2020 Oregon new law update FAQ

General

Q1: Is the Oregon Department of Revenue offering continuing education credit (CE) for attending the Oregon New Law Update presentations?

A1: Revenue doesn't usually issue CE; it's usually issued through external organizations. Revenue will not be issuing CE for this training. We will be posting a recording of the new law update to our website that you may view at your meetings for CE.

Q2: Does the interest and penalty relief announced by the governor on December 14, 2020 need to be requested, or is the relief automatic?

A2: You will need to request the relief. Read the FAQ regarding the small business relief for COVID-19.

Q3: What is the mailing address for vouchers this coming tax year?

A3: Oregon Department of Revenue
PO Box 14950
Salem, OR 97309-0950

Q4: Is a scanned wet signature considered a facsimile signature?

A4: Yes.

Payroll/withholding and special programs

Q5: If my company only employs me, and I would not take any type of leave as I'm basically self-employed as a single member S-corporation with a wage, would I still have to pay the family leave tax?

A5: The Oregon Employment Department is administering the Paid Family and Medical Leave Insurance Program. They are in the process of developing policies related to the administration of this program, with contributions scheduled to begin January 1, 2022. The Department of Revenue will continue to update its website with frequently asked questions. However, this question would be best directed to the Oregon Employment Department.

Q6: For marijuana tax, what does the first $11,125,000 received by the state pay for?

A6: These funds will go to Measure 91 recipients. Additional funds apply to the new Drug Treatment and Recovery Services Fund.

Q7: Will the paid family medical leave be mandatory for all employers, regardless of the number of employees?

A7: Ultimately, the Employment Department will create the rules for this program. For more information, visit their website or read their frequently asked questions. For questions, email paidfamilyandmedicalleave@oregon.gov.

Employers with fewer than 25 employees are not required to pay the 40 percent employer contribution. However, if an employer does pay the 40 percent employer contribution, they are eligible to receive assistance grants.

Q8: Are 1099 NECs and 1099-MISC required to be filed electronically this year via iWire?

A8: OAR 150-314-0140 provides the full list of returns that are required to be electronically filed. The Form 1099-MISC was already required to be filed in iWire. The new forms that are required to be filed electronically include Form 1099-NEC and Form 1099-K. Penalties will be assessed if a payer fails to file an information return, or files an incorrect or incomplete information return for Form 1099-K or Form 1099-NEC beginning in tax year 2021. Forms are due in January 2022.

Personal Income Tax (PIT)

Q9: The Oregon reconnect date is December 31, 2018. Does this mean any federal tax changes made after this date (including those made in 2020) are, or are not, carried through to Oregon returns? Do we need to make adjustments for 2020 federal tax law changes on the Oregon return?

A9: Oregon has a running tie to the definition of federal taxable income, so any changes Congress makes that impact federal taxable income, Oregon is tied to and you will not have an adjustment on the Oregon return. However, for all other changes to federal law, Oregon is tied to the laws as amended and in effect as of December 31, 2018.

Q10: Did Oregon tie to the tax extenders that were retroactively changed in December 2019 back to tax year 2020 (e.g., the 7.5 percent AGI floor for the medical expense deduction, the deduction for mortgage insurance premiums, etc.)? It's not clear if Oregon ties to federal law as of December 31, 2018, but this law was passed after that.

A10: Yes, Oregon is currently tied to the extenders for the 7.5 percent AGI floor for the medical expense deduction and the deduction for mortgage insurance premiums, as both of those impact federal taxable income (see above question about the rolling reconnect).

Q11: Can an individual with a 529 subtraction from a year prior to 2016 carry forward a portion of that subtraction to tax year 2020?

A11: No. The 529 subtraction has a four-year carryforward. If the contributions were made prior to tax year 2016, they would expire prior to tax year 2020.

Q12: What is the deadline for making a 2020 Oregon 529/ABLE contribution in order to receive the corresponding credit?

A12: The contributions must be made by the due date of the 2020 tax return or the date the taxpayer files this return, whichever is earlier.

Q13: Is there a listing of all the credits that can be transferred from one taxpayer to another?

