

**Oregon Commercial Activities Tax (CAT)  
Summary of Key Provisions  
As of December 1, 2020**

The CAT tax was enacted May 16, 2019. Proceeds of this tax will be used to establish a “fund for student success”. It is estimated that this will provide over \$1 billion per year of additional funding for education in Oregon.

The following is a summary of some of the key provisions of the law, including subsequent administrative guidance issued through the date of this document. As this is just a summary, many important details are missing. Thus, this document should not be relied on for compliance under the CAT. Please refer to the Department of Revenue’s CAT site at <https://www.oregon.gov/dor/programs/businesses/Pages/corporate-activity-tax.aspx> to access the full text of the law itself and related Administrative Rules and guidance.

### General Concepts

- The CAT is a privilege tax imposed on businesses for the privilege of doing business in Oregon. The CAT is in addition to the Oregon income tax. The CAT took effect January 1, 2020 and is codified in Oregon Revised Statutes Chapter 317A.
- The law included a .25% reduction in Oregon individual income tax rates, except for those in the highest 9.9% bracket. This is intended to help offset the cost to individuals from the expected pass through of some portion of the CAT tax to consumers in the form of higher prices.
- The CAT is based on a business’s taxable Commercial Activity in Oregon.
  - Commercial Activity means 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. For most, this means gross receipts.
  - Rental activities could be subject to CAT if they rise to the level of a trade or business. If a QBI deduction is claimed, this is a good indication that the rental is being treated as a business and thus subject to CAT.
- A deduction is allowed for 35% of certain business expenses.
- A taxpayer’s accounting method for the CAT tax shall be the same as used for federal income tax.
- The CAT return is filed on a calendar year basis regardless of the federal income tax year. However, fiscal year taxpayers can use information from their most recent fiscal year-end to compute the 35% subtraction (see more information below).
- Tax is computed on taxable Oregon Commercial Activity in excess of \$1 million. The tax is \$250 plus .57% of taxable Oregon commercial activity over \$1 million. If Oregon Commercial Activity is less than \$1 million, no tax is due.

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- The CAT tax is deductible for income tax purposes.
- The tax is imposed on the seller not the purchaser. However, the seller can pass through the cost of the tax to its customers.
- Governmental and certain tax-exempt organizations are exempt from the tax.

### **Commercial Activity**

- Commercial Activity is generally gross receipts from sales to Oregon customers, net of returns and allowances.
- A subtraction is allowed for bad debt charge-offs to the extent previously included in taxable commercial activity.
- The sourcing rules used to determine if a sale is to an Oregon customer are as follows:
  - Sale, rental, lease, or license of real property – If the property is located in Oregon.
  - Rental, lease, or license of personal property – If the property is located in Oregon.
  - Sale of tangible personal property – If and to the extent the property is delivered to a purchaser in Oregon. An ultimate destination test is used.
  - Sale of a service – If and to the extent the service is delivered to a location in this state.
- There is a long list of receipts that are specifically exempt from the tax. See paragraph 1(b)(A)-(QQ) of the law for a complete list. Some of the exempt items include:
  - Interest income except for interest income on credit sales.
  - Receipts from the sale of an asset described in section 1221 or 1231 of the IRC.
  - Tax refunds.
  - Distributive income received from a pass-through entity.
  - Dividends received.
  - Receipts from sales to a “wholesaler” in this state, if the seller receives certification at the time of sale from the wholesaler that the wholesaler will sell the purchased property out of state. See further guidance on this exemption later.
  - Receipts from the wholesale or retail sale of groceries (but not nonfood items).
  - Intercompany receipts between members of a unitary group.
  - Amounts collected that are contractually obligated to be paid as sales commissions to a nonemployee of the business.
  - Amounts received by an agent on behalf of another in excess of the agent’s commission.
  - 15% of the amount received for labor by a subcontractor from a general contractor pursuant to a contract for residential real estate construction for single-family residential construction located in Oregon.
  - PPP loan forgiveness.
- Also includible in taxable commercial activity is the value of property the person transfers into this state for the person’s own use in the course of a trade or business within one year after the person receives the property outside this state unless it can be demonstrated that CAT tax avoidance was not a motive.

