



Oregon

Kate Brown, Governor

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DATE: March 6, 2020
TO: Interested Parties
SUBJECT: Notice of Temporary Administrative Order

Attached please find a copy of a Notice of Temporary Administrative Order for two recently adopted temporary rules pertaining to the new **Oregon Corporate Activity Tax**.

The newly adopted temporary rules are posted on the department's website at <http://www.oregon.gov/DOR/about/Pages/rules.aspx>.

The department is continuing to develop additional administrative rules. As rules are finalized, additional notices will be provided (and will be posted on the above website).

In compliance with the Americans with Disabilities Act, this information is available in alternative formats upon request. Please contact me if you have questions.

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Enclosures: Notice of Temporary Administrative Order

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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

REV 3-2020

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

03/04/2020 2:04 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Corporate Activity Tax: Defines "employee," "compensation," and "single-family residential construction" under ORS Chapter 317A.

EFFECTIVE DATE: 03/06/2020 THROUGH 09/01/2020

AGENCY APPROVED DATE: 03/02/2020

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Filed By:
Katie McCann
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NEED FOR THE RULE(S):

These rules provide guidance relating to the Corporate Activity Tax, chapter 317A which became effective January 1, 2020. These rules clarify the definitions of "single-family residential construction" for purpose of the subcontractor labor exclusion as well as "employee" and "compensation" for purpose of labor cost subtraction. Taxpayers need to know the definitions of "single-family residential construction" to determine the 15 percent exclusion of payments made to subcontractors for labor cost pursuant to a contract for single-family residential construction. In addition, taxpayers need to know the definitions of "employee" and "compensation" for purpose of the labor cost subtraction to determine taxable commercial activity.

JUSTIFICATION OF TEMPORARY FILING:

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s); A subtraction of 35 percent of labor cost or cost inputs is allowed against commercial activity. In addition, a 15 percent exclusion of payments made to subcontractors for labor costs pursuant to a contract for single-family residential construction is allowed under ORS Chapter 317A. These rules provide guidance to taxpayers to determine their cost inputs amount and exclusion from commercial activity of payments to subcontractors. Without guidance, taxpayers may not be able to determine or know, before the first quarterly estimated tax payment due on April 30, 2020:

- what is considered a "single-family residential construction" for purpose of the 15 percent exclusion of payments to subcontractors.
- who is considered an "employee" for the labor cost subtraction;
- who is not considered an "employee" for purpose of the labor cost subtraction
- what amounts are considered "compensation" for purpose of the labor cost subtraction;
- what amounts are not considered "compensation" for purpose of the labor cost subtraction.

(2) who would suffer these consequences;

Persons who are subject to the Corporate Activity Tax will suffer the above consequences on account of lack of

published guidance to determine the correct amount of exclusion attributable to subcontractor payments and the correct subtraction against commercial activity and subsequently total Corporate Activity Tax. Taxpayers will not be able to determine what amount will provide them a greater tax benefit, a subtraction of labor cost or a subtractions of cost inputs. The Department of Revenue would bear the burden of answering taxpayers' questions and providing education and outreach to taxpayers.

(3) why or how failure to immediately take rulemaking action would cause these consequences;

Without a temporary rule, taxpayers may not have the information necessary to determine which payments to subcontractors are eligible for the 15 percent exclusion or determine labor cost for the subtraction against commercial activity for filing their CAT returns and calculating estimated payments. In addition, taxpayers' first estimated payment is due April 30, 2020 and without this rule, they will not have the necessary information to able to estimate their tax liability and make estimated payments as required by chapter 317A.

(4) how the temporary action will avoid or mitigate those consequences.

Promulgating a temporary rule effective March 6, 2020 will provide guidance for taxpayers before the first quarterly estimated tax payment deadline of April 30, 2020.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised statues, chapter 317A

https://www.oregonlegislature.gov/bills_laws/ors/ors317A.html

RULES:

150-317-1120, 150-317-1220

ADOPT: 150-317-1120

RULE TITLE: Definition of single-family residential construction.

RULE SUMMARY: Defines the term "single-family residential construction" for purpose of Oregon Revised Statute (ORS) 317A.122 which provides general contractors an exclusion from their commercial activity equal to 15 percent of the payments made to subcontractors for labor costs pursuant to a contract for single-family residential construction.

RULE TEXT:

For the purposes of ORS 317A.122, single-family residential construction means the construction of new single-family housing such as single-family detached or semidetached houses and townhouses or row houses where each housing unit:

- (1) Is separated from the adjacent unit by a ground-to-roof wall;
- (2) Has no housing units constructed above or below;
- (3) Does not share heating or air-conditioning systems; and
- (4) Does not share utilities.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.122, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.122

ADOPT: 150-317-1220

RULE TITLE: Employee Compensation: Labor Cost Subtraction

RULE SUMMARY: Provides guidance to assist taxpayers in determining who is considered an employee and what compensation includes for purposes of calculating the corporate activity tax labor cost subtraction.

RULE TEXT:

(1) Definitions. For purposes of the labor cost subtraction, as calculated under OAR 150-317-1200:

(a) "Employee" has the meaning given that term in OAR 150-316-0255(5). "Employee" does not include:

- (A) Partners in a partnership who receive guaranteed payments or distributive income;
- (B) Members in a Limited Liability Company (LLC) who receive guaranteed payments or distributive income;
- (C) Statutory employees described in the Internal Revenue Code (IRC) section 3121(d)(3); or
- (D) Independent contractors, as defined in ORS 670.600.

(b) "Compensation" has the meaning given that term in ORS 317A.100(1)(b)(H).

(2) The labor cost subtraction, as calculated under OAR 150-317-1200, does not include:

- (a) Compensation in excess of \$500,000 paid to any single employee;
- (b) Payroll taxes, including but not limited to, Social Security, Medicare, and Federal unemployment.

Example 1: A2zk Tech Inc. employs 50 workers who meet the requirements to be considered employees. Each employee receives a base annual salary of \$375,000. In addition, the company pays commission and bonuses, based on performance, and a total of \$15,000, which includes health insurance and other fringe benefits such as employer-provided retirement contributions, for each of its employees. Assume that A2zk also pays \$25,000 in payroll taxes for each employee. Although A2zk Tech pays taxes for each employee, any tax amount paid for its employees is not used to calculate the total compensation. During 2020, 10 of the employees earned \$150,000 each in commission and bonuses. Because the total compensation of each of those 10 employees exceeds \$500,000, ($\$375,000 + \$15,000 + \$150,000 = \$540,000$), A2zk Tech calculates the total labor cost as $[(40 * \$390,000) \text{ (base salary plus benefits)} + (10 * \$500,000)] = \$20,600,000$.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.100

STATUTES/OTHER IMPLEMENTED: ORS 316.167, 317A.100, 670.600