Potential New Oregon Commercial Activity Tax Update

TO OUR CLIENTS AND FRIENDS:

The Oregon Senate passed HB 3427A (the Commercial Activity Tax). The House previously passed the bill, and it now heads to Governor Brown for her signature.

If signed by the Governor, the bill would impose an annual tax, beginning in 2020, on **all commercial activity (so it does not matter what the form the business is- corporation, pass-through entity, sole proprietor)** even though it is called a "corporate activity tax" in the bill text. This tax is **in addition** to the income taxes, including minimum tax, already imposed by Oregon.

The new tax is $250 plus 0.57% of the total "taxable commercial activity." The tax rate is applied to the total of all Oregon-sourced receipts from a trade or business (with a number of exceptions) in excess of $1,000,000, less 35% of inputs (Cost of Goods Sold) or labor. The subtraction cannot exceed 95% of receipts and will be subject to apportionment. No "person" with less than $1,000,000 of total taxable commercial activity is subject to tax.

PASS-THROUGH ENTITIES BE AWARE:

- This is an entity-level tax.
- Income from other pass-through entities will not be included in the computation of tax, unless they are part of the same unitary group required to file as a single taxpayer.
- Related groups of pass-through entities could meet the definition of a unitary group, even without a corporate parent.
- Will need to examine unitary factors to determine if group filing obligation applies.
- Receipts of unitary group get aggregated to determine if $1M exemption applies, and only the first $1M of the entire group is exempt instead of $1M per entity.

The tax will only be imposed on transactions and activities "in the regular course of a trade or business", and there are numerous exclusions, so taxpayers will also want to closely examine what potential receipts should be excluded and any documentation needed to claim such exclusions.

This is a massive change for Oregon tax, so now is the time to be thinking about what the potential tax impact is for your business and what information or documentation you might need to be gathering to minimize your state tax burden.

The rule regarding how to source revenue is the same as we currently have, although it does not appear to require throwback of tangible personal property sales. Sourcing will be a key consideration, as will the potential application of exemptions and documentation required to claim them.

Oregon's commercial activity tax will be an annual tax with returns due April 15 following the end of each tax year, and with quarterly payments due April, July, October and January.

There is a bright line nexus threshold of $50,000 of payroll or property, or $750,000 of sales in the state (or 25% of any of these), as well as those resident or domiciled in the state. A person can also have nexus in Oregon if they are employing capital in the state or are organized/registered to do business in the state. **NOTE: P.L. 86-272 does not protect sellers of tangible personal property- meeting the threshold amounts alone is enough to have a filing obligation.**

Our expert team at Geffen Mesher is ready and prepared to help navigate these changes for your business.

Please reach out to our expert team:

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