A13: Currently, there are three credits that are allowed by statute to be transferred. They are the Agriculture Workforce Housing Credit, Bovine Manure Credit, and the Short-line Railroad Credit. These three credits are listed in the instructions for Form OR-TFR and are explained more fully in Publication OR-17.

Q14: When will the 2019 Oregon surplus kicker credit be released?

A14: There will not be a kicker on the 2020 return. If triggered, this credit will only be claimed on tax returns for odd-numbered years.

Q15: Will the federal recovery rebate payment be an add-back on the Oregon return?

A15: The Oregon federal tax subtraction will be reduced by the recovery rebate payment. There is no add-back required.

Q16: Will Oregon accept Form 1045 in lieu of an amended tax return for a net operating loss (NOL)?

A16: Yes, federal Form 1045 will be accepted in lieu of having taxpayers file an amended federal return just for Oregon. Taxpayers will file the amended Oregon return and the federal Form 1045 to carry back the NOL.

Q17: How will Revenue handle the second round of federal recovery rebate payments? Some taxpayers received the recovery rebate payment in calendar year 2020, and some will receive it in calendar year 2021. Regardless of when received, will all second-round recovery rebate payments be included in reducing the 2020 federal tax liability subtraction (line 10) on the Oregon return?

A17: The first and second federal recovery rebate payments are an advance payment of a refundable credit against 2020 federal tax. Each recovery rebate payment will be added together to determine the amount to subtract from federal tax to determine the federal tax subtraction.

Q18: Will the $600 recovery rebate payment I received in calendar year 2021 be reported on the 2020 Oregon return?

A18: The 2021 $600 recovery rebate payment is an advance payment of a 2020 federal refundable credit; therefore, it is included in the calculation of the 2020 federal tax subtraction amount.

Q19: What form number will the IRS issue for the second recovery rebate payment that taxpayers should keep for their record?

A19: The IRS should be issuing Form 1444B for the second recovery rebate payment amount.

Q20: What if a Washington resident, who normally works in Oregon, telecommutes from home. Is the income earned by the Washington resident taxable to Oregon?

A20: Per OAR 150-316-0165, the income earned by a nonresident employee outside of Oregon is not taxable to Oregon. See the rule for exceptions for nonresidents whose services are connected with the management or conduct of a business in Oregon.

Q21: Paycheck Protection Program (PPP) funds are tax free, federally. When will Oregon decide if they tied to this or not?

A21: The appropriations bill passed by Congress in December 2020 allows deductions for related expenses (wages, etc.) even though the PPP loan is excluded from income. Because the taxability and deductibility of PPP affects federal taxable income, Oregon is currently tied to these changes due to our rolling reconnect to federal taxable income. However, the Legislature may decide to have a different treatment during the 2021 legislative session.

Corporate Activity Tax (CAT)

Q22: Is there a listing of the excluded items?

A22: Revenue's CAT webpage provides information on many of the major exclusions but does not have a separate list of all 48 excluded items. For the most current and detailed list of excluded items, refer directly to the 2020 laws. Revenue's CAT webpage also includes a link to the law.

Q23: Will the excluded items be listed in the CAT return instructions?

A23: Yes, we plan to include the list of exclusions from commercial activity in the CAT instructions.

Q24: How is CAT handled for a fiscal tax return? Do I use my fiscal year for the calculation?

A24: The CAT is an annual calendar year tax. Businesses that use an alternate fiscal year must still file and pay based on the calendar year. However, under HB 4202 (2020 first special session) taxpayers may elect to use their most recent fiscal year information for purposes of determining their labor cost, or cost input subtraction.

Q25: By registering for the CAT program, am I required to file an annual CAT tax return, even if I don't meet the $1 million of gross revenue?

A25: No. Entities that meet the $750k threshold are required to register, but they are not required to file a return if they do not meet the filing threshold of $1 million in Oregon commercial activity.

Q26: Is selling residential rental units considered commercial activity?

A26: We need further information on the business's specific facts and circumstances to fully determine if the sale of rental property would be subject to CAT. 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)]

Q27: Was the 2020 CAT tax return due April 15, 2020 or April 15, 2021?

