



*Executive summary*

2020

# **Annual Report on Administrative Rules**

Oregon Laws 2016, Chapter 44

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January 17, 2020



# Executive summary

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This is the Department of Revenue's administrative rules report in response to the annual report requirement in Oregon Laws 2016, Chapter 44 (2016 HB 4106).

## **Rules adopted, amended, or suspended in accordance with ORS 183.335(2) and (3).**

During calendar year 2019, the department adopted three rules, amended 17 rules, and repealed three rules in accordance with ORS 183.335(2) and (3).

## **Temporary rules adopted, amended, or suspended in accordance with ORS 183.335(5).**

During calendar year 2019, the department adopted 13 rules in accordance with ORS 183.335(5).

### **List of rules:**

- 150-311-0655, *Deferral Criteria for Homesteads with a Reverse Mortgage*. (Adopt).
- 150-317-1000, *Definition of Commercial Activity* (Adopt).
- 150-317-1010, *Substantial Nexus Guidelines for the Corporate Activity Tax (CAT)* (Adopt).
- 150-317-1020, *Factors Used in Determining Whether a Group of Persons are Engaged in a Unitary Business and Filing Requirements for Unitary Groups* (Adopt).
- 150-317-1030, *Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property* (Adopt).
- 150-317-1040, *Sourcing Commercial Activity Other Than Sales of Tangible Personal Property in This State* (Adopt).
- 150-317-1100, *Agent Exclusion* (Adopt).
- 150-317-1130, *Property Brought into Oregon* (Adopt).
- 150-317-1200, *Cost Input or Labor Cost Subtraction* (Adopt).
- 150-317-1300, *Estimated Tax: When Estimated Payments Are Required* (Adopt).
- 150-317-1310, *Estimated Tax Payments: Delinquent or Underestimated Payment or Both, Constitutes Underpayment* (Adopt).
- 150-317-1320, *Estimated Tax: Unitary Groups and Apportioned Returns* (Adopt).
- 150-317-1330, *Extension of Time to File* (Adopt).





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## Introduction

Oregon Laws 2016, Chapter 44, requires state agencies to submit a report no later than February 1 of each year regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. This is the Department of Revenue's report covering rulemaking activity during calendar year 2019.

## Rules adopted, amended, or repealed [ORS 183.335(2) and (3)]

The following table shows the number of rules adopted, amended, or repealed in accordance with Oregon Revised Statutes (ORS) 183.335(2) and (3):

<b>Adopted</b>	3
<b>Amended</b>	17
<b>Repealed</b>	3

## Temporary rules adopted, amended, or suspended [ORS 183.335(5)]

Number of rules: 13

### List of rules:

- 150-311-0655, *Deferral Criteria for Homesteads with a Reverse Mortgage* (Adopt).
- 150-317-1000, *Definition of Commercial Activity* (Adopt).
- 150-317-1010, *Substantial Nexus Guidelines for the Corporate Activity Tax (CAT)* (Adopt).
- 150-317-1020, *Factors Used in Determining Whether a Group of Persons are Engaged in a Unitary Business and Filing Requirements for Unitary Groups* (Adopt).
- 150-317-1030, *Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property* (Adopt).
- 150-317-1040, *Sourcing Commercial Activity Other Than Sales of Tangible Personal Property in This State* (Adopt).
- 150-317-1100, *Agent Exclusion* (Adopt).
- 150-317-1130, *Property Brought into Oregon* (Adopt).
- 150-317-1200, *Cost Input or Labor Cost Subtraction* (Adopt).
- 150-317-1300, *Estimated Tax: When Estimated Payments Are Required* (Adopt).
- 150-317-1310, *Estimated Tax Payments: Delinquent or Underestimated Payment or Both, Constitutes Underpayment* (Adopt).
- 150-317-1320, *Estimated Tax: Unitary Groups and Apportioned Returns* (Adopt).
- 150-317-1330, *Extension of Time to File* (Adopt).

**Statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned:**

### **OAR 150-311-0655, *Deferral Criteria for Homesteads with a Reverse Mortgage* (Adopt)**

This rule is necessary to clarify terms and processes for determining eligibility for the senior and disabled deferral property tax program under new law. This rule clarifies what information will be considered and required for the senior and disabled deferral program home equity test that is required under Oregon Laws 2019, Chapter 591 (Enrolled HB 2587). It also clarifies how



the equity percentage will be calculated. This temporary rule is applicable for the 2020 deferral application filing season, and is relevant to applications where the homeowner holds a reverse mortgage obtained on or after July 1, 2011 and before January 1, 2017.

