

### Miscellaneous questions:

**Q: How do I treat revenues that I'm the third-party reseller for, i.e., I buy and sell prescriptions for customers after eye surgery with little or no mark up. Are those included in CAT? Does the answer change if Medicare pays for it?**

**A:** Revenue realized by the third-party reseller may be commercial activity if it is realized in the regular course of the trade or business and meets the transactional test, regardless of whether Medicare pays those amounts.

[OAR 150-317-1000 \(Definition of Commercial Activity\)](#) provides guidance regarding the definition of commercial activity, and Section (5) of [OAR 150-314-0335 \(Apportionable and Nonapportionable Income Defined\)](#) includes detailed information regarding receipts that meet the transactional test.

**Q: The income tax apportionment is not available by the time the CAT is due. How long are the extensions? How is the true-up calculated?**

**A:** The extension of time to file is six months from the due date of the return. The extension form will be available on DOR's website. You may find our [estimated payments worksheet](#) useful in calculating tax liability. Our return forms are still being finalized.

**Q: Please explain the brief mention that "timber" is not included in the definition of an agricultural commodity. What is it if it isn't agriculture? Does "timber" include Christmas tree sales?**

**A:** For purposes of the CAT, the term "agricultural commodity" is specifically defined in law as: "Agricultural commodity includes all agricultural, horticultural, viticultural and vegetable products produced in this state, including bees and honey. Agricultural commodity does not include timber or timber products." [[Section 6, HB 4202 \(first Special Session\)](#)]

Timber, as used in this definition, does not include sales of Christmas trees. The sale of Christmas trees would be considered the sale of an agricultural commodity.

**Q: Does the quarterly underpayment penalty (QUP) apply to a first-time filer?**

**A:** In order to ensure you are not charged any underpayment penalties, your estimated quarterly payments need to be at least 80 percent of the annual tax liability for the 2020 calendar year. For the 2021 calendar year, the required minimum payment threshold increases to 90 percent. However, if you don't pay at least 80 percent this year, you may not be charged QUP if you made a good-faith effort, as described in under [OAR 150-317-1500 \(Good-Faith Effort\)](#), to calculate correctly and pay estimated payments. Additional information regarding 2020 QUP is available on the CAT [Beyond the FAQ](#) webpage.

**Q: If you could please discuss how the CAT will be reconciled annually if we are fiscal-year taxpayer?**

**A:** Fiscal taxpayers must file and pay CAT based gross receipts realized on a calendar year basis. For purpose of the subtraction, a taxpayer may elect to use the taxpayer's or unitary group's most recent fiscal year information for purposes of determining the subtraction under this rule. This election must be made on a timely filed, original return including extensions. This section is binding for and applicable to the tax year in which it is made.

**Q: What kind of paperwork needs to be given to DOR?**

**A:** Every year, you must file your annual CAT return and make estimated payments. If you need to request an extension of time file, the request must be submitted to the department before the due date of the return. Additional information may be requested by the department in order to process your return or upon review of your return.

**Q: Will tax professionals be able to get a continued education certificate for participation?**

**A:** Unfortunately, the training session is not part of the continuing education program for tax professionals.

**Q: What if you have more than \$1 million in gross receipts in 2020, but then drop under \$750,000 in the future. Do you have to continue to file?**

**A:** For purposes of the CAT if you meet the filing requirement threshold in one year, but not in another year, you would only file for the year that you meet the filing requirement threshold.

**Q: If you aren't providing services in Oregon, nor delivering anything within Oregon, but you drive through Oregon, you have to create phony income for the amount of miles you drive through the state?**

**A:** Commercial activity is the total amount realized from transactions and activity in the regular course of a person's trade or business. You asked whether you have to create income for the amount of miles driven through Oregon. If providing transportation services is not part of a person's regular trade or business, then receipts from the sale of those services are not commercial activity and are not subject to the CAT.

