

Questions about what is considered commercial activity

Q: Is a privately-owned school, such as a vocation training school, subject to CAT? If part of the tuition is paid via federal student loans, does that change anything?

A: Yes, a privately owned educational institution or training school is subject to CAT. Receipt of federal student loan funds to pay student tuition does not impact the institution's responsibility to register for and pay the CAT.

Q: Can insurers consider the CAT part of the Retaliatory Tax Calculation on Schedule G?

A: For insurers, commercial activity is specifically defined to include gross direct life insurance premiums, gross direct accident and health insurance premiums, and gross direct property and casualty insurance premiums received by insurers and reported on the statement of premiums filed with the Director of Consumer and Business Services (DCBS) under [ORS 731.574](#), as well as the gross amount of surplus lines premiums received on Oregon home state risks, as shown in the report required by [ORS 735.465](#). [[ORS 317A.100\(1\)\(a\)\(C\)](#)]

An insurer's premium tax, as required to be reported on the two different statements or reports under [ORS 731.574](#) and [ORS 735.465](#), is administered by DCBS's [Division of Financial Regulation](#) (DFR). The Department of Revenue would refer any questions regarding an insurer's premium tax calculation to DCBS' DFR for more information.

Q: Do vehicles and/or other assets that have been seized to satisfy a lien, count for the tax? The tow truck company is only allowed to keep the amount due and after a period of time (like two years), if there is a surplus and the owner of the vehicle/asset does not claim the excess funds the business can keep it. It is part of a normal course of business, the question is more of when would it be included as income?

A: Commercial activity, for the purposes of the CAT, is defined as "the total amount realized by a person, arising from transactions and activity in the regular course of the person's trade or business." [[ORS 317A.100\(1\)\(a\)](#)]

Commercial activity is realized when a taxpayer realizes the amount in question pursuant to the method of accounting used by a taxpayer for federal income tax purposes.

For example: A towing company ("Company") seizes a vehicle worth \$20,000. Company holds the vehicle for two years during which time the owner of the vehicle accrues the following charges: towing fee of \$150 and storage fees of \$6,000, for a total of \$6,150. After two years, the owner has neither collected his vehicle nor paid the fees. Company is allowed to sell the vehicle and keep the proceeds. Company receives \$10,000 from the sale. Company would report \$3,850 (\$10,000 - \$6,150) as commercial activity for "other income" when the proceeds from the sale are received and will report \$6,150 as commercial activity for their recovered fees.

[OAR 150-317-1000 \(Definition of Commercial Activity\)](#) also provides further detail to assist CAT taxpayers in determining their commercial activity.

Q: How is CAT tax liability calculated for insurance companies? Could you please give an example of how insurance companies should calculate? What should be the starting point? Gross premium? STAT income on blue book? Or anything else? How should it be apportioned?

A: Under the laws governing the CAT, the tax is imposed on the commercial activity of insurers:

If received by an insurer, as reported on the statement of premiums accompanying the annual statement required under [ORS 731.574](#) to be filed with the director of the Department of Consumer and Business Services, *all gross* direct life insurance premiums, gross direct accident and health insurance premiums, and gross direct property and casualty insurance *premiums*; and *[t]he gross amount* of surplus lines *premiums* received on Oregon home state risks as shown in the report required by [ORS 735.465](#). [See [ORS 317A.100\(1\)\(a\)\(C\)](#)]

Based on the language of the statute, as noted above [emphasis added], the tax on an insurer's Oregon commercial activity is based on the gross premiums reported on the two different reports required to be filed with the Department of Consumer and Business Services. The department is in the process of developing an administrative rule to provide more detailed guidance to taxpayers on this topic.

