OREGON DEPARTMENT OF REVENUE

Oregon Department of Revenue
Tax Professional's Liaison Meeting 05/25/2018
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Minutes

Legislative Updates

Oregon connected to federal tax law as amended and in effect on December 31, 2017, or if related to the definition of taxable income, as amended and in effect for the tax year of the taxpayer.

This includes all provisions of the federal "Tax Cuts and Jobs Act of 2017," Public Law 115-97, unless the Oregon legislature specifically disconnects from them. It also includes provisions enacted on or after January 1, 2018 that define 2017 taxable income.

Federal provisions that expired at the end of 2016, but were extended for 2017 on February 9, 2018:

- *Tuition and fees deduction/subtraction*
    - Federal deduction – IRC § 222
        - Deduction → flows through to Oregon return
        - Oregon subtraction → allowed if taxpayer chose federal credit(s) instead of deduction
- *Mortgage insurance premiums itemized deduction*
- *Exclusion of discharged home mortgage indebtedness*

Oregon 2017 instructions were written under the assumption these provisions were expired but information can be found in the 2016 instructions.

House Bill (HB) 4028

- *Working Family Household and Dependent Care Credit*
    - Earned income must be taxable by Oregon
    - Changes to limit for married filers
- *Bovine Manure Credit*
    - "Bovine" definition changed from "cow" to "cattle"
    - Annual limitation per calendar year, not per tax year
    - *Film and Video* – direct funding for current fiscal year
    - *Affordable Housing Lenders* – nonprofit may qualify as borrower

Senate Bill (SB) 1528

- *New tax credit auction* – SB 1528
    - Funds go to *Oregon Opportunity Grant Fund*
    - Provides grants for low-income college students
    - Similar to Film and Video credit auction
    - $14 million in tax credits to be auctioned off each year

HB 4007

- *First-Time Home Buyer Savings Account*
    - Subtract up to $5,000 ($10,000 MFJ) in contributions each year, with a phase-down based on AGI
    - Subtraction allowed each year for up to 10 years, up to $50,000 total principal and interest
    - Funds in the account must be used to buy a home within 10 years of opening the account

This is a **subtraction** taken in the year contributions are made to a savings account dedicated for this purpose. This provision has no effect on any credit or subtraction allowed at the time a home is purchased. If the funds in the savings account are not used to purchase a house, any amount subtracted must be added back at the time the funds are withdrawn from the account.

HB 4026

- *Residency determinations*
    - Audit issue – multiple factors to consider
    - Charitable giving/activities no longer allowed to be considered

Federal Disconnects – The Oregon Legislature disconnected Oregon taxable income from the following provisions:

HB 4080

- *Oregon 529 savings plan funds used for K-12 tuition*
    - Earnings aren't taxed at the federal level
    - Untaxed earnings and amounts previously subtracted must be added back for Oregon if used for K-12 tuition

SB 1528

- *Qualified business income deduction – IRC §199A*
    - Below-the-line deduction

    (after AGI on federal return)
    - No Oregon addition required

***Reminder – Minimum age to claim the Oregon Special Medical Subtraction increases to 65 for tax year 2018. Taxpayers must be 65 by December 31, 2017 to qualify for the subtraction.**

Special Session May 22, 2018

- *HB 4301 - Expansion of PTE Reduced Rate to Qualifying Sole Proprietorships*
    - For tax years beginning 1/1/2018
    - At least 1 employee (non family member)
    - 30 hours per week
    - 1,200 hours annually
    - Election is irrevocable and must be made on the original return.

Provisions of the reduced rate haven't changed. Refer to the 2017 instructions for more details about qualifying for the reduced rates. 2018 instructions will be available January 2019.

HB 4139 (2018)
<u>Heavy Equipment Rental Tax</u>

A tax of 2-percent is imposed on the rental price received for qualified heavy equipment rentals occurring on or after January 1, 2019. Rental provider is required to collect tax from the renter at the time rental is made.

Qualified heavy equipment

Construction, mining, earthmoving or industrial equipment, with attachments and other equipment and tools that is mobile, held primarily for rental, and owned by a person primarily engaged in the business of renting qualified heavy equipment without an operator.

Exemptions

Qualified heavy equipment subject to heavy equipment rental tax is exempt from property taxes.
Agreements for the use of property for 365 consecutive days or more are not considered "rentals" for purposes of the heavy equipment rental tax.

Filing requirements

Qualified heavy equipment provider must register with Dept. of Revenue by December 31, 2018.
Returns and remittance of tax is due quarterly on the last day of the month following the calendar quarter end.

Distribution of tax receipts

Dept. or Revenue administrative expenses are reimbursed in amount up to 5 percent of tax collections. Two percent of gross tax collections are transferred to counties without heavy equipment rental locations with the county boundary. The remaining tax collection amount is then distributed to counties in proportional share as the tax was collected by rental locations in the county.

HB 4059 (2018), ORS 320.400-320.490
<u>Transportation Project Taxes – Vehicle Privilege and Use Taxes</u>

Modifications not included in tax calculation

Starting June 2, 2018, the retail sales price, for tax calculation purposes, doesn't include the value of:

- Modifications to a taxable vehicle that are necessary for a person with a disability to enter, drive, or otherwise operate or use the vehicle.
- Customized industrial modifications to the chassis of a truck that has a gross vehicle weight rating of at least 10,000 pounds and not more than 26,000 pounds.

