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CHAPTER 150
DEPARTMENT OF REVENUE

FILING CAPTION: Permanent rules providing guidance related to the Corporate Activity Tax Chapter 317A

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RULES:
150-317-1000, 150-317-1010, 150-317-1020, 150-317-1025, 150-317-1030, 150-317-1040, 150-317-1100, 150-317-1120, 150-317-1130, 150-317-1150, 150-317-1200, 150-317-1220, 150-317-1300, 150-317-1310, 150-317-1320, 150-317-1330, 150-317-1410

ADOPT: 150-317-1000

REPEAL: Temporary 150-317-1000 from REV 15-2019

RULE TITLE: Definition of Commercial Activity

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to assist taxpayers regarding the definition of commercial activity for purposes of the Oregon Corporate Activity Tax (CAT) established by ORS Chapter 317A.

RULE TEXT:
(1) "Commercial activity" means the fair market value of all amounts realized in the regular course of a taxpayer's trade or business that meet the "transactional test" in OAR 150-314-0335(5).
(2) "Amounts realized" means all items of value received in a trade or business, including but not limited to money, property received, debt forgiven and services rendered.
(3) Commercial activity does not include amounts that meet the "functional test" in OAR 150-314-0335(6) unless the amount in question meets the definition of commercial activity pursuant to section (1) of this rule.
(4) The definition of commercial activity is not based on or tied to the definition of gross income in IRC section 61.
(5) Commercial activity is realized when a taxpayer realizes the amount in question pursuant to the method of accounting used by a taxpayer for federal income tax purposes.
[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS Chapter 317A

ADOPT: 150-317-1010

REPEAL: Temporary 150-317-1010 from REV 15-2019

RULE TITLE: Substantial Nexus Guidelines for the Corporate Activity Tax (CAT)

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to assist taxpayers in determining whether they have substantial nexus with Oregon for purposes of the Oregon Corporate Activity Tax (CAT).

RULE TEXT:

(1) For purposes of ORS 317A.116, substantial nexus exists if a connection between the person and Oregon is sufficient to establish nexus under the U.S. Constitution.

(2) "Substantial nexus" for corporate activity tax jurisdiction purposes, under the Commerce Clause of the U.S. Constitution, does not require a person to have a physical presence in Oregon. Substantial nexus exists where a person regularly takes advantage of Oregon's economy to realize commercial activity for the person and may be established through the significant economic presence of the person in the state.

(3) When determining whether a person has substantial nexus with Oregon, the department may consider whether the person:

(a) Maintains continuous and systematic contacts with Oregon's economy or market;

(b) Conducts deliberate marketing to, or solicitation of, Oregon customers;

(c) Files or is required to file reports or returns with Oregon regulatory bodies;

(d) Realizes significant gross receipts attributable to customers in Oregon;

(e) Realizes significant gross receipts attributable to the use of the person's intangible property in Oregon; or

(f) Receives benefits provided by the state, such as:

(A) Laws providing protection of business interests or regulating consumer credit;

(B) Access to courts and judicial process to enforce business rights including debt collection and intellectual property rights;

(C) Highway or transportation system access for transport of the person's goods or services;

(D) Access to an educated workforce in Oregon; or

(E) Police and fire protection for property in Oregon that displays the person's intellectual or intangible property.

(4) The list of possible facts in section (3) that the department may consider in determining whether a person has substantial nexus with Oregon is meant to be nonexclusive, and those facts should be considered only to the extent they are relevant. The department may consider any other relevant facts and circumstances.

Example 1: Brookland Distributing Company (Brookland), located outside of Oregon, distributes wine and beer throughout Oregon, through Oregon licensed distributors with whom Brookland has distribution agreements. Brookland is required to obtain and maintain a wholesaler's license from the Oregon Liquor Control Commission (OLCC). A condition of the license is that Brookland must make monthly reports of sales volumes to the OLCC. Brookland also periodically seeks advice and approval from the OLCC for special event activities in Oregon, where no sales are solicited by Brookland. Brookland has substantial nexus in Oregon.

