



Executive summary

2020

**Government-to-Government
Annual Report**

December 14, 2020

Executive summary

The mission of the Oregon Department of Revenue is to make revenue systems work to fund public services that preserve and enhance the quality of life for all citizens. We partner with Oregon tribes to achieve this mission. Representatives from the cigarette and other tobacco products tax, Corporate Activity Tax, Corporate Income and Excise taxes, Collections, Personal Income Tax, and property tax programs work together with tribes to resolve issues. Following are items of interest for 2020:

- Cigarette and other tobacco products (OTP) tax programs—Completing work on revenue sharing agreements with the Cow Creek tribe while continuing agreements with the Klamath and the Confederated Tribes of the Umatilla Indian Reservation tribes.
- Collections—Continue to work with the tribes on collection processes, including garnishments for those tribes with whom we do not have current or existing garnishment agreements.
- Corporate Activity Tax—Addressed concerns about impacts of the CAT on tribal businesses and governmental entities while continuing to deepen relationships.
- Personal and corporate income tax programs—Provided education and assistance; continued to streamline return processing; maintained an online portal for added taxpayer and tribe member self-sufficiency; participated in the Economic Development and Community Services Cluster and other tribe-state events.
- Property Tax—Continue to share information and provide training and workshops on property tax matters that may impact tribes or their members.

Policy adopted under ORS 182.164

The Oregon Department of Revenue will be developing and adopting an agency tribal policy in 2021 to come into compliance with ORS 182.164.

Department statement

The Oregon Department of Revenue values its relationship with Oregon tribes. The department's tribal key contact, Nia Ray, left the department in May 2020. Betsy Imholt was confirmed as the new director in September 2020 and will now be taking the lead in working with employees who are developing and implementing programs affecting the tribes. Director Imholt is leading the department in a new strategic planning process. During this process, the department will consult with the tribes to understand shared and competing priorities. The department's primary contacts with the tribes are:

- Cigarette and other tobacco products taxes—John Galvin
- Collections—Joel Hernandez
- Corporate Activity Tax—Leah Putnam
- Corporate Income and Excise taxes—Victoria Johnson
- Personal Income Tax—Ben Gille
- Property Tax—Linda Blacklock

Developing partnerships to achieve our mission is of primary concern. The unique legal status of Oregon tribes as sovereign nations makes the tribes some of our most important partners. As such, we are active participants in the Economic Development and Community Services (EDCS) Cluster group meetings and attend the annual summit to build and improve these partnerships.



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Questions?

Contact: Betsy Imholt, director

Phone: 503-945-8214

Fax: 503-945-8290

955 Center Street NE

Salem, OR 97301-2555

betsy.a.imholt@oregon.gov

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Program updates

Cigarette and Other Tobacco Products Tax 2020 highlights

Under the provisions of ORS 323.401, the department maintains cigarette tax refund agreements with eight Oregon tribes: Confederated Tribes of Warm Springs, Confederated Tribes of the Umatilla Indian Reservation, Klamath Tribes, Confederated Tribes of Grand Ronde, Confederated Tribes of Siletz, Coquille Indian Tribe, Burns Paiute, and Confederated Tribes of Coos, Lower Umpqua, and Siuslaw. We also have an OTP refund agreement with the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw.

Tribe members are not required to pay Oregon's cigarette or OTP tax. Under these agreements, the tribes agree that their retail outlets will purchase cigarettes and OTP for retail sale from state licensed distributors that have already paid the Oregon tax. In turn, we agree to share tax revenue with the tribes based on an estimate of the cigarette or OTP tax we believe was paid by tribe members. We believe the agreements are in the best interest of the tribes and the state of Oregon and assist us in effectively administering Oregon's cigarette tax program. By the end of 2020, we will have shared more than \$1.21 million in cigarette and OTP revenues with participating tribes this year.

We attended the EDCS Cluster meetings and other events throughout 2020.

Ongoing

We are working with the Cow Creek tribe for cigarette and OTP tax revenue sharing agreements. Upon signing of the cigarette agreement, all tribes in Oregon will be participating in cigarette tax revenue sharing.