## 35% Deduction

- A deduction from Oregon Commercial Activity is allowed in arriving at taxable Oregon Commercial Activity. The deduction is 35% of the greater of labor costs, or the cost of inputs.
  - This deduction is further limited to 95% of commercial activity.
  - Labor costs means total compensation of all employees, not to include compensation paid to any single employee in excess of \$500,000.
  - Guaranteed payments are not labor costs since the partners are not considered employees.
  - Labor costs include most types of compensation paid to employees, such as wages, health insurance benefits, retirement benefits, and any other fringe benefits, but not the employer portion of payroll taxes.
  - Cost of inputs means the cost of goods sold (COGS) as calculated in arriving at taxable income under the Internal Revenue Code (IRC), excluding any expenses from transactions between members of a unitary group. This includes any labor costs appropriately included as COGS.
  - For farming operations that do not report cost of goods sold, the taxpayer's operating expenses, excluding labor costs, can be used to compute the statutory subtraction.
  - Ineligible costs include:
    - Expenses related to transactions between unitary group members (since the gross receipts are not included)
    - Cost inputs or labor costs that are attributable to a person's receipts from an item that is not Commercial Activity.
  - If a taxpayer can reasonably determine from its books and records how much of its costs are ineligible costs, it may calculate the subtraction based upon the costs so determined.
  - If a taxpayer cannot reasonably determine how much of its costs are ineligible based on its books and records, it may use a reasonable method to approximate eligible costs.
  - Once eligible costs are determined, they are sourced to Oregon Commercial Activity as follows:
    - If all the taxpayer's Commercial Activity is sourced to Oregon, the amount used to compute the subtraction equals 100% of its eligible costs.
    - If the taxpayer has commercial activity both within and without Oregon, the taxpayer must apportion the eligible costs as follows, unless the taxpayer elects to use the substitute rule (see below).
      - If the CAT taxpayer is identical to the entity or group of entities reporting on the apportionment schedule of the Oregon income tax return, that taxpayer must multiply its eligible costs by the apportionment factor percentage from the apportionment schedule filed with the income tax return. The most recent return covering a 12-month period filed should be used.
      - If the CAT taxpayer is not identical to the entity or group of entities reporting on the apportionment schedule filed with the income tax return, the taxpayer must compute its Oregon apportionment factor percentage for the unitary group using the applicable apportionment method as prescribed under the income tax laws and multiply its eligible costs by the apportionment factor obtained.
    - Substitute rule – In lieu of the apportionment rule outlined above, a taxpayer can apportion its eligible costs by means of the Commercial Activity Ratio.
      - $\text{Commercial Activity Ratio} = \frac{\text{Commercial Activity sourced to Oregon}}{\text{Commercial Activity everywhere (which includes certain specific items that are excluded from Commercial Activity under the law)}}$

- ❖ Receipts from unitary group transactions are excluded from both numerator and denominator.
- The subtraction equals 35% of the greater of total cost of goods sold everywhere or total labor costs everywhere (excluding unitary group transactions) multiplied by the Commercial Activity Ratio.
- Fiscal Year Election – If the taxpayer has a fiscal year-end the taxpayer may elect to use its most recent fiscal year-end information for determining its subtraction. This election is an irrevocable annual election and must be made on a timely filed original return.

## Unitary Group Rules

- Unitary groups shall register, file, and pay the tax as a single taxpayer.
  - Unitary group means a group of persons and/or entities with more than 50% common ownership (direct or indirect) that are engaged in business activities that constitute a unitary business.
  - Broad ownership attribution rules apply to an individual's spouse, parents, brothers or sisters, grandparents, children, grandchildren, and an estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the trust or estate is for the benefit of that individual's spouse or children.
  - Unitary business means a business enterprise in which there exists directly or indirectly between the members or parts of the enterprise a sharing or exchange of value as demonstrated by:
    - Centralized management or a common executive force;
    - Centralized administrative services or functions resulting in economies of scale; or
    - Flow of goods, capital resources or services demonstrating functional integration.
    - Unitary businesses may include a business enterprise the activities of which are in the same general line of business or constitute steps in a vertically integrated process.
  - Unitary groups can elect to exclude affiliated foreign entities if they have no Oregon Commercial Activity.