Failure to adopt this rule was likely to cause deferral application forms for the 2020 application season to be issued later than normal. This may have caused confusion for taxpayers and resulted in a shorter period of time for taxpayers to file their applications by the statutory deadline. Another concern was that a delay may have required shifting department resources from other program development work.

**OAR 150-317-1000 through 150-317-1330:**

These rules provide guidance to taxpayers on the new Corporate Activity Tax (CAT) established under Oregon Laws 2019, Chapter 122, Sections 58 to 76 (enrolled HB 3427) as amended by Oregon Laws 2019, Chapter 579, Sections 50 to 60 (enrolled HB 2164), which became effective January 1, 2020. The rules clarify terms and processes applicable to the new tax. Taxpayers needed guidance in order to be compliant with the new laws.

Without guidance, taxpayers may not have been able to determine or know before the first quarterly estimated tax payment due on April 30, 2020:

- Whether their business activity meets the definition of commercial activity;
- Whether they have substantial nexus with Oregon;
- Whether they are engaged in a unitary business or understand the filing requirements for unitary groups;
- How to source commercial activity from sales of tangible personal property to Oregon for taxpayers who have business activity across state lines;
- How to source commercial activity other than sales of tangible personal property for taxpayers who have business activity across state lines;
- Whether they are acting as an agent for purposes of the exclusion provided by Oregon Laws 2019, Chapter 122, Section 58(1)(b)(M), as amended by Oregon Laws 2019, Chapter 579, Section 50;
- Whether property brought into this state is included in taxable commercial activity for purposes of Oregon Laws 2019, Chapter 122, Section 61, as amended by Oregon Laws 2019, Chapter 579, Section 51;
- How to compute the cost input or labor cost subtraction for the CAT under Oregon Laws 2019, Chapter 122, Section 64, as amended by Oregon Laws 2019, Chapter 579, Section 53;
- When estimated corporate activity tax payments are required, including estimated payment due dates for short-period returns;
- How refund requests are handled;
- How to apply an overpayment to a future tax period;
- That estimated tax payments for the CAT must be made via electronic funds transfer;
- Correct amounts of estimated corporate activity tax payments or requirements for interest imposed on underpayment of estimated tax, including estimated tax payment obligations for unitary groups of taxpayers filing a single return and for those who must apportion their commercial activity;
- The length of available extensions of time to file CAT returns and the manner to make an extension request;
- Circumstances qualifying as “good cause” for requesting an extension of time to file CAT returns.

**150-317-1000, *Definition of Commercial Activity (Adopt)***

This rule provides guidance to assist taxpayers regarding the definition of commercial activity for purposes of the Oregon Corporate Activity Tax (CAT), described in Oregon Laws, Chapter 122, Section 58(1), as amended by Oregon Laws 2019, Chapter 579, Section 50.

**150-317-1010, *Substantial Nexus Guidelines for the Corporate Activity Tax (CAT) (Adopt)***

This rule provides guidance to assist taxpayers in determining whether they have substantial nexus with Oregon for purposes of the Oregon Corporate Activity Tax (CAT) under Oregon Laws 2019, Chapter 122, Section 63, as amended by Oregon Laws 2019, Chapter 579, Section 52.

**150-317-1020, *Factors Used in Determining Whether a Group of Persons are Engaged in a Unitary Business and Filing Requirements for Unitary Groups (Adopt)***

This rule provides guidance to assist taxpayers in determining whether they are engaged in a unitary business under Oregon Laws 2019, Chapter 122, Section 58(18), as amended by Oregon Laws 2019, Chapter 579, Section 50, and explains filing requirements for unitary groups.

**150-317-1030, *Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property (Adopt)***

This rule provides guidance for sourcing of commercial activity from the sale of tangible personal property for taxpayers who have business activity inside and outside of Oregon under Oregon Laws 2019, Chapter 122, Section 66, as amended by Oregon Laws 2019, Chapter 579, Section 54.

**150-317-1040, *Sourcing Commercial Activity Other Than Sales of Tangible Personal Property in This State (Adopt)***

This rule provides guidance for sourcing of commercial activity from other than sales of tangible personal property for taxpayers who have business activity across state lines under Oregon Laws 2019, Chapter 122, Section 66, as amended by Oregon Laws 2019, Chapter 579, Section 54.

**150-317-1100, *Agent Exclusion (Adopt)***

This rule provides guidance to assist taxpayers in determining whether they are acting as an agent for purposes of the exclusion provided by Oregon Laws 2019, Chapter 122, Section 58(1)(b)(M), as amended by Oregon Laws 2019, Chapter 579, Section 50.