Trailers and vehicles without an odometer

The vehicle privilege or use tax applies to vehicles that aren't equipped with an odometer and sold with a manufacturer's certificate of origin (MCO) or a manufacturer's statement of origin (MSO).
Starting June 2, 2018, a trailer is subject to the vehicle privilege or use tax if it's sold with a MCO/MSO and required to be registered in Oregon.

Previously registered in Oregon

Starting June 2, 2018, taxable motor vehicles that have been previously registered in Oregon, unless the registration was to a dealer for use as a demonstration vehicle, aren't subject to the vehicle privilege or use taxes.

Electric-assisted bicycles

Starting June 2, 2018, the privilege and use tax no longer apply to electric-assisted bicycles. Electric-assisted bicycles are now subject to the $15 bicycle excise tax.

Transportation Project Taxes – Bicycle Excise Tax

HB 4059 (2018), ORS 320.400-320.490

Starting June 2, 2018, the wheel size will no longer be a factor in determining whether or not a bicycle is taxable, and electric-assisted bicycles with retail sales price of $200 or more will also be taxable.

State Lodging Tax

HB 4120 (2018), ORS 320.300-320.350

The definition of "transient lodging intermediary" was clarified to include a person collecting consideration charged for occupancy and a person receiving a fee or commission AND requiring provider to use specified third-party payment processor

2017-2018 Changes in Oregon Corporation Tax

- Oregon adopted market based sourcing for sales of services and intangibles effective 1/1/2018.
- Oregon adopted changes to how the Oregon sales factor is calculated effective 1/1/2018.
- Oregon connected to most of the 2017 federal tax reform.
- Oregon disconnected from Federal provisions related to the one time mandatory repatriation (IRC 965 transition tax) for tax year 2017.
- Other Oregon changes are coming in tax year 2018- FDII, GILTI and territorial tax.

Market Based Sourcing

- See ORS 314.665(4) and ORS 314.665(6). The sale of a service is sourced to where the service is delivered. Sales of intangibles (services) are sourced to the place where the intangible is used. These rules apply for tax years beginning on or after 1/1/2018.
- Oregon adopted a market based sourcing administrative rule at OAR 150-314-0435 that shows how to apply market based sourcing.
- OAR 150-314-0435 is a complex rule. How market based sourcing is applied depends on, among other things, the type of service sold and whether the service is sold to an individual or business.
- See ORS 316.127(6)- market based sourcing applies to ORS chapter 316 taxpayers.

Information from the 2018 National Multistate Tax Symposium with a list of states that have adopted market-based sourcing: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-pass-through-entity-structures-state-tax-issues-for-today-and-tomorrow.pdf

Oregon Sales Factor

- See ORS 314.610(7)- the Oregon sales factor only includes transactional receipts for tax years beginning on or after 1/1/2018. Those receipts come from the sale of goods and services in the ordinary course of business.
- For tax years beginning before 1/1/2018, the Oregon sales factor included functional receipts. As a general matter, functional receipts come from the sale of business assets.
- See ORS 314.610(7)(a)(A)- receipts from hedging transactions and the "maturity, redemption, sale, exchange, loan or other disposition of cash or securities" are also excluded from the Oregon sales factor.

2017 Repatriation

- Federal taxpayers must include all 1986-2017 deferred earnings and profits from specified foreign corporations in their federal taxable income. This is referred to the IRC 965 transition tax or the repatriation.
- Federal taxpayers are allowed a deduction against the repatriated amount. Oregon computes the dividend received deduction for the repatriation using the gross amount of the repatriation.
- This created a problem for Oregon because the net amount of the repatriation would flow through to Oregon taxable income while the Oregon dividend received deduction would be computed based on the gross amount of the repatriation.
- In response, SB 1529 required that the federal deduction against the repatriation be added back to Oregon taxable income.
- SB 1529 also repealed the ORS 317.716 listed jurisdiction law.
- SB 1529 will become effective June 2, 2018.
- There are three new codes related to the repatriation addback
    - Addition code 184. This addition equals the gross amount of the repatriation on Line 1 of the IRC 965 Transition Tax statement.
    - Subtraction code 377. This subtraction equals the amount of the Oregon dividend received deduction against the Oregon repatriation addition.
    - Credit code 870. This tax year 2017 credit equals the lesser of tax attributable to the ORS 317.716 listed jurisdiction law or the 2017 repatriation.
    - Here is a link to instructions-
        - http://www.oregon.gov/DOR/programs/businesses/Pages/corp-topics.aspx
- Oregon's listed jurisdiction law applied for tax years 2014-2016.
- Oregon's listed jurisdiction law required the net income of unitary corporations in certain jurisdictions to be added back to Oregon taxable income.
- A concern was raised that double taxation could result because the same income would be subject to the listed jurisdiction addition and the repatriation and taxed twice by Oregon .

The repatriation tax credit is meant to address this concern of double taxation by Oregon.

