

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150  
DEPARTMENT OF REVENUE

**FILED**

04/27/2020 5:01 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Permanent rule providing guidance on Corporate Activity Tax estimation, replacing version dated April 17, 2020

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/26/2020 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Katie McCann  
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Salem, OR 97301

Filed By:  
Katie McCann  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 05/26/2020

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Remote Hearing -  
Conference Call

955 Center St NE  
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Conference call line 541- 465 - 2805;  
PIN 234470

NEED FOR THE RULE(S):

OAR 150-317-1300: This proposed rule with last revised date April 27, 2020, replaces the version with last revised date of April 17, 2020. Provides guidance to taxpayers in determining when estimated corporate activity tax (CAT) 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. A temporary rule has been in effect since January 1, 2020. The permanent rule adopts the language of the temporary rule, clarifies that persons subject to unrelated business income have the same obligations as other persons under the CAT, and provides a higher estimated tax payment threshold for the first year of the tax

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes: 317A.100 – 317A.161, available online through Legislative Counsel. Letter to Sandra McDonough of Oregon Business and Industry from Governor Brown, dated April 24, 2020, available from the department upon request.

## FISCAL AND ECONOMIC IMPACT:

Approximately 40,000 businesses will be subject to the Corporate Activity Tax, based on Legislative Counsel's estimate during the 2019 legislative session.

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## COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

1. OAR 150-317-1300 with last revised date of April 27, 2020, requires payments of estimated tax via electronic funds transfer if the expected tax liability is \$10,000 for the first year of the tax and \$5,000 for subsequent tax years. There are no fees for payments made from a checking account or savings account. The department uses a third-party service provider for debit or credit card payments, and the service provider may charge a fee of 2.4%. The department is unable to quantify the number of taxpayers who will elect to make estimated payments by debit or credit card.

2. a. All entity types with more than \$1 million in gross receipts are required to file a CAT return. For those businesses that expect to have a tax liability of \$10,000 or more for the first tax year and \$5,000 or more for subsequent tax years, they also must make estimated payments. Oregon has approximately 89,469 businesses with fewer than 499 employees. We estimate Oregon has approximately 11,500 small businesses with fewer than 50 employees who are subject to this rule.<sup>2</sup> Because the tax threshold for making estimated payments is \$10,000 in year one, and \$5,000 in subsequent years, only those small businesses within the 11,500 estimate above with gross receipts in excess of approximately \$4 million and \$2.5 million, respectively, will be required to make estimated payments.

b. OAR 150-317-1300 with last revised date of April 27, 2020, requires payments of estimated tax via electronic funds transfer if the expected tax liability is \$10,000 for the first year of the tax and \$5,000 for subsequent tax years. There are no fees for payments made from a checking account or savings account. The department uses a third-party service provider for debit or credit card payments, and the service provider may charge a fee of 2.4%. The department is unable to quantify the number of taxpayers who will elect to make estimated payments by debit or credit card.

c. None known.

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## DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We conducted several outreach meetings around the state in order to gather stakeholder feedback prior to drafting the temporary administrative rule. We met with small business liaison groups such as the Oregon Farm Bureau, Oregon Business and Industry, Council on State Taxation, business owners and tax professionals to hear about their concerns and issues that needed to be addressed by administrative rule. In addition, drafts of the temporary rule were posted on the Department of Revenue's Corporate Activity Tax webpage in order to allow all members of the public, including small businesses, tax professionals who serve small businesses, and other stakeholders the opportunity to provide feedback prior to filing the temporary rule with the Secretary of State. An email box was established specifically for stakeholders to provide their feedback on draft rule. Program has a list of interested parties which was used to notify stakeholders when a draft rule was posted to our website.

Program conducted a second set of outreach meetings around the state and held one meeting over the phone with out-of-state stakeholders. At these meetings, program reviewed and explained the context of temporary rule. Attendees had the opportunity to ask specific questions about the application of the rule to their individual businesses. In addition, program once again invited stakeholders to provide feedback regarding the temporary rule.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for this rule; however, we did seek and receive input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted, and they have the interest and expertise necessary to provide adequate feedback on the proposed rule; therefore, a committee is unlikely to provide further benefit.

ADOPT: 150-317-1300

RULE SUMMARY: Provides guidance to taxpayers in determining when estimated corporate activity tax (CAT) 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. A temporary rule has been in effect since January 1, 2020. The permanent rule adopts the language of the temporary rule, clarifies that persons subject to unrelated business income have the same obligations as other persons under the CAT, and provides a higher estimated tax payment threshold for the first year of the tax.