**150-317-1130, *Property Brought into Oregon (Adopt)***

This rule provides guidance on when property brought into this state is included in taxable commercial activity for purposes of the Oregon Corporate Activity Tax (CAT) under Oregon Laws 2019, Chapter 122, Section 61, as amended by Oregon Laws 2019, Chapter 579, Section 51.

**150-317-1200, *Cost Input or Labor Cost Subtraction (Adopt)***

This rule provides guidance to assist taxpayers in how to compute the cost input or labor cost subtraction for purposes of the Oregon Corporate Activity Tax (CAT) under Oregon Laws 2019, Chapter 122, Section 64, as amended by Oregon Laws 2019, Chapter 579, Section 53.

**150-317-1300, *Estimated Tax: When Estimated Payments Are Required* (Adopt)**

This rule provides guidance to taxpayers in determining when estimated corporate activity tax payments are required, including estimated payment due dates for short-period returns, how refund requests are handled, how to apply an overpayment to a future tax period, how estimated taxes are credited, and to require payment of estimated tax via electronic funds transfer.

**150-317-1310, *Estimated Tax Payments: Delinquent or Underestimated Payment or Both, Constitutes Underpayment* (Adopt)**

This rule provides guidance to taxpayers in determining the correct amounts of estimated corporate activity tax payments and establishes requirements for interest imposed on underpayment of estimated tax.

**150-317-1320, *Estimated Tax: Unitary Groups and Apportioned Returns* (Adopt)**

This rule provides guidance to taxpayers regarding estimated corporate activity tax payment obligations for unitary groups of taxpayers filing a single return and for those who must apportion their commercial activity.

**150-317-1330, *Extension of Time to File* (Adopt)**

Oregon Laws 2019, Chapter 122, Section 70(3) grants the department rule writing authority to allow extensions of time to file the Corporate Activity Tax return for “good cause.” This rule establishes the length of the extension and the manner to make a request, as well as to define what circumstances qualify as “good cause.”

**For each rule, an explanation of why proceeding under ORS 183.335(5) was the most appropriate method for adopting, amending, or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335(2) and (3):**

**OAR 150-311-0655, *Deferral Criteria for Homesteads with a Reverse Mortgage* (Adopt)**

Without temporary rule adoption, the department would have proceeded with a permanent rule adoption process that requires additional time for public notice and public comment. These required timeframes would have delayed the development of the application form and system changes beyond the timeframe for timely development, printing, and distribution of the forms to taxpayers. The temporary rule allowed the department to provide guidance with enough time to enact the form and system changes and print and distribute the forms timely. The department plans to undertake permanent rulemaking in 2020.

**OAR 150-317-1000 through 150-317-1330:**

Without temporary rules, taxpayers wouldn’t have the information necessary to determine if they are subject to the Corporate Activity Tax, to determine what is necessary for record keeping, to make estimated payments, or to file correct CAT returns.

Promulgating temporary rules effective January 1, 2020 provided guidance for taxpayers as of the effective date of the new Corporate Activity Tax and before the first quarterly estimated tax payment deadline of April 30, 2020. The department plans to undertake permanent rulemaking in 2020.

- 150-317-1000, *Definition of Commercial Activity* (Adopt).
- 150-317-1010, *Substantial Nexus Guidelines for the Corporate Activity Tax (CAT)* (Adopt).
- 150-317-1020, *Factors Used in Determining Whether a Group of Persons are Engaged in a Unitary Business and Filing Requirements for Unitary Groups* (Adopt).
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- 150-317-1330, *Extension of Time to File* (Adopt).

# Appendix 1

## Oregon Laws 2016, Chapter 44

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### CHAPTER 44

AN ACT

HB 4106

Relating to state agency adoption of temporary rules.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1.** (1) As used in this section:

(a) "Agency" has the meaning given that term in ORS 183.310.

(b) "Rule" has the meaning given that term in ORS 183.310.

(c) "Statement of need" means the statement described in ORS 183.335 (5)(c).

(2) No later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed or suspended during the preceding 12-month period. The report must include:

(a) The number of rules adopted, amended or repealed in accordance with ORS 183.335 (2) and (3); and

(b) With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335 (5):

(A) The number of rules;

(B) A list of the rules;

(C) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned; and

(D) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

Approved by the Governor March 14, 2016

Filed in the office of Secretary of State March 14, 2016

Effective date January 1, 2017