Example 2: Atlas Company (Atlas Co.), headquartered in Maryland, operates a website supporting internet sales, primarily to European country customers. Atlas Co. made approximately 10,000 sales at $99.00 per sale, to residents of Oregon during the year, realizing $990,000 of commercial activity. Atlas Co. contracts with an Oregon mailing service to deliver the merchandise in Oregon. While the amount of commercial activity realized by Atlas Co. is below the threshold to file a corporate activity tax return and pay tax, Atlas Co. does have substantial nexus in Oregon, and must register with the department when commercial activity exceeds $750,000.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.116

ADOPT: 150-317-1020

REPEAL: Temporary 150-317-1020 from REV 15-2019

RULE TITLE: Corporate Activity Tax Unitary Business Factors, Common Ownership and Filing Requirements for Unitary Groups

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to assist taxpayers in determining whether they are engaged in a unitary business under ORS 317A.100(18) and explains common ownership attribution and filing requirements for unitary groups.

RULE TEXT:

(1) Definition. As used in this rule, the term "entity" or "business entity" refers to any individual or legal entity described in ORS 317A.100(14).

(2) The presence of all of the factors described in ORS 317A.100(18)(a)(A)-(C) will demonstrate that a unitary business exists, but the presence of one or two such factors may also demonstrate the flow of value requisite for a unitary business determination.

(3) The Concept of a Unitary Business. A unitary business is a single economic enterprise that is made up either of separate parts of a single entity or a commonly owned group of entities that are sufficiently interdependent, integrated, and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This sharing or exchange of value may also be described as requiring that the operation of one part of the business be dependent upon, or contribute to, the operation of another part of the business. In other words, if the activities of one business either contribute to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business.

(4) Requirement for a Unitary Business. The sharing or exchange of value described in section (3) that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business. In Oregon, the unitary business principle will be applied to the fullest extent allowed by the U.S. Constitution.

(5) Separate Trades or Businesses Conducted within a Single Entity. A single entity may have more than one unitary business. In such cases, it is necessary to determine the commercial activity attributable to each separate unitary business for purposes of sourcing commercial activity to Oregon under ORS 317A.128, and the subtraction under ORS 317A.119.

(6) Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single entity or among a commonly owned group of entities.

(7) Determination of a Unitary Business. A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980) and ORS 317A.100(18)(a)(A) to (C): centralization of management, economies of scale, and functional integration. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one or more of the factors mentioned above.

(8) Description and Illustration of Centralization of Management, Economies of Scale, and Functional Integration.

(a) Centralization of Management. Centralization of management exists when officers, directors, partners, members, managers, or others jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one subsidiary entity to another, from one division within a single entity to another division within an entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an

overall operational strategy of the business, or any other mechanism that establishes joint management.
(A) Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers, directors, partners, members, managers, or others participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers, directors, partners, members, managers, or others, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors.
(B) Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one or more significant operating aspects of one business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight.
(b) Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance.
(A) Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale.
(B) Centralized Administrative Functions. The performance of traditional administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale.
(c) Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance.
(A) Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and/or the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to affect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser.
(B) Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common

advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. Such activity, however, is relevant to determining the existence of economies of scale or centralization of management.

(C) Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations.

(D) Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration.

(E) Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where the products, services or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration.

(F) Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by or the pledging of the credit of, one or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration.

(9) Indicators of a Unitary Business.

(a) Same Type of Business. Business activities that are in the same general line of business generally constitute a single unitary business, as, for example, a multistate grocery chain.

(b) Steps in a Vertical Process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices.

(c) Strong Centralized Management. Business activities which might otherwise be considered as part of more than one unitary business may constitute one unitary business when there is a strong central management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices which perform for the business activities the normal matters which a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing.

(10) More Than 50 Percent Common Ownership. If a person owns, directly or indirectly, more than 50 percent of the voting power and value of the ownership interest of an entity, then the person and entity are under common ownership, and the person and entity are included in a unitary group if they are also engaged in a unitary business. The provisions of this section (10) apply to all persons and entities described in ORS 317A.100(14) other than entities described in ORS 317A.100(4)(a) to (i) and (k).

(a) For purposes of the definition of common ownership, each of the following apply:

(A) "Voting power" means:

(i) the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of a corporation, or

(ii) in the case of an entity that is not a corporation, the power of all ownership interests with the right to control or determine the management of the entity.