Regarding the second part of the question about apportionment, for purposes of the CAT, taxpayers can apportion their cost inputs or labor costs to calculate the 35 percent subtraction. The department is amending OAR 150-317-1200 (Cost Input or Labor Cost Subtraction) and other guidance regarding the 35 percent subtraction to reflect changes made by [HB 4202 \(First 2020 Special Session\)](#). The administrative rule provides guidance on methods for calculating the subtraction and apportioning eligible costs. The updated rule will be finalized by December 1, 2020 and will be available on the [Secretary of State website](#). The October [Notice of Proposed Rulemaking—CAT October 1, 2020](#) document also provides information on the proposed rule.

Q: Telecommunications revenues are derived from several different sources. Local service revenue from end users, federal revenues from sources such as universal service and NECA and state revenues such as Oregon Universal Service. Network access revenues are derived as well from both federal and state sources. Universal service revenues are received by companies such as ours to help develop a nationwide network. Revenues derived from broadband (internet) are traditionally recognized as interstate revenue due to federal tariffs and the fact that the internet is connected to the world wide web. Should these interstate

revenues be used in the calculation of the CAT or should they be excluded like other interstate revenue sources are?

A: Under the laws governing the CAT, certain items are excluded from commercial activity. Specifically related to telecommunication revenue, the following items are excluded:

- Federal universal service funds as determined by the FCC. [[ORS 317A.100\(1\)\(b\)\(OO\)](#)]
- Universal service surcharge moneys collected or recovered and paid into the universal service fund established in ORS 759.425. [[See ORS 317A.100\(1\)\(b\)\(MM\)](#)]
- Moneys collected or recovered by entities listed in ORS 756.310 [public utilities and telecommunications providers], cable operators as defined in 47 U.S.C. 522(5) telecommunications carriers as defined in 47 U.S.C. 153(51) and providers of information services as defined in 47 U.S.C. 153(24), for fees payable under ORS 756.310, right-of-way fees, franchise fees, privilege taxes, federal taxes and local taxes. [[ORS 317A.100\(1\)\(b\)\(KK\)](#)]

Q: Some auto manufacturers provide cash incentives for an auto dealer to improve their facilities. Would these receipts be excluded from CAT? Sometimes qualification for these incentives are based on vehicles sales or customer service ratings. Would this change the classification of these receipts with regard to CAT?

A: The CAT is measured on commercial activity—the total amount a business realizes from transactions and activity in the regular course of the trade or business. A transaction may be considered part of the regular trade of the business if it is reasonable to conclude that transactions of that type are customary in the kind of trade or business being conducted. Based on the information provided, the cash incentives the dealer receives appear likely to be commercial activity, regardless of whether the incentives are based on vehicle sales or customer service ratings. [OAR 1503-17-1000 \(Definition of Commercial Activity\)](#) provides further guidance that may assist taxpayers in determining whether receipts are commercial activity.

Q: Are legal fees considered commercial activity?

A: The CAT is imposed on each person with taxable commercial activity of more than \$1 million. Taxable commercial activity means commercial activity sourced to Oregon, less a subtraction of 35 percent of the greater of labor costs or cost inputs. Commercial activity means the total amount realized from transactions and activity in the regular course of a person's trade or business.

A transaction may be considered part of the regular trade of the business if it is reasonable to conclude that transactions of that type are customary in the kind of trade or business being conducted. Not enough information has been provided to determine whether the legal fees are part of the person's or business's regular course of a trade or business. Please refer to [OAR](#)

[1503-17-1000 \(Definition of Commercial Activity\)](#) for more detailed information on transactions subject to the CAT.

Q: For automotive dealerships, are vehicles sent to an auto auction subject to CAT tax? We would be unaware of where the vehicle would end up. Are they considered a pass thru business? Do vehicle dealer trades apply to used vehicles?