A27: The 2020 CAT return is due April 15, 2021 unless the taxpayer requests the six-month extension.

Q28: I have several clients that regularly file an extension to file because, as a sole practitioner, I cannot complete all tax returns by April 15, 2020. Does OAR 150-317-1330 (1)(b)(A) mean that this situation does not qualify as good cause to request an extension to file?

A28: Not having the information necessary to file CAT is good cause for requesting an extension to file. However, reliance on a professional to merely prepare a return on time is not considered good cause. See OAR 150-317-1330 for circumstances that qualify for good cause. Keep in mind: The request for an extension of time to file must be made prior to April 15.

Q29: How will Oregon know if a registered company does not exceed the $1 million mark, if they don't file a return?

A29: If the $1 million threshold is not met, the registered company doesn't have to file a return. Revenue will do normal compliance checks to verify this information, as it does with other tax programs.

Q30: If a service provider does not report cost of goods sold (COGS), what expenses are considered cost inputs?

A30: Cost inputs is defined in statute as the cost of goods sold, as calculated in arriving at federal taxable income under the Internal Revenue Code (IRC). Businesses that are not required to report COGS for federal tax purposes may determine cost inputs in the same manner as calculated under IRC Section 471 and applicable regulations.

Q31: Commercial activity means the fair market value of all amounts realized in the regular course of trade or business, including debts forgiven. Is the Paycheck Protection Program (PPP) forgiveness included in gross income for CAT?

A31: Commercial activity means the fair market value of all amounts—including debt forgiven—realized in the regular course of the taxpayer's trade or business. Generally, a forgivable PPP loan (whether or not forgiven) received by a business from the CARES Act federal relief program is not commercial activity and thus is not subject to the CAT. CAT taxpayers are allowed to subtract 35 percent of the greater of their cost inputs or their labor costs that are attributable to commercial activity. The amount of a PPP loan (forgiven or not) used to pay labor costs or cost inputs incurred over the year can be included in the taxpayer's costs eligible for the subtraction, so long as those costs are attributable to commercial activity. We have information on the PPP loans and the CARES Act on the CAT webpage.

Q32: Can you confirm that income into an entity from a pass-through entity that pays CAT will not also be subject to an additional CAT filing and payment?

A32: Distributive income received from a pass-through entity is excluded under ORS 317A.100(1)(b)(CC).

Q33: Many Oregon farmers have well over $1 million in total sales but send most of their crop out of Oregon (either through direct sales, co-ops, or Oregon wholesalers) and thus their Oregon commercial activity is below $750k. Do such farmers have any registration or filing requirements for the CAT?

A33: The registration threshold is based on Oregon commercial activity. Taxpayers with Oregon commercial activity below $750,000 have no responsibilities under the CAT, and they are not required to register or file.

Q34: Are 1031 exchange residential rental units considered commercial activity?

A34: Commercial activity is the total amount realized by a person, arising from transactions and activity in the regular course of the person's trade or business, without deduction for expenses incurred by the trade or business. Commercial activity does not include receipts from the sale, exchange, or other disposition of an asset described in IRC 1221 or 1231, without regard to the length of time the person held the asset. If the residential rental units meet the definition of property under IRC 1231, then a 1031 exchange would not be subject to CAT.

Q35: Do labor costs include S corporation shareholder's wages?

A35: Labor costs means total compensation of all employees, not to include compensation paid to any single employee in excess of $500,000. An employee is any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed or the manner in which they are performed. Typically, owners are not considered employees, so their compensation would not qualify for the labor cost subtraction.

However, there are situations under which an owner may be considered an employee. Generally, if the owner is compensated through a federal Form W-2 and is subject to federal taxes and withholding, then they qualify to be treated as an employee, and the compensation received may be used for calculating the labor cost subtraction. Conceivably, a business owner who is also an S corporation shareholder, could be considered an employee if they provide services and act as an employee to the corporation.

The Commercial Activity Subtraction video on the CAT training materials webpage provides information to assist taxpayers in determining their labor costs for purposes of CAT's 35 percent subtraction. Detailed information is available in OAR 150-317-1220 (Employee Compensation Labor Cost Subtraction).

