

OREGON CORPORATE ACTIVITY TAX “CAT”

WHAT IS CORPORATE ACTIVITY TAX?

- Tax imposed for the “privilege” of doing business in Oregon (Gross Receipts Tax)
 - Based on Calendar Year information (no Fiscal Year)
- Measured on “Commercial Activity”, or the amounts realized on Transactions in Oregon
- “Commercial Activity” defined as the total amount realized by a company from transactions and activity of business in Oregon without deductions for expenses incurred (i.e. Gross Receipts for from Oregon Customers)
- “Taxable Commercial Activity” defined as “Commercial Activity” less subtraction of 35% “Cost Inputs” or 35% of Labor Costs
 - Cost Input – Cost of Good Sold as calculated in arriving at federal taxable income
 - Labor costs – Includes only compensation paid to employees, Capped at \$500,000 per employee.

WHO IS SUBJECT TO “CAT” TAX?

- Any business or Unitary Group doing Business in Oregon:
 - C Corporations
 - S Corporations
 - Partnerships
 - Sole Proprietorships
- Required to Register if Commercial Activity Exceeds \$750,000
 - Must Register within 30 days of exceeding \$750,000 Commercial Activity
- Required to File & Pay if Commercial Activity Exceeds \$1,000,000
 - Must Register within 30 days of exceeding \$750,000 Commercial Activity

WHAT IS A UNITARY BUSINESS?

- Group of Entities that form a unitary business enterprise in which members share or exchange value. “United” by more than 50% Common Ownership
- In addition to 50% test above, unitary group exists if one of the following is met:
 - Centralized management or common executive force
 - Centralized administrative services or function in Economies of Scale; Or
 - Flow of Goods, Capital Resources or services demonstrating functional integration
- Members of a unitary group may be in the same general line of business, or in multiple lines of business that are vertically integrated
- Unitary Groups must Register, File & Pay as a single Taxpayer

WHO IS NOT SUBJECT TO CAT

- Certain Transactions are Excluded
 - Sales of Motor Vehicle Fuel
 - Grocery Sales
 - Sales of Items Delivered outside of Oregon (i.e. Market Based Sourcing)
 - Farmer's Sales to a Co-Op
 - Property/Money Received by an Agent on behalf of another in excess of Agent's Fees or Commission (see Draft Rules)
 - Receipts between members of a Unitary Group
 - Distributive income received from a Pass Through Entity
 - Hospitals, Long Term Care
 - Non Profits
- Full list of 47 excluded transactions found in text of Law HB 2164 (Section 50)

HOW CAT TAX IS CALCULATED

- Start with Commercial Activity (i.e. Gross Receipts)
- Subtract 35% Cost inputs or 35% Labor Costs
- Result is Taxable Commercial Activity
- If Taxable Commercial Activity > \$1,000,000
 - \$250 on First \$1,000,000
 - 0.57% on Excess of \$1,000,000
- Note: Can Pass Through CAT to Customers, but will result in CAT on CAT passed through. (i.e. Passed Through CAT goes into Gross Receipts)

WHEN ARE RETURNS & ESTIMATES DUE

- First Annual Return will be due April 15, 2021
- Estimated Payments Due
 - April 30
 - July 31
 - October 31
 - January 31
- Extensions:
 - Submit Completed application on form prescribed by ODR
 - File the application prior to 4/15
 - Certify "Good Cause"
 - Death or illness, Destruction by fire, information not available or in proper form
 - NOT – Reliance on Professional or Employee

ESTIMATED TAXES

- Estimated Tax Payments due if Expected CAT Liability exceeds \$5,000
- Equivalent of \$1,833,245 of Taxable Commercial Activity
- Must be filed via Electronic Funds Transfer
- Required Regardless of when Taxpayer exceeds \$1,000,000

UNDERPAYMENTS ON ESTIMATES

- For tax years beginning after 1/1/2020 and ending before 1/1/2021
 - 80% of Tax for the year is required to avoid underpayment interest
- For tax years beginning after 1/1/2021
 - 100% of the prior year tax

DRAFT RULES

- ODR stated they would issue Temporary Rules in January, February & March
- Final Rules will be issued in April, May & June
- First Set of DRAFT rules issued December 9, 2019 & will be effective January 1, 2020

DRAFT RULES 12/9/2019

- 1) Substantial Nexus
 - Does not require Physical Presence
 - ODR will consider
 - Maintains continuous & systematic contracts in Oregon's Market/Economy
 - Conducts deliberate marketing/soliciting to Oregon Customers
 - Files Reports with other Oregon Agencies (i.e. OLCC)
 - Realizes significant Gross Receipts from Customers In Oregon
 - Receives benefits provided by the state
 - Meant to be noninclusive and will be considered only to extent relevant

DRAFT RULES 12/9/2019

- 2) Factors in determining group of persons are engaged in unitary busienss
 - Single economic enterprise that is made up of separate parts of a single entity of a commonly controlled group of entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide synergy and mutual benefit that produces sharing or exchange of value among them and a significant flow of value to the separate parts.
 - For example, if activities of one business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary group
 - Centralized Management, Economies of Scale, Functional Integration
 - Indicators include
 - Same Type of Business
 - Steps in Vertical Process
 - Strong Centralized Management

DRAFT RULES 12/9/2019

- 3) Agent Exclusion
 - Person Acting on Behalf of another, subject to that other persons' control
 - May Exclude only to the extent the amounts are received on behalf of the person who controls the agent. Also includes amounts reimbursed.
- 4) Property Brought to Oregon
 - Must include FMV of property received outside of Oregon and transferred into Oregon for use in a business within one year of receiving it
 - Unless the transfer of property was not intended to avoid the CAT tax

DRAFT RULES 12/9/2019

- 5) Estimated Taxes
 - Due when Expected CAT Tax Liability exceeds \$5,000 (~\$1,833,245 Taxable Income)
 - Regardless of when taxpayer exceeds \$1M of Commercial Activity
 - Due April 30, July 31, October 31, January 31
 - Must be made via electronic funds transfer
- 6) Underpayment on Estimates
 - For returns processed after January 2021 (i.e. First returns 4/15/2012)
 - 80% of 2020 Tax to avoid underpayment
 - 100% of PY Liability in for 2021 and on

DRAFT RULES 12/9/2019

- 7) Estimated Taxes for Unitary Groups & Apportioned Returns
 - Each entity is jointly liable for filing, payment, estimates
 - Either use current period actual or prior year factors to meet annualization exceptions
- 8) Extension of Time to File
 - Submit a completed Application on a form prescribed by the ODR
 - File the application prior to 4/15
 - Certify "Good Cause" for requesting extension
 - Death or illness
 - Destruction by Fire, Natural Disaster
 - Information required to complete return not available or in proper form
 - Items NOT "good cause"
 - Reliance on Professional
 - Reliance on Employee