If providing transportation services are part of a person's regular trade or business, then amounts realized from motor carrier transportation services are sourced to Oregon if and to the extent the service is delivered to a location in Oregon. A transportation service is delivered in this state to the extent the transportation occurs within the borders of the state. The portion of receipts from services provided to transport property that passes through, into, or out of Oregon is determined using a ratio of miles traveled in the state to total miles traveled from

points of origin to destination. Please refer to [OAR 150-317-1070 \(Sourcing of Motor Carrier Transportation Services\)](#) for more information about sourcing motor carrier transportation services.

**Q: Can you talk at all about how ownership of a business is determined for purposes of more than 50 percent common ownership requirement for unitary businesses? Particularly how ownership is attributed (if at all) through entities, trusts, and/or family members? Sorry, just to follow up on this. What if I own 100 percent of Corporation A and my wife owns 100 percent of Corporation B? Do they have common ownership? What if I own 100 percent of Corporation A and a trust that I am the sole beneficiary of owns 100 percent of Corporation B? Do they have common ownership? What if I own 100 percent of Corporation A and my child owns 100 percent of Corporation B? Do they have common ownership?**

**A:** If a person owns, directly or indirectly, more than 50 percent of the voting power and value of the ownership interest of an entity, then the person and entity are under common ownership. Voting power generally means the right to control or determine the management of an entity. Stock or an ownership interest is owned when the title to the stock or ownership interest is directly or indirectly held, or if the stock or ownership interest is constructively owned. 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. In the case of a grantor trust to which IRC Section 677 applies, the grantor is treated as the owner of the stock or ownership interest held by the trust. In case of a trust to which IRC Section 678 applies, the person, other than the trust, described in IRC Section 678 is treated as the owner of stock or ownership interest held by the trust.

Based on the family attribution rules, you would have common ownership in your first and third examples assuming you, your spouse or your child possess a class of stock or ownership interest with voting power entitled to elect the membership of the board of directors of the corporation or the right to control or determine the management of the entity. You would not have common ownership in your second example unless IRC Section 677 or IRC Section 678 applied to the trust. Please keep in mind a unitary group for purposes of the CAT not only requires more than 50 percent common ownership but also requires a group of persons to be engaged in activities that constitute a unitary business. Please refer to [OAR 150-317-1020 \(Unitary Business Factors, Common Ownership & Filing Requirements for Unitary Groups\)](#) for more information about a unitary business determination and common ownership requirements.

**Q: I have a trucking company and I pick up a load in Halsey, OR, and deliver it to Washougal, WA. Then I pick up a load in Washougal, WA, and drive all the way down I-5 to deliver my load to San Diego, CA. I will be paid by two different companies. However**

**the trip will be reflected in my books as one. How do I calculate the income that is included or excluded from CAT?**

**A:** Receipts from interstate transportation services for hauling freight are sourced to Oregon by multiplying receipts by a ratio of mobile property miles traveled in Oregon to total mobile property miles traveled from points of origin to destination. A mobile property mile is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded.

In your example, you would include the total miles traveled from Halsey to Washougal and the total miles traveled from Washougal to San Diego in the ratio's denominator. You would include the miles traveled on Oregon's highways and roadways in the ratio's numerator. Please refer to [OAR 150-317-1070 \(Sourcing of Motor Carrier Transportation Services\)](#) for more information about sourcing motor carrier transportation services.

**Q: For motor carrier sourcing rules, if an out-of-state transportation company had a route going through Oregon, but no pickup or destination location in Oregon (they were just driving through), would they have nexus for the CAT? Would they use the sourcing ratio of instate miles compared to total miles?**

**A:** If the out-of-state transportation company provides transportation services as part of the company's regular trade or business and uses Oregon's highways or roadways, then it is providing a service in Oregon. The company would use a ratio of in-state miles to total miles traveled from points of origin to destination to source commercial activity from transportation services. Please refer to [OAR 150-317-1070 \(Sourcing of Motor Carrier Transportation Services\)](#) for more information about sourcing motor carrier transportation services.

