



Oregon

Tina Kotek, Governor

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March 16, 2023

Senator Deb Patterson, Co-Chair
Representative Greg Smith, Co-Chair
Joint Committee on Ways and Means Subcommittee on General Government
900 Court Street NE
Salem, OR 97301

Subject: Written Responses to Day One (3/15/23) Committee Questions

Dear Co-Chairs:

During our committee presentation on March 15, members asked questions for which we are providing additional information.

What are the consequences of committing tax fraud?

The department provides referrals on fraud cases to either the Oregon Department of Justice or the Internal Revenue Service who works with the U.S. Justice Department and the FBI. Fraud cases that we've been involved in have generally resulted in prison sentences and restitution.

Cases have been tried at both the state level and federal level. State cases generally involve losses (fraudulent paid refunds) where the fraudster was located and remains in Oregon. Federal cases generally involve losses to more than one state or the Internal Revenue Service, where the fraudster is either unknown or known to be located outside of Oregon.

Does the department want or need tools to help identify fraud?

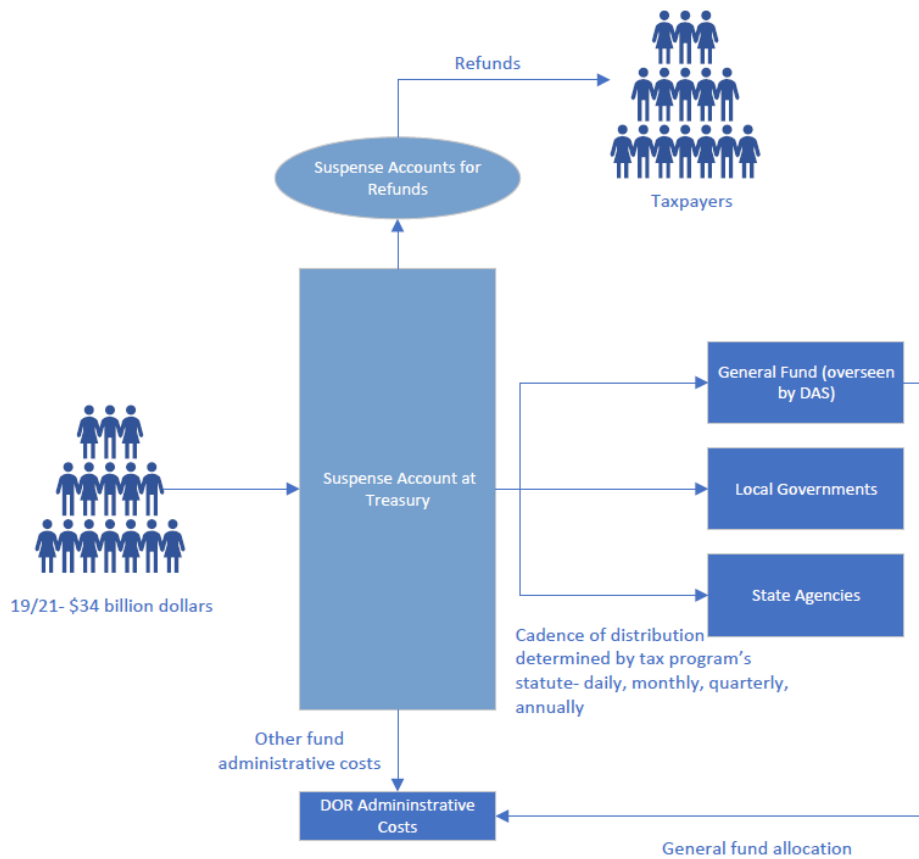
The department appreciates the Legislatures support to combat fraud and identity theft. In 2021, [Senate Bill 2128 \(2021\)](#) was approved and requires tax professionals to notify the department within five days of discovering a data breach of security. In 2019, [House Bill 2102 \(2019\)](#) was approved and allows the department to join a multijurisdictional information sharing organization for the purpose of fighting identity theft and fraud.