Q36: Is there a summary on the website of the 40 commercial activity exclusions?

A36: The Revenue CAT webpage provides information on many of the major exclusions but does not have a separate list of all 48 excluded items. For the most current and detailed list of excluded items, refer directly to the 2020 laws. Revenue's CAT webpage also includes a link to the law.

Q37: Are difficulty-of-care payments and those not-taxable payments from DHS for foster care subject to CAT?

A37: The statutes governing the CAT do not provide a specific exclusion for difficulty of care payments or foster care payments excluded from gross income under Section 131 of the Internal Revenue Code and IRS Notice 2014-7. The CAT is imposed on taxable commercial activity (commercial activity, less the 35 percent subtraction for cost inputs or labor costs) over

$1 million. Those with $1 million or less of taxable commercial activity will not have a CAT liability.

Q38: Are grocery stores exempt from CAT?

A38: Grocery stores are not an excluded entity under the statutes governing the CAT. However, the law does exclude receipts from the retail or wholesale sale of groceries. [ORS 317A.100(1)(b)(EE)].

For purposes of the CAT, groceries are food and food items that would be eligible for purchase with Supplemental Nutrition Assistance Program (SNAP) benefits. Essentially, groceries are food and beverages purchased for home consumption. Food-producing seeds and plants for use in the purchaser's garden are also groceries. Please note that the grocery exclusion does **not** apply to certain items, such as alcoholic beverages, tobacco, cannabinoid edibles, marijuana seeds, food that is hot at the point of sale, and hot food products ready for immediate consumption. Taxpayers must include receipts from sales of these items in their commercial activity.

A taxpayer may exclude receipts from the retail sale of groceries, provided that the sale meets the following requirements:

Requirement 1: The sale is of a grocery item that would be eligible for purchase with SNAP benefits, and

Requirement 2: The seller typically intends or expects that the sale of food to the purchaser is for home consumption by the purchaser.

Safe Harbor: Stores that are qualified SNAP retailers, with a current permit from the U.S. Department of Agriculture to accept SNAP benefits, have met requirement No. 2 and may exclude receipts from the sales of SNAP-eligible food sold from the qualified retail store (regardless of whether the groceries were purchased with SNAP benefits). Similarly, stores that are not qualified SNAP retailers may still exclude receipts from the retail sales of grocery items, provided that the items are intended for, or typically sold to, the final consumer for home consumption. More information on this exclusion, including FAQs and a brief video, is available on the DOR CAT webpage. More information is also available at OAR 150-317-1150 (Retail Sale of Groceries Exclusion).

Q39: Are restaurants exempt from CAT?

A39: No. The CAT provides an exclusion for receipts from the retail or wholesale sale of groceries for home consumption. The statutes governing the CAT do not provide an exclusion for restaurants. For purposes of the grocery exclusion, the term groceries is specifically defined in statute. Essentially, groceries are food and beverages purchased for home consumption. Hot food products ready for immediate consumption, and food that is hot at the point of sale, are not groceries as defined for CAT. Sales of meals and food products by restaurants, cafes, delicatessens, coffee shops, and similar establishments are not considered retail sales of groceries for home consumption. The exclusion does not apply to any food or food products sold to consumers by a store or other establishment, if that establishment's receipts from sales of hot food are more than 80 percent of their total receipts from all sales of all food items (receipts from both hot and cold food items).

Q40: Would take-out sales in a restaurant be exempt if delivered to a home?

A40: No. Sales of meals and food products by restaurants, cafes, delicatessens, coffee shops, and similar establishments are not considered retail sales of groceries. The retail grocery exclusion does not apply to any food or food products sold to consumers by a store or other establishment if that establishment's receipts from sales of hot food are more than 80 percent of their total receipts from all sales of all food items (receipts from both hot and cold food items).

Q41: If someone pays a bill where the vendor charges a CAT tax, how do we deduct that (assuming it is deductible)? Do we just add to the invoice or show it as taxes?

