SB 164 – Modifies Provisions of Corporate Activity Tax

Background

In 2019, Oregon's Corporate Activity Tax (CAT) was created in House Bill 3427 with a few technical modifications adopted in House Bill 2164.

During the June 2020 Special Session, House Bill 4202 was approved, and made a series of technical and policy clarifications to the statutes governing CAT. These changes apply to all tax years beginning on or after January 1, 2020.

Senate Bill 164

Senate Bill 164 currently includes provisions that expand CAT exemptions for certain retailers, and the measure applies to tax years beginning on or after January 1, 2022. The department can implement these changes as we prepare for subsequent tax filing seasons.

Additional Considerations

Underpayment Penalty

The modified penalty provisions adopted in HB 4202 will cause taxpayers to be treated differently. A taxpayer that files their 2021 tax return by the original due date will receive penalty relief if they paid 80% of the tax due. A taxpayer who files after the original due date, but on approved extension, will receive penalty relief if they paid 90% of the tax due. Currently, that penalty relief does not apply for the entirety of tax years 2020 and 2021. If that was the legislative intent, then the department recommends the following change:

> Oregon Laws 2020 1st Special Session, SECTION 11. Section 78, chapter 122, Oregon Laws 2019, is amended to read:
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> Sec. 78. (1) [*Section 77 of this 2019 Act applies*] **The amendments to ORS 317A.161 by section 9 of this 2020 special session Act apply** to tax years beginning on or after January 1, 2020, and before January 1, [*2021*] **2022**~~, and to returns filed on or before April 15, [*2021*] **2022**~~.
>
> **(2) The amendments to ORS 317A.161 by section 10 of this 2020 special session Act apply to tax years beginning on or after January 1, 2022~~, and to returns filed after April 15, 2022~~.**

Closed or Sold Business

Original 2019 CAT legislation included provisions for tax treatment when a person quits or sells a business. ORS 317A.146 requires the person who quits or sells a business to file a tax return and pay the amount of tax due within 45 days of the disposition or sale. This creates a compliance burden for taxpayers; in some cases, businesses have indicated they do not have the information required to file a CAT return within 45 days of the disposition or sale. The expedited filing requirement does not align with other annual tax programs.

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To ease the burden on taxpayers, a revision to ORS 317A.146(2) is suggested:

> ORS 317.146 (2) If any person quits business or sells out, exchanges or otherwise disposes of a business or stock of goods, any corporate activity tax imposed under ORS 317A.116 shall become ~~immediately due and~~ **payable on April 15 of the following year**. ~~The person shall, within 45 days after the sale, exchange or disposition, make a return and pay the tax due.~~

Tax Administration Penalties

In addition to the underpayment penalty provisions, HB 4202 also added language explicitly applying the failure to file penalties in ORS 314.400(1) (five percent failure to file or pay by due date) and 314.400(2) (additional 20 percent penalty for failure to file by more than three months). This provision is unnecessary because ORS 317A.149 ties the administration of CAT to other provisions, including penalties, in chapters related to taxation. By explicitly applying to the failure to file penalties, it could be interpreted that no other penalties, such as the penalty for failure to file three years in a row or the penalty for fraudulently filed returns, may be imposed.

To clarify tax administration penalties are not limited to those imposed by ORS 314.400(1) and (2); an amendment to delete ORS 317A.161(3) is suggested.

Minor Technical Clarification

ORS 317A.100(1)(B)(AA) excludes net revenue of residential care facilities or in-home care agencies for providing services to a medical assistance or Medicare recipient. “Net revenue” is not defined and the CAT is based on “receipts” from commercial activity. If the intent is to exclude “receipts” of residential care facilities or in-home care agencies that are compensation for providing services to a medical assistance or Medicare recipient, clarification in statute would be helpful.

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