A: Cars sold through an auction are commercial activity and are subject to CAT if they are delivered to a purchaser in Oregon. If the dealership is receiving the revenue from the sale, then it is the dealership's commercial activity. We cannot determine, based on the information provided, whether the auction would be a pass-through business. The auction may be subject to CAT on whatever fees, commission, etc., that it receives as revenue. The auction may not be subject to the CAT on the sale of the property, if it has no right to keep the money from the transaction. This relationship is referred to as the agent exclusion. Please refer to [OAR 150-317-1100 \(Agent Exclusion\)](#) for more information about the agent exclusion. The exclusion for motor vehicle dealer trades applies specifically to vehicle dealer trades or transfers, whether new or used vehicles, provided that the following two requirements are met:

1. The sale or transfer is made for the purpose of resale by the transferee motor vehicle dealer.
2. The sale or transfer is made based on the transferee motor vehicle dealer's need to meet a specific customer's preference.

Further information regarding the exclusion for dealer trades is available on the CAT [Beyond the FAQ](#) webpage and in [OAR 150-317-1410 \(Motor Vehicle Resale Certificate\)](#).

Q: Are commissions earned and received from sales of tangible personal property at other businesses considered commercial activity for purposes of CAT tax?

A: The CAT is imposed on each person with taxable commercial activity of more than \$1 million. Taxable commercial activity means commercial activity sourced to Oregon, less a subtraction of 35 percent of the greater of labor costs or cost inputs. Commercial activity means the total amount realized from transactions and activity in the regular course of a person's trade or business.

A transaction may be considered part of the regular trade of the business if it is reasonable to conclude that transactions of that type are customary in the kind of trade or business being conducted. Based on the information provided, it appears that the sale of tangible personal property may be part of the regular course of the person's trade or business. If so, the person receiving the commissions for the sale of property would be subject to the CAT if they realize over \$750,000 of commercial activity in the year. Please refer to [OAR 1503-17-1000 \(Definition of Commercial Activity\)](#) for more detailed information on transactions subject to the CAT.

Q: Does CAT apply to the sale of a house that was for personal use?

A: The CAT is imposed on each person with taxable commercial activity of more than \$1 million. Commercial activity means the total amount realized from transactions and activity *in the regular course of a person's trade or business* (emphasis added). If the sale of the house was a one-time event and not part of the normal business activities, then it would not be considered commercial activity. If an individual buys and sells houses regularly, then the sale of a house would be considered commercial activity and be subject to CAT. [OAR 1503-17-1000 \(Definition of Commercial Activity\)](#) provides guidance regarding the definition of commercial activity and transactions subject to the CAT.

Q: For video lottery retailers do we have to pay CAT on our portion of the Lottery sales?

A: The commission the business receives on the lottery sales would be subject to CAT.

Q: Healthcare clinics that are not hospitals or nursing homes that receive Medicare payments, will they qualify for the Medicare payment exclusion as well?

A: Net revenue of residential care facilities as defined in ORS 443.400 or in-home care agencies as defined in ORS 443.305 is excluded, to the extent that the revenue is derived from or received as compensation for providing services to a medical assistance or Medicare recipient.

Q: If farmers receive funds from farm cooperatives, is that income excludable from their income for calculating their gross income?

A: Receipts from a farmer's sales to an agricultural cooperative described in Section 1381 of the Internal Revenue Code are excluded from Oregon sourced commercial activity. In addition, a patronage dividend a farmer receives from a cooperative would also be excluded from commercial activity. [[ORS 317A.100\(1\)\(b\)\(BB\)](#) and [317A.100\(1\)\(b\)\(TT\)](#)]

Q: Is the sale of rental property subject to CAT?

A: Further information would be needed to fully determine if the sale of rental property would be subject to CAT in this specific situation. However, receipts from the sale, exchange, or other disposition of an asset described in Section 1221 or Section 1231 of the Internal Revenue Code (without regard to the length of time the person held the asset) are excluded from commercial activity. Please see [IRS Publication 544](#) for more details. Assuming the rentals are 1231 property, they will not be subject to CAT upon disposition. [[ORS 317A.100\(1\)\(b\)\(B\)](#)]