



**OREGON**  
ASSOCIATION OF  
NURSERIES

**Comments on House Bill 4202/LC 53, CAT technical fixes for Oregon Agriculture  
To the Joint Committee on the First Special Session of 2020**

Submitted by Jeff Stone, Executive Director, Oregon Association of Nurseries  
June 24, 2020

Co-Chairs Courtney and Kotek, Co-Vice Chairs Girod and Drazan, and members of the committee, my name is Jeff Stone and I serve as the Executive Director of the Oregon Association of Nurseries. Thank you for the opportunity to provide comments on potential legislation that will modify the Commercial Activity Tax (CAT) from House Bill 3427 passed in 2019.

**Nursery and Greenhouse Industry is a traded sector and steward of the land**

The nursery and greenhouse industry remain the state's largest agricultural sector, and ranks third in the nation for nursery production, with almost a billion (\$996 million) in sales annually to customers in Oregon, the rest of the United States, and abroad. In fact, nearly 75% of the nursery stock grown in our state leaves our borders – with over half reaching markets east of the Mississippi River. In 2018, Nursery and Floriculture averaged 9,150 jobs, while its payroll totaled \$332 million; with the average wage of \$36,286. We grow and provide ecologically friendly green products out of the state and bring traded sector dollars back to Oregon.

Nursery association members represent wholesale plant growers, Christmas tree growers, retailers, and greenhouse operators. Our members are located throughout the state, with our largest nursery growing operations found in Clackamas, Marion, Washington, Yamhill and Multnomah Counties.

**Support for Commercial Activities Tax Technical Fixes: Oregon Agriculture (HB 4202)**

During the debate on the CAT in 2019, legislative leaders were committed to better understanding the concerns brought forward by agricultural producers. We appreciate the opportunity to make technical fixes as implementation gets under way.

Several aspects of the technical fix are encouraging – especially to some agricultural operations that compete with out of state growers, sell to agricultural co-ops, and local consumers. Several

aspects of the technical fix legislation have been outlined in the movement of goods, cost of goods sold, understanding cash accounting, and the mechanism of the tax itself. Fixing a single issue – when considering the economic dynamics of agricultural production – will create winners and losers. At risk is the small and medium sized farm operations that will be forced to either go out of business or consolidate.

The OAN is on record by a coalition letter submitted for your consideration that goes into greater detail about the opportunities and the challenges of a technical fix and would like to amplify our thoughts on a couple changes in the bill.

- **Resale certificate for comingled commodities**

Since the passage of the Commercial Activities Tax, the OAN has been working with our membership to sort out tax applicability through apportionment certificate for goods aggregated and sold out-of-state through a wholesaler. There is uncertainty how to track green goods that are sold to a wholesaler and ultimately is sold out of state. This creates ambiguity about when the tax applies to a nursery operation. Contemplating the additional administrative cost is difficult at best.

We agree with many in the business community and their concerns and alarm that the rules provide no way of determining which products were ultimately exported and which were sold in Oregon. The enactment of the tax without clarity regarding tax liability raises several red flags.

- **Cost of goods sold**

The definition of ‘cost of goods sold’ under section 471 of the Internal Revenue Code doesn’t fit the cash accounting model and doesn’t account for costs incurred in planting and growing crops across multiple tax years. Allowing agricultural producers to file a form 1125-A under section 471 of the Internal Revenue Code to include 35% of the expenses reported on the Schedule F, Section 179 on the Schedule K and on Form 4835 is a step in the right direction.

The nursery and greenhouse industry remain gravely concerned about cost increases on inputs to production. Supply chain companies that provide equipment, growing media, containers, fertilizers and other materials are all multiple year inputs before the normal growing cycle and sale for a typical 3-5-year-old plant. Add transportation costs to that impact and the Oregon growers are at a disadvantage selling at a national and global marketplace.

The nursery and greenhouse industry operate with multi-year crops – some plants are grown for several years before it is shipped to seller and the green good accrues cost inputs over a period of years but sells in another year. Given the fact that things grow in the summer but typically sold in the spring, even a crop with 12 months of actual age are usually crossing the calendar, unless one uses a fiscal year to group those activities. To complicate the

applicability of the tax – sales terms (when a grower gets paid) may be paid over a period of weeks or push across the calendar year.

### **HB 4202 does not mitigate the potential harm to the Nursery and Greenhouse Industry**

Since passage of HB 3427 in the 2019 session, the OAN has engaged with agricultural stakeholders in an effort to provide the Oregon Department of Revenue (DOR) comments to clarify the department's interpretation of the law.

The desire for adequate school funding is a value that the nursery and greenhouse industry shares. To be candid, it is very frustrating after years of providing lawmakers insight into the agricultural business model that the Commercial Activities Tax is based on gross revenue instead of the more appropriate net revenue basis. The continual blind eye to this reality is a slow-moving catastrophe to agricultural operations that do not set the price of their goods (it is market based) and have razor thin margins. The cumulative impact of the CAT and the sloppy administrative rule process will create uncertainty and unintended consequences for the nursery and greenhouse industry.

While the nebulous out-of-state sales are exempt from the CAT, Oregon growers who sell agricultural products locally are penalized. Often ignored by policymakers is the truth that any transactions made through the Oregon supply chain are subject to the new tax. How the nursery industry's ability to continue to absorb these cost increases and still compete with out-of-state growers who can produce goods more cheaply is a troubling open question.

### **OAN supports a grace period or graduated implementation**

The nursery and greenhouse industry will be attempting to figure out a tax (.57%) while simultaneously establishing cost of good inputs for a partial deduction, all while dealing with the economic pressures and fallout of the COVID-19 pandemic – which has simultaneously increased the cost of doing business and reduced sales.

A significant concern to the OAN includes the possibility of significant penalties for misinterpreting the new law or failing to comply. We worry that good-faith efforts will be treated the same as scoff-law attempts. It is important to note that many nursery operations are diversified and farm traditional crops as well as nursery stock.

### **OAN supports an Agricultural Exemption from CAT**

We encourage the legislature to revisit HB 4154 (2020), which would have exempted receipts from sales of agricultural, floricultural, horticultural, viticultural or food products from the Commercial Activities Tax (CAT). The OAN fully supports an outright exemption of the agricultural community to the (CAT). Agriculture is an industry that is at the heart of Oregon's tradition of local economic activity, and it is also recognized for its thin margins. If tax policy impacts the supply chain and our retail operations – the solution must also remedy the harm to the producers of plant material.

The CAT will have a significant impact on the nursery and greenhouse industry. We encourage the committee to consider a full measure of relief to our state's agricultural community. Thank you for your time and attention.

**OAN urges your support for HB 4202, but this should not be the end of the conversation.**

Thank you.