House Bill 2102 has given the department access to industry and banking lead data from many sources. Additional resources will allow the department to further analyze the lead data. An Operations and Policy Analyst 3 dedicated to analyzing the data would allow the department to be more proactive in working with other states, the IRS, and referring fraud cases. In addition, the department utilizes an Operations and Policy Analyst 2 as a part time resource to update our fraud manager system at the beginning of the tax season. A full-time dedicated resource would allow us to analyze the returns that have stopped in the fraud manager to refine our rules and determine which returns could be released and allow us to focus on the most likely fraudulent returns.

This session the department is supporting [Senate Bill 205](#). This bill allows the Department of Revenue and Oregon Employment Department to disclose taxpayer information when identity theft or fraud is detected. Your support in passing this bill will further help in fighting fraud.

Explain the flow of funds at DOR.

Tax money received by the Department of Revenue is deposited into one suspense account at Treasury. Refunds are moved out to another account then sent to taxpayers. The department’s administrative costs for other programs are transferred to the agency from the suspense account. The department disperses the revenue from the suspense account either daily, monthly, quarterly, or annually-- depending on each program’s statutory requirements. Revenue recipients are the general fund (which is overseen by DAS), local governments, and several state agencies. See diagram below.



Does the department give guidance to businesses about passing CAT to consumers?

On the [DOR CAT webpage](#), within the Frequently Asked Questions section, we include the question “Can I pass the CAT on to my customers?” with the following response:

The laws establishing the CAT do not prohibit any business from recovering a business expense when setting the total price for the sale, lease, or license of an item or the sale of a service (ORS 317A). The CAT is imposed on the entity doing the business in Oregon and is considered part of the business’s expenses. A business may include the CAT with other business expenses when setting the total price charged to customers. However, the total price charged (including any amount estimated to be attributable to the CAT) is included in the business’s commercial activity.

Business taxpayers and business customers have also emailed DOR asking whether they can include CAT on receipts or if businesses are allowed to include that. Here are example questions and responses we share.

Common questions from business customers

E.g., “Can a business collect CAT from the purchaser, even if the business never exceeds the \$1M threshold, and thus never has to pay CAT?” and “If I believe a business is charging the CAT to their customers, but is not actually a CAT taxpayer, where can I report that?”

The CAT is an annual tax on the business, not on a particular transaction. A business that does not exceed the \$1M threshold for the year is not liable for CAT. In addition, a business that is liable for CAT generally is eligible to claim a subtraction from commercial activity for a percentage of its labor costs or cost of goods sold. As the state tax agency, the Department of Revenue does not enforce or administer non-tax laws. There may be non-tax laws that regulate pricing, advertising, or industry trade practices. If you have questions or concerns regarding trade practices or consumer protection regulations, you may want to contact a consumer advocacy group or confer with an attorney.

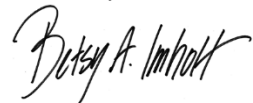
Common questions from business taxpayers

E.g., “Does that mean I can list the CAT as a line item on my invoice?”

The Corporate Activity Tax law imposes the tax on the business, not the customer. The CAT is an annual tax, not a tax on any particular transaction. While a business may increase the price charged to customers based on their business expenses, the CAT is imposed on the business entity itself, and thus the total price the business charges (including any amount the business adds to the price as attributable to the CAT) is included in the business’ commercial activity and possibly subject to CAT. The law (ORS 317A) establishing the CAT does not prohibit a business from including the CAT with other business expenses when setting the total price charged to customers. However, there may be non-tax laws that regulate business pricing, advertising, or other industry trade practices. The Department of Revenue does not advise about compliance with non-tax laws. You may want to confer with an attorney or other advisor.

Thank you for the opportunity to provide additional information to the committee. Please let us know if you have questions.

Sincerely,



Betsy Imholt, Director