**Q: Does CAT gross receipts include M-1 adjustment, such as deferred revenue M-1, etc.? If so, if the taxpayer is a fiscal year taxpayer, how can we calculate deferred revenue M-1 for calendar year? Shall we use M-1 on the most recent filed Oregon tax return?**

**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 for 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. Over 40 items are excluded from the definition of commercial activity and, therefore, will not be subject to the CAT. Some examples of items that are excluded from commercial activity include interest income, receipts from wholesale and retail sales of groceries, and receipts from sales of motor vehicle fuel. A taxpayer's method of accounting for commercial activity is the same as the taxpayer's method of accounting for federal income tax purposes. Schedule M-1 filed for income tax purposes generally includes a book to income tax reconciliation with items of revenue and expenses that may not be subject to the CAT depending upon the type of revenue or expense and the accounting method used by the taxpayer for recognition of revenue and expenses.

**Q: If a unitary group has one member that is agriculture and uses cash basis for income tax filing and another entity uses accrual for COG determination, do you add those together in your calculation for deduction?**

**A:** A taxpayer's method of accounting for commercial activity, cost inputs and labor costs for a tax year is the same as the taxpayer's method of accounting for federal income tax purposes for the taxpayer's federal tax year that includes the tax year. If members of a unitary group use different methods of accounting, commercial activity and cost inputs or labor costs are determined as a summation of each member's commercial activity and costs after eliminating all transactions between unitary group members.

For purposes of the subtraction under ORS 317A.119, a unitary group includes 35 percent of the greater of the eligible labor costs or eligible cost inputs of all members of the unitary group. 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 calculating the subtraction. The updated rule will be finalized by December 1, 2020 and will be available on the [Secretary of State website](#). Guidance will also be available on our CAT [Beyond the FAQ](#) webpage. The October [Notice of Proposed Rulemaking—CAT October 1, 2020](#) document has information on proposed rules and proposed amendments to rules.

**Q: I think I hear you recommending the use of the federal apportionment schedule or percentage for CAT. However, the federal apportionment to Oregon could include throwback sales, which should not be included. Shouldn't the federal apportionment be recalculated without the throwback?**

**A:** If a taxpayer has commercial activity both within and without Oregon, the taxpayer apportions its eligible costs by means of an apportionment factor.

If the taxpayer is identical to the entity or group of entities reporting on the apportionment schedule filed for purposes of Oregon income or excise tax, the taxpayer multiplies its eligible costs by the factor from the Oregon apportionment schedule.

If the taxpayer is not identical to the entity or group of entities reporting on the Oregon income or excise tax apportionment schedule, the taxpayer must compute its Oregon apportionment factor using the applicable apportionment method under ORS Chapters 314 or 317. The taxpayer multiplies its eligible costs by the computed apportionment factor.

Instead of using apportionment factors, taxpayers may elect to approximate and apportion eligible costs using a commercial activity ratio. Taxpayers may also petition the department to use an alternative method of apportionment if neither the apportionment factor nor the commercial activity ratio fairly represent the taxpayer's costs attributable to commercial activity in Oregon.

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**Q: Our business provides transportation service for large items such as equipment and machinery. Some of those services are brokered. Miles traveled by state is not a metric we currently collect for tax calculations. Do we need to obtain actual miles traveled in Oregon? Can an estimate of miles be used based on the originating and terminating location? What documentation should be retained in our calculations?**

**A:** A transportation service is delivered in this state to the extent the transportation occurs within the borders of the state. All receipts from any transportation service which both originates and terminates within Oregon is sourced to Oregon. Receipts from interstate transportation services for hauling freight are sourced to Oregon by multiplying receipts by a ratio of mobile property miles traveled in Oregon to total mobile property miles traveled from points of origin to destination. A mobile property mile is the movement of a unit of mobile property a distance of one mile whether loaded or unloaded. You may use a reasonable approximation based on the points of origin and termination and keep any documentation in your records that supports the approximation method and amount. Please refer to [OAR 150-317-1070 \(Sourcing of Motor Carrier Transportation Services\)](#) for more information about sourcing motor carrier transportation services.