We continue to work on revenue-sharing agreements with the Klamath and the Confederated Tribes of the Umatilla Indian Reservation tribes for tax revenue from tobacco products other than cigarettes sold by tribal retail outlets. We are willing to work with any tribe wishing to update their existing agreement to reflect the most recent agreements. Additionally, the department is willing to enter into revenue-sharing agreements for tax revenue from tobacco products other than cigarettes with any tribe that wishes to enter into such an agreement.

Oregon voters passed Measure 108 in the November 2020 general election. Measure 108 increases the cigarette tax rate by \$2 per pack of 20 cigarettes and \$2.50 per pack of 25. The measure requires cigarette distributors and retailers of cigarettes to pay a floor or inventory tax on their inventory. The measure also taxes inhalant delivery systems, or vaping products, as a tobacco product for the first time and raises the cap on the tax of premium cigars from 50 cents per cigar to \$1. Finally, Measure 108 classifies certain little cigars, weighing 3 pounds or less per 1,000 as cigarettes and prohibits the sale of cigarettes that are not sold in sealed packages of at least 20 cigarettes. Some tribes may receive larger payments as a result of the increased tax rates.

Collections—Tax and Other Agency Accounts 2020 highlights

In 2020, the agency began the process to create a separate Collections Division. The goal is to move all the collections staff and activities from various other tax programs into one division. Long term, we hope to standardize and become more efficient. Because of our internal movement and the COVID-19 public health crisis, contact between the liaisons and the tribes has been reduced during 2020.

Ongoing

Our goal is to continue to work with the tribes on collection processes, including entering into or amending garnishment agreements. Because the tribes are sovereign entities and have separate collection laws from the state of Oregon, these agreements are necessary to convert our processes to align with those processes within the tribal courts. We will continue to reach out to our tribal contacts and plan to set up regularly scheduled check-ins.

Corporate Activity Tax 2020 highlights

Enacted in 2019, the Corporate Activity Tax (CAT) is imposed on businesses for the privilege of doing business in Oregon to raise money for education. While federally recognized Indian tribes are explicitly exempt from the tax, the department's CAT program participates in Legislative Commission on Indian Services meetings, and Leah Putnam, the CAT section manager, is an active member of the Economic Development and Community Services (EDCS) Cluster group. These meetings enable us to understand each tribe's respective priorities and concerns and to address questions that arise as the department implements the new tax.

Ongoing

In January 2020, the CAT program met with representatives from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) to address their issues regarding exempt tribal government and business entities operated by tribal governments. While federally recognized tribal governments are exempt from the CAT, representatives from the CTUIR raised concerns as to whether this exemption applied to business entities run by the tribal government. The CAT program confirmed that tribal government organizations, as well as tribal corporations under federal charter (commonly referred to as Section 17 Corporations) are clearly exempt from tax under ORS 317A.

Furthermore, other businesses owned by the tribal government, regardless of whether the business is structured as a Section 17 corporation operating under federal charter, may also be exempt from the CAT, if the business is providing governmental functions or used for governmental purposes.

We are also aware of the potential indirect impact of CAT on tribal governments. While the CAT itself does not apply to federally recognized tribes, the tax may still apply to non-tribal private sector companies that provide services to tribal governments. The total price charged by the private sector company may increase to include the estimated cost of the CAT.

The CAT program will continue to participate in Legislative Commission on Indian Services meetings and take an active role in the EDCS Cluster group. We also stand ready to assist tribes in answering any questions regarding the CAT. We have identified specific liaisons within the CAT program to work directly with tribes to deepen our partnership and ensure any concerns are addressed quickly and collaboratively.

Corporate Income and Excise Tax 2020 highlights

We attended EDCS Cluster meetings and Legislative Commission on Indian Services meetings during 2020. We are ready to work with the Oregon tribes on any corporation income tax matters.

Ongoing

We continue to attend meetings with the tribes and the Legislative Commission on Indian Services to maintain awareness of tribes' concerns and further develop our relationship with them. We invite the tribes to participate in our legislative and rules processes.

