

ADMINISTRATIVE RULE REVIEW

New Rule Permanent Rule -DRAFT	Rule No. 150-317-1420	
	Page Page 1 of 2	Last Revised Date October 14, 2020
	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE: Provides taxpayer guidance in determining whether damages received as the result of litigation are subject to the Oregon Corporate Activity Tax (CAT), as provided by Oregon Revised Statutes, Chapter 317A.

1 **150-317-1420**

2 **Damages Received as the Result of Litigation**

3 (1) Damages, including settlement proceeds, received by a taxpayer as a result of litigation are
4 commercial activity to the extent they arise from transactions and activity during the regular course of the
5 taxpayer's trade or business.

6 (2) To the extent receipts stem from damages received as the result of litigation and those receipts are in
7 excess of what would have been received had the taxpayer not been involved in litigation, the taxpayer
8 may exclude the amount in excess from its calculation of commercial activity.

9 (3) Damages not excluded by ORS 317A.100(b)(L) are subject to the corporate activity tax in the year
10 those amounts are realized, regardless of when the litigation was initiated.

11 (4) All facts and circumstances may be considered to determine if the damages were received as result of
12 litigation.

13 **Example 1:** Widget Co., a business with Oregon commercial activity, sues Items Inc. for selling
14 defective equipment in Oregon. Widget Co. wins the lawsuit and is awarded \$1 million for the cost of the
15 defective equipment and \$2 million for the loss of business income in Oregon. Widget Co. includes the
16 \$2 million amount received for the loss of business income in its commercial activity.

17 **Example 2:** In the regular course of its business, Widget Co. allows other manufacturers to use its
18 patented process in exchange for a royalty. Widget Co. discovers that Items Inc. is using its
19 patented process without paying the royalty fee. Widget Co. files a lawsuit for patent infringement.
20 Widget Co. wins the lawsuit and is awarded compensatory damages of \$2 million for the loss of business
21 income in Oregon, \$500,000 for punitive damages, and \$60,000 for attorney fees. Widget Co. includes
22 \$2 million in its commercial activity because that is the amount Items Inc. would have paid in royalties.
23 The \$500,000 of punitive damages and the \$60,000 of attorney fees are not included in Widget Co.'s
24 commercial activity because those amounts would have never been received, had there not been

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1 a lawsuit.

2 **Example 3:** Widget Co. and Items Inc. enter into settlement negotiations over Items Inc.'s alleged breach
3 of a contract. As a result of the settlement, Items Inc. agrees to pay Widget Co. \$1 million for the cost of
4 the contract in Oregon and \$50,000 as a penalty for the breach of contract. Widget Co. includes the \$1
5 million for the breach of contract as commercial activity and excludes the \$50,000 penalty.

6 **Stat. Auth.:** ORS 305.100, 317A.143

7 **Stats. Implemented:** ORS 317A.100(1)(b)(L)

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