CHANGES TO RULE:

### 150-317-1300

#### Estimated Tax: When Estimated Payments are Required

(1) Estimated tax liability means the tax as computed under ORS chapter 317A, less allowable credits. ¶

(2) Every person required to file an Oregon Corporate Activity Tax (CAT) return and expecting to have a tax liability of \$5,000 or more must make estimated tax payments. For purposes of determining whether estimated tax liability exceeds \$5,000, a credit balance resulting from overpayment of tax for a prior year is not taken into account. ¶

(3) Estimated tax payments are required, regardless of when a taxpayer exceeds \$1 million of taxable commercial activity. ¶

(4) Payments are due on the last day of the month that follows the end of each calendar quarter: April 30, July 31, October 31, and January 31. ¶

(5) Due dates of payments for short-period returns. If a return is filed for a short period of less than 12 months, estimated tax payments are due as follows: ¶

(a) If the period covered is less than four months, only one payment is required. It is equal to 100 percent of the estimated tax and is payable on the due date of the return. ¶

(b) If the period covered is four months or longer but less than six months, one payment of one-half of the estimated tax is required and due on the 15th day of the fourth month, and the balance is due on or before the due date of the tax return, not including extensions. ¶

(c) If the period covered is six months or longer but less than nine months, three payments are required. One-third of the estimated tax is due on the 15th day of the fourth month, one-third on the 15th day of the sixth month and the balance on or before the due date of the tax return, not including extensions. ¶

(d) If the period covered is nine months or longer, but less than twelve months, four payments are required. One-fourth of the estimated tax is due on the 15th day of the fourth month, one-fourth on the 15th day of the sixth month, one-fourth on the 15th day of the ninth month, and the balance on or before the due date of the tax return, not including extensions. ¶

(6) Tax-exempt persons that have "Unrelated Business Income," as defined in the Internal Revenue Code, must also register, file an Oregon CAT return, and pay the tax, if such person is otherwise subject to those requirements under ORS 317A.100 to 317A.161. If their expected Oregon tax liability is \$5,000 or more, estimated tax payments must be made. ¶

(7) Refunds prior to filing of return. Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient

cause to refund such excess prior to the filing of the Oregon CAT return. On a case-by-case basis, if a taxpayer establishes to the satisfaction of the department that the facts warrant a refund, the department may issue a refund of estimated taxes prior to the filing of the tax return. ¶

(8) Overpayments of tax. ¶

(a) Election. When a person files a completed CAT return and the tax calculated on the return is less than the amounts previously paid for that year, the person may make an irrevocable election to have the overpayment of tax either refunded or applied as a payment of estimated tax. The election is made by entering the amount in the appropriate space provided on the CAT return. ¶

(b) Application to estimated tax installment. For tax years beginning on or after January 1, 2021, the department will apply the elected overpayment, unless it is subject to an offset under ORS 314.415 and related rules, to the following year's estimated tax payment due on the last day of the fourth month of the taxable year, to the extent that the overpayment of tax is attributable to estimated tax payments received prior to the following year's first quarter estimated tax due date. Payments received after the following year's first quarter estimated tax due date will be applied to estimated tax as of the date the payment is received. In the case of an amended or delinquent return, the amount will be credited to the estimated tax installment as of the date the amended or delinquent return was filed or the date a payment was received, whichever is later. ¶

(9) Payments of estimated tax. Except as otherwise specifically provided in section (8) of this rule, the department will credit estimated tax payments as of the date that they are received. The department will apply estimated tax payments to any prior underpayment and the remainder, if any, will be applied to the next required installment. ¶

(10) Requirement to use electronic funds transfer. For tax years beginning on or after January 1, 2020, persons are required to make estimated CAT payments by electronic funds transfer (EFT). ¶

(11) A person disadvantaged by the requirement to pay by EFT may request an exemption. The request must be in writing and sent to the address for EFT registration. The request must explain why the requirement to pay by EFT is a disadvantage to the taxpayer. An example of a disadvantage to the taxpayer is when the taxpayer's bank or the bank of the taxpayer's payroll service is unable to provide the service. Requests for an exemption will be evaluated on a case-by-case basis. If granted, the exemption will be for a period of 12 months, during which the taxpayer is expected to make arrangements to comply with the requirement to use EFT. The department will grant only one exemption period to a taxpayer. ¶

(12) Notwithstanding section (2) of this rule, taxpayers that expect their annual tax liability for tax year 2020 to be less than \$10,000 are not required to make quarterly estimated payments for tax year 2020.

Statutory/Other Authority: ORS 305.100, 317A.143

Statutes/Other Implemented: ORS 314.415, 314.505, 314.515, 314.518, 317A.137, 317A.149