- The department is in the process of developing an administrative rule that will help taxpayers compute the repatriation tax credit.
- It is anticipated that this rule will be effective on July 1, 2018.

- The webpage at the following link will remain updated with information about the tax credit administrative rule.
  - http://www.oregon.gov/DOR/programs/businesses/Pages/corp-topics.aspx

Oregon Statewide Transit Tax

The statewide transit tax is a new income tax that will help fund public transportation services and improvements within Oregon. The tax is equal to one-tenth of one percent (.001) of the wages received by an employee who is an Oregon resident, or an employee who is a nonresident but who performs services in Oregon. **For tax year 2018, only wages received from July 1, 2018 through December 31, 2018 are subject to this tax.**

- Employer must withhold from employee wages at the time of payment (similar to income tax withholding)
  - Employers currently subject to withholding income tax from employee wages are automatically subject to statewide transit tax.
  - Oregon residents must report and pay statewide transit tax if employer doesn't withhold because they are not required to (e.g. Oregon resident who works in Vancouver, WA).
    - These taxpayers will be required to file Form OR-STI, *Oregon Statewide Transit Individual Tax Return*.
      - Can be filed with annual personal income tax return (details to follow).
    - Oregon can't compel out-of-state employer outside of the taxing jurisdiction in Oregon to withhold income tax or statewide transit tax. These employers may register with DOR and withhold taxes as a courtesy to the employee.
  - Employer must withhold, report, and remit Statewide Transit Tax to DOR on a quarterly basis (e.g. 3rd quarter {July 1 – Sept. 30} filing and payment due date is October 31, 2018)
  - Agricultural employers (Form WA filers) and domestic employers (Form OA Domestic filers) file and pay the Statewide Transit Tax on an annual basis (filing and payment due date is January 31).

Exemptions to the Statewide Transit Tax

- Enrolled tribal members who receive income from a source on federally recognized Indian country in Oregon and reside on federally recognized Indian country in Oregon (ORS 316.777).
- Income derived from the exercise of rights of any Indian tribe to fish secured by treaty, Executive order or Act of Congress if IRC section 7873 doesn't permit a like federal tax to be imposed on such income (ORS 316.785).
- Any exemptions listed under ORS 316.162 (e.g. active service in the Armed Forces, services performed by a duly ordained, commissioned or licensed minister of a church, emergency forest firefighters who are temporarily employed, etc.)

The Oregon Employment Department's electronic withholding system did not have capacity to bring up a new program. As a result, the Oregon Legislature move the responsibility of payroll withholding to the Department of Revenue. Since DOR could not use Employment's forms or system, we had to create our own forms and process for accepting withholding payments for this new tax.

Which returns must employers file?

1. Quarterly Statewide Transit Tax return
2. Statewide Transit Tax Employee Detail Report
3. Annual Statewide Transit Tax return
4. Form OR-WR Annual Withholding Tax Reconciliation Report
5. Payment Voucher – for cash, check, and money order payments

Forms may be filed on Revenue Online or by paper.
Payments can be made using Revenue Online, or with cash, check, or money order with the STT payment voucher.

Employers may **not** use

- Form OQ
- Form 132
- Form WA
- Form OA
- Form OTC payment voucher

Penalties

- Normal penalties under ORS chapters 305 and 314
  - Five percent penalty for failure to file/failure to pay by the due date
  - 20 percent penalty for failure to file after one month
  - 25 percent penalty for failure to file 30 days after Demand Notice
  - 100 percent penalty for failure to file for three consecutive years (12 consecutive quarters for statewide transit tax)
  - Additional penalty for knowingly failing to deduct and withhold statewide transit tax
  - $250 per employee, capped at $25,000 for each tax period
  - OAR 150-320-0510

Additional information from questions

- If there's an employee who doesn't work, close the account.
- Unless the income is exempt from this tax, the tax will be on wages as reported in box 1 of Form W-2. Wages and withholding will also be reported in box 14, though the Administrative Rule mandating this will not be in effect for 2018.
- If an employer withholds on wages not subject to the tax, the employee will file Form OR-STI to claim a refund.
- Estimated revenue from this tax is $106M this biennium.

Misc. Q & A
Q – Why so many letters asking for W-2 and 1099s?

A – Our fraud manager system cast too wide a net and issued more information request letters than intended. Lessons learned and will be improved by 2018 processing.

Q – What is the timeframe for taxpayers waiting for a refund?
A – We strive for 12 week turnaround though it has been taking longer. We issue refunds that are issued 45 days past the day we receive the return.

Q – Revenews archives are in GZip'd Text format and I can't open that format.
A – The Revenews listserv is administered by Oregon State Library and they are owners of the archives. Archives are grouped by calendar quarter. Click the "Thread" link and you can open the Revenews articles issued during that quarter. http://listsmart.osl.state.or.us/pipermail/revenews/ Do not click the GZip link.

Q- How do I remove old clients from my Revenue Online account?
A – Choose to remove third party access. The client's name will be greyed out and remain, but access will be terminated.

Thank you for attending. Next meeting is July 27, 2018 and we will have information about the Oregon Schedule A.