## Nexus

- This is not an income tax, so Public Law 86-272 does not apply.
- A physical presence is not required.
- While certain bright line nexus thresholds are provided in the law, the Department of Revenue has indicated they will not apply a bright line nexus test.
- Some factors to be considered when determining whether substantial nexus exists. Does the person:
  - Maintain continuous and systematic contacts with Oregon's economy or market;
  - Conduct deliberate marketing to, or solicitation of, Oregon customers;
  - File or is required to file reports or returns with Oregon regulatory bodies;
  - Realize significant gross receipts attributable to customers in Oregon;
  - Realize significant gross receipts attributable to the use of the person's intangible property in Oregon; or
  - Receive benefits provided by the state, such as:
    - Laws providing protection of business interests or regulating consumer credit;
    - Access to courts and judicial process to enforce business rights including debt collection and intellectual property rights;

- Highway or transportation system access for transport of the person's goods or services;
- Access to an educated workforce in Oregon; or
- Police and fire protection for property in Oregon that displays the person's intellectual or intangible property.

## Registration and Filing

- Any person or unitary group with Oregon Commercial Activity in excess of \$750,000 in the tax year must register with the ODR or be subject to penalties. Registration is due within 30 days of meeting the \$750,000 in sales threshold.
- Every taxpayer with Oregon commercial activity of greater than \$1 million for the year must file a CAT annual return no later than April 15<sup>th</sup>.
  - An extension of up to six months can be requested. An extension will be granted on the basis of good cause. Will say "The taxpayer needs more time to gather the information needed to file a complete and accurate return".
- Quarterly estimated tax payments are required if the taxpayer expects more than \$5,000 in CAT liability for the year (\$10,000 for 2020).
  - The tax itself is payable quarterly on or before the last day of January, April, July, and October of each year for the previous quarter.
  - If an underpayment exists for a quarter, a penalty of 5% of the amount underpaid is assessed.
  - Underpayment penalties will not be imposed if:
    - No estimated tax payments are required based on the expected tax due;
    - The taxpayer paid an amount equal to at least the taxpayer's required installment for the corresponding quarter of the preceding tax year; or
    - Each estimated tax installment is equal to or more than 25% of any one of the following:
      - 90% of the tax for the year (80% for tax years beginning on or after 1/1/20 and ending before 1/1/22);
      - 90% of the tax computed on annualized taxable commercial activity (80% for tax years beginning on or after 1/1/20 and ending before 1/1/22).
      - For tax years beginning on or after 1/1/21, 100% of the tax shown on the prior year return providing the prior tax year was a period of twelve months and showed a tax liability.
      - Seasonal activity approach as defined under IRC for seasonal businesses.
- Tax payments are made through Revenue Online. Return filing will be done electronically via third-party software or by paper filing. The return forms are expected to be publicly available in January of 2021.

## Out-of-State Wholesaler Exemption

- A wholesaler purchasing property for resale out of state may provide the seller of the property with an out-of-state resale certificate declaring the amount of purchased property that the wholesaler will resell out of Oregon. These sales will not be subject to CAT.
  - A certificate can only be provided by a "wholesaler", which is defined as a person primarily doing business by merchant distribution of tangible personal property to retailers or other

wholesalers. Thus, a business that is primarily a manufacturer, that also has wholesale sales, would not be able to provide an out-of-state resale certificate since wholesaling is not its primary business activity.

- The certificate must be provided at the time of the sale and for each sale. No blanket certificates are allowed.
- See OAR 150-317-1400 for items of information that must be included on the certificate.
- If a wholesaler is unable to determine precisely how much of a purchase will be resold out-of-state, it can use an approximation ratio.
  - Numerator = Amount of Commercial Activity the wholesaler realized from sales to Oregon customers in the prior year.
  - Denominator = Amount of Commercial Activity the wholesaler realized from sales to all customers in the prior year.
  - Wholesalers with locations in multiple states can only include Commercial Activity from property delivered from their Oregon locations.
- Special rules apply to farmers.