

# Oregon Administrative Rules Annual Report to the Oregon Legislature

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ORS 183.403 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agencies to submit a report no later than February 1 of each year regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period.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 2021.

## **Rules adopted, amended or repealed in accordance with ORS 183.335 (2) and (3)**

During calendar year 2021, the department adopted 15 rules, amended 22 rules and repealed two rules.

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

During calendar year 2021, the department adopted two temporary administrative rules and amended two temporary administrative rules in accordance with ORS 183.335(5). Those rules are as follows:

### Adopt:

150-320-0365, Administration of Local Lodging Taxes

150-317-1060, Definition of Insurers' Gross Premium Receipts – Corporate Activity Tax

### Amend:

150-305-0360, Rules Application – local transient lodging taxes

150-317-1020, Corporate Activity Tax – unitary groups

## **Below is the statement of need and justification for each temporary rule adopted in 2021.**

### **150-305-0360, 150-320-0365**

These rules give guidance on the administration of local transient lodging taxes which will begin in the second quarter of 2021.

This guidance will give temporary notice to municipalities how the Department of Revenue will administer their taxes if the municipality chooses to participate in the program. Failure to implement a temporary rule would make it much more difficult for a municipality to decide if they want to participate in the program or not.

Local municipalities looking for assistance with the administration of their local transient lodging programs.

Without the rules it will be difficult for a municipality to decide if they prefer DOR to administer their local transient lodging tax programs or to continue to do it on their own.

The rules will give them the additional information required to make the analysis regarding participating in this program or not.

### **150-317-1060**

This rule provides guidance to insurers who are subject to the Corporate Activity Tax established under Oregon Revised Statutes, chapter 317A, regarding the sourcing and definition of insurance premiums receipts for the Corporate Activity Tax.

Without guidance, insurers subject to the Corporate Activity Tax may not be able to correctly source Oregon commercial activity and subsequently will not be able to determine the amount of tax due. The temporary rule provides the following:

- defines “gross insurance premiums” for purpose of determining an insurer’s commercial activity subject to the Corporate Activity Tax

- clarifies that unless otherwise prohibited in statute the rule will apply to gross direct life, accident and health, and property and casualty insurance premiums written
- clarifies that sourcing for surplus line insurance applies to premiums written

Insurers that are subject to the Corporate Activity Tax will suffer the above consequences without published guidance.

Without guidance, Insurers may incorrectly assign receipts as taxable or nontaxable depending on their interpretation of the statute.

Promulgating a temporary rule effective February 1, 2021 will provide guidance for insurers before the filing of the CAT return is due on April 15, 2021.

### **150-317-1020**

Under Oregon Revised Statutes 317A.106, a unitary group must register, file, and pay the corporate activity tax as a single taxpayer. ORS 317A.100(19) defines a “unitary group” as “a group of persons with more than 50 percent common ownership, either direct or indirect, that is engaged in business activities that constitute a unitary business.” OAR 150-317-1020(10) includes rules regarding direct and indirect ownership, under which a person may be part of more than one unitary group in some circumstances. This rule provides guidance for taxpayers that meet the criteria for inclusion in more than one unitary group. It also incorporates a reference to OAR 150-317-1025 to update for changes to unitary group membership under ORS 317A.106 made by House Bill 4202 in the 2020 First Special Session (Or Laws 2020 (1<sup>st</sup> sp sess), ch 2, § 2).

It amends the rule to require members of more than one unitary group to file with the unitary group that reports the greatest amount of commercial activity, after exclusions and modifies reference to OAR 150-317-1025 for changes made by House Bill 4202 during the 2020 First Special Session.

Failure to provide guidance to taxpayers that meet the unitary group criteria of more than one unitary group may lead to unitary group members filing returns under multiple unitary groups or cause confusion regarding the appropriate unitary group to be included in for the corporate activity tax return. Returns for the 2020 tax year are due April 15, 2021. The guidance provides information used to determine the unitary group that should be used to file their corporate activity tax return. The temporary amendment to the rule provides the following:

- If the taxpayer is a common owner of more than one unitary group, the taxpayer must file as a member of the unitary group that realizes the greatest amount of commercial activity, after the exclusions described under ORS 317A.100(1)(b)(A)-(VV);
- Modifies reference to OAR 150-317-1025 for changes made by House Bill 4202 during the 2020 First Special Session related to unitary groups with Non-US members.

Taxpayers subject to chapter 317A that meet the unitary group criteria to be part of more than one unitary group will suffer the consequences without published guidance to determine which unitary group should be used to file their corporate activity tax return.

Without guidance, taxpayers that are members for more than one unitary group may file the corporate activity tax return under more than one unitary group or be confused regarding the appropriate unitary group in which to be included. Taxpayers may report incorrectly and pay the incorrect amount of tax.

Promulgating a temporary amendment to OAR 150-317-1020 effective March 1, 2021 will provide guidance for taxpayers before the filing of the corporate activity tax return is due on April 15, 2021.