A41: The laws governing the CAT impose the tax on the business, not the customer. The CAT is an annual tax, not a tax on any particular transaction. The law establishing the CAT do not prohibit a business from including an estimate of the CAT with other business expenses when setting the total price charged to customers. However, the total price charged (including any amount estimated to be attributable to the CAT) is included in the business's commercial activity and possibly subject to CAT. The statutes governing CAT do not provide any deductions. There may be non-tax laws that regulate business pricing, advertising, or other industry trade practices. Revenue does not advise about compliance with non-tax laws.

Q42: Are businesses that provide hospice care (not facility) and paid by Medicare and Medicaid subject to this tax?

A42: Hospitals, long-term care facilities, and other entities subject to the health insurance premium and managed care assessment or the hospital and long-term care facility assessment are excluded from the CAT, unless they have unrelated business income. The net revenue of residential care facilities as defined in ORS 443.400, and/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.

Q43: If you're only able to deduct 35 percent of your labor or 35 percent of cost of goods sold against gross sales—it says taxable over $1 million, shouldn't that be gross instead of taxable?

A43: The CAT applies only to taxable commercial activity over $1 million. Taxable commercial activity means Oregon commercial activity, less the 35 percent subtraction. [ORS 317A.100(16)] The tax does not apply to gross commercial activity.

Q44: My question is regarding slide 42—I wanted to know if it should be gross, instead of taxable regarding the $1 million?

A44: As noted on slide 42 of the January 9, 2021 presentation, the CAT applies only to taxable commercial activity over $1 million. Taxable commercial activity means Oregon commercial activity, less the 35 percent subtraction. [ORS 317A.100(16)] The tax does not apply to gross commercial activity.

Q45: Can vendors charge a separate line item on their invoices for the CAT tax?

A45: The laws establishing the CAT do not prohibit any business from recovering a business expense when setting the total price for the sale, lease, or license of an item, or the sale of a service. The CAT is imposed on the entity doing business in Oregon and is considered part of the business's expenses. A business may include the CAT with other business expenses when setting the total price charged to customers. However, the total price charged (including any amount estimated to be attributable to the CAT) is included in the business's commercial activity and possibly subject to CAT.

Q46: How do you file if you qualify as an exempt organization such as a Medicare facility?

A46: Entities that are specifically excluded under CAT statutes, such as hospitals, long-term care facilities, and other entities subject to the health insurance premium and managed care assessment or the hospital and long-term care facility assessment, are not required to register or file, unless the entity has unrelated business income in Oregon that would be considered commercial activity subject to CAT. Further information on excluded entities is available on DOR's CAT FAQs, and in the CAT Overview video on the CAT training materials webpage.

Q47: What are cost inputs?

A47: Cost inputs are defined as cost of goods sold, as calculated in arriving at federal taxable income under the Internal Revenue Code [ORS 317A.100(2)]. Taxpayers can refer to IRS Publication 538, Accounting Periods and Methods, for more information.

For taxpayers engaged in farming operations doing business under NAICS code 111 (crop production), 112 (animal production and aquaculture), or 115 (support activities for agriculture and forestry) who are not required to report cost of goods sold for federal tax purposes, cost inputs means the taxpayer's operating costs, excluding labor costs.

The Commercial Activity Subtraction video on the CAT training materials webpage provides information to assist taxpayers in determining their cost inputs for purposes of CAT's 35 percent subtraction. Farming operations may also refer to the Cost Inputs for Farming Operations training video on the CAT training materials webpage, which provides specific information for the agricultural sector.

Q48: Is there an exclusion for the sale of gasoline at a gas station?

A48: Yes. Receipts from the sale, transfer, exchange, or other disposition of motor vehicle fuel or any other product used for the propulsion of motor vehicles is excluded from commercial activity.

Q49: If you register for the CAT, do you have to file? Also, what if you file for 2020 but don't exceed $1 million in 2021, do you have to cancel your registration?

A49: Any business—or unitary group of businesses—with Oregon commercial activity in excess of $750,000, must register for the CAT. However, only those with Oregon commercial activity in excess of $1 million must file a return, and only taxpayers with taxable Oregon commercial activity in excess of $1 million will have a tax payment obligation. Taxpayers are not required to cancel their registration if they do not meet the registration or filing thresholds in future years. Further information on the registration and filing thresholds is available on DOR's CAT FAQs and in the CAT Overview video on the CAT training materials webpage.