We also work cooperatively with tribal representatives to address issues and answer questions, which helps develop a mutual understanding.

Personal Income Tax 2020 highlights

The department's Personal Income Tax program deals directly with tribe members. Our goal is to provide assistance and education to tribe members so they can meet their filing requirements.

Due to the COVID-19 pandemic, the department extended the tax year 2019 return filing and payment due date for all personal income tax filers from April 15, 2020 to July 15, 2020. Taxpayers could still file their return before the original due date because the department continued to process returns and issue refunds during that time.

The temporary shutdown of businesses due to the pandemic has resulted in many wage earners receiving unemployment benefits, many for the first time. The department wants to inform recipients that unemployment benefits are taxable. We urge recipients to request that state tax be withheld from the benefits in order to avoid

receiving an unexpected tax bill when they file their tax year 2020 return in 2021. For enrolled tribe members who live and work in American Indian country located in Oregon, any unemployment benefits associated with work that would have been exempt from Oregon taxation is not taxable.

In September 2020, many counties in Oregon were impacted by the wildfires that destroyed homes and businesses. In response, the department is allowing impacted taxpayers that have a valid extension until January 15, 2021 to file without any penalty.

There was no change to the tax exemption for income earned by enrolled tribe members who live and work in American Indian country located in Oregon. They still must file an Oregon return with 2020 Schedule OR-EIS, Exempt Income Schedule for Enrolled Members of a Federally Recognized Indian Tribe, each year, even when their situation has not changed and their income is still exempt. A tribe member can submit a Form OR-W-4 to their employer to claim exempt from withholding using the exemption code "A." The exemption certificates must be renewed annually by February 15. This requirement started in 2020. The 2021 OR-W-4 and online withholding calculator will be updated and available in December 2020. For more information, please visit www.oregon.gov/dor.

We continue to get questions from qualifying tribe members who derive income from work or business activity performed in and outside of American Indian country. For employees, the income that is exempt is only the wages earned for work performed in American Indian country located in Oregon. This can be determined by calculating the percentage of days worked in American Indian country to total days worked for the year. For business owners, the business must be located in American Indian country in Oregon, and the percentage that is exempt is based on the services performed, or sales that occurred, in American Indian country.

The department appreciates the changes made by the facilitators of the EDCS Cluster meetings to a virtual format and to a shorter but more frequent meeting schedule in 2020. This allowed us to continue to participate in cluster meetings and other events throughout 2020 during the COVID-19 restrictions. We shared information with cluster members on our agency budget, COVID-19 tax relief and the status of legislation, administrative rules, and program changes that impacted the tribes.

Ongoing

One of our goals is to assist Oregon taxpayers in becoming more self-sufficient. We continue to encourage personal income taxpayers to use our secure website, Revenue Online. Through Revenue Online, taxpayers can access their account at any time to view letters from the Department of Revenue, make payments, file returns, securely communicate with the Department of Revenue, and update contact and personal information. This site provides a way for tribe members to scan and submit their 2020 Schedule OR-EIS.

We continue to update and maintain tribe information regarding taxation on our website at www.oregon.gov/dor. We welcome feedback and comments from tribe members on the effectiveness of the website. We work to improve user experience with the site and the information provided.

Property Tax 2020 highlights

The Tribal Tax Work Group (TTWG) is composed of representatives from the tribes, county assessment offices, Oregon Department of Justice, Governor's Office, and the Department of Revenue. The TTWG has been dormant since 2014 since there were no new property tax issues brought forward by tribal representatives or other members of the work group. However, we are always available to address new issues should the need arise.

We actively participated in EDCS Cluster meetings and other events throughout 2020.

Ongoing

We continue to partner with local jurisdictions to share information and provide training and workshops on property tax matters that may impact tribes or their members.

The Property Tax Division is always ready to assist tribes in addressing complex property tax matters such as exemptions or valuation. We regularly provide central assessment data to tribes to assist them in administering their own tribal tax codes. For example, the Umatilla Tribe uses the utility assessment roll to administer its own property tax system.