Q50: What is the definition of labor costs for the CAT?

A50: The term labor costs is specifically defined in statute as the total compensation of all employees, not to include compensation paid to any single employee in excess of $500,000. [ORS 317A.100(12)] The term compensation means the amount received or to be received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer. This includes reimbursements received by or for an individual for medical or education expenses, health insurance premiums, employee expenses, or on account of a dependent care spending account, legal services plan, any cafeteria plan described in Section 125 of the Internal Revenue Code, or any similar employee reimbursement.

The Commercial Activity Subtraction video on the CAT training materials webpage provides information to assist taxpayers in determining their labor costs for purposes of CAT's 35 percent subtraction. Detailed information, as well as an example, is also available in OAR 150-317-1220 (Employee Compensation Labor Cost Subtraction).

Q51: CAT tax personal property sold out of the state but shipped or delivered out of the state–does this count as far as being subject to CAT tax?

A51: Receipts from the sale of tangible personal property are sourced to Oregon if the property is delivered to a purchaser within Oregon, regardless of the f.o.b. point or other conditions of sale, whether transported by seller, purchaser, or common carrier. Tangible personal property sold and delivered to a purchaser outside of Oregon is not sourced to Oregon, and receipts from that sale are not subject to the CAT. Detailed information and examples on sourcing sales of tangible personal property is available in OAR 150-317-1030 (Sourcing Commercial Activity from Sales of Tangible Personal Property) and in the CAT web video, Sourcing Sales of Tangible Personal Property, on the training materials webpage.

Q52: If a business ships most of its products out of state, is income from those transactions excluded from the corporate activity?

A52: The CAT applies to commercial activity sourced to Oregon. Receipts from the sale of tangible personal property are sourced to Oregon if the property is delivered to a purchaser within Oregon, regardless of the f.o.b. point or other conditions of sale, and whether transported by seller, purchaser, or common carrier. Detailed information and examples on sourcing sales of tangible personal property is available in OAR 150-317-1030 (Sourcing Commercial Activity from Sales of Tangible Personal Property) and in the web video, Sourcing Sales of Tangible Personal Property, on the training materials webpage.

Receipts from a sale of a service are sourced to Oregon, to the extent that the service is delivered to a location in Oregon. Detailed guidance and instructions on sourcing receipts from the sale of services, as well as the sale, rental, or lease of intangible property are available in OAR 150-317-1040 (Sourcing Commercial Activity to Oregon of Other than Sales of Tangible Personal Property) and in the web video, Sourcing for the Sales of Other Than Tangible Personal Property, on the training materials webpage.

Receipts that are not sourced to Oregon are not subject to the CAT.

Q53: If inventory is sold to an out-of-state customer, does this count for the CAT tax?

A53: The CAT only applies to commercial activity receipts that are sourced to Oregon. Receipts from the sale of tangible personal property are sourced to Oregon if the property is delivered to a purchaser within Oregon, regardless of the f.o.b. point or other conditions of sale, and whether transported by seller, purchaser, or common carrier. Receipts from sales that are sourced outside of Oregon are not included in the taxpayer's Oregon commercial activity and are not subject to the CAT.

Guidance and examples to assist taxpayers in sourcing sales of tangible personal property is available in OAR 150-317-1030 (Sourcing Commercial Activity from Sales of Tangible Personal Property) and in the web video, Sourcing Sales of Tangible Personal Property, on the training materials webpage.

In addition, detailed guidance and examples for sourcing receipts from the sale of **services**, as well as the sale, rental, or lease of **real property** and **intangible property,** is also available in OAR 150-317-1040 (Sourcing Commercial Activity to Oregon of Other than Sales of Tangible Personal Property) and in the web video, Sourcing for the Sales of Other Than Tangible Personal Property, on the training materials webpage. Detailed guidance on sourcing receipts for motor carrier transportation services and financial services is available in OAR 150-317-10770 (Sourcing Motor Carrier Transportation Services) and 150-317-1050 (Sourcing of Commercial Activity for Financial Institutions in This State).

Receipts that are not sourced to Oregon are not subject to the CAT.