(B) "More than 50 percent of the voting power of the ownership interest" means voting power equal to more than 50 percent of all outstanding voting stock or other ownership interests with the ability to control or determine the management of the entity.
(C) "Ownership interest" includes an ownership interest where ownership is retained but the actual voting power is transferred in the following manner:
(i) For one year or less, or
(ii) By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferor.
(b) "Common ownership" in a group of persons means any of the following:
(A) A parent entity and any one or more entity or chains of entities, connected through direct ownership (or constructive ownership) with the parent entity, but only if:
(i) The parent owns stock or other ownership interest possessing more than 50 percent of the voting power of at least one entity, and, if applicable;
(ii) Ownership interests cumulatively possessing more than 50 percent of the voting power of each of the entities, except the parent entity, is owned by the parent, or one or more entities described in subparagraph (i).
(B) Any two or more entities, if stock or ownership interest possessing more than 50 percent of the voting power of the entities is owned, or constructively owned, by the same person.
(C) Any two or more entities that constitute stapled entities.
(i) For purposes of this paragraph, "stapled entities" means any group of two or more entities if more than 50 percent of the ownership or beneficial ownership of the stock or other ownership interest possessing voting power in each entity consists of stapled interests.
(ii) Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of one of the interests, the other interest or interests are also transferred or required to be transferred.
(c) Membership in a commonly owned group must be treated as terminated in any year, or fraction thereof, in which the conditions of subsection (b) of this section are not met, except as follows:
(A) When stock or an ownership interest of an entity is sold, exchanged, or otherwise disposed of, the membership of an entity in a commonly owned group cannot be terminated, if the requirements of subsection (b) of this section are again met immediately after the sale, exchange, or disposition.
(B) The department may treat the commonly owned group as remaining in place if the conditions of subsection (b) of this section are again met within a period not to exceed two years.
(d) Except as otherwise provided, stock or an ownership interest is "owned" when title to the stock or ownership interest is directly or indirectly held, or if the stock or ownership interest is constructively owned.
(A) An individual constructively owns stock or an ownership interest that is directly owned by any of the following: spouse, parents, brothers or sisters, grandparents, children, grandchildren, and an estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual's spouse or children.
(B) If an ownership interest in an entity is owned directly or indirectly by or for any person, such person shall be considered as owning any stock or other ownership interest owned directly or indirectly by or for such entity, in that proportion which the value of the entity interest that such person owns bears to the value of all ownership interests in that entity.
(C) In the case of a partnership, a person owning more than 50 percent of the capital or profits interest in the partnership is treated as a common owner in the partnership.
(D) In the case of a grantor trust to which IRC § 677 applies, the grantor is treated as the owner of stock or ownership interest held by the trust.
(E) In the case of a trust to which IRC § 678 applies, the person, other than the trust, described in IRC § 678 is treated as the owner of stock or ownership interest held by the trust.

Example 1: Harvey and his siblings, Ellie and Ben, each own one third of the stock in S corporation DEF. Harvey also owns 100% of sole proprietorship ABC. ABC and DEF are engaged in activities that constitute a unitary business. Harvey constructively owns 100% of DEF because of his family relationship with Ellie and Ben. Because DEF and ABC meet the common ownership requirement and are engaged in a unitary business, they must register, file, and pay the corporate activity tax as a single taxpayer.

(11) Filing requirements. In accordance with ORS 317A.106, persons who compose a unitary group, as defined in ORS 317A.100(19), shall register, file, and pay the corporate activity tax as a single taxpayer based on the commercial activity of all members of the unitary group, if at least one member of the unitary group has substantial nexus with Oregon (refer to OAR 150-317-1010: Substantial Nexus). Unitary groups with alien or foreign members that have no commercial activity in Oregon, or that realize commercial activity that is excluded from the definition of Oregon commercial activity may file a modified group return (refer to OAR 150-317-1025: Unitary Group with Foreign Affiliates).

Example 2: Clarendon Corp. (Clarendon), Deanwood LLC (Deanwood), and Eisenhower Partnership (Eisenhower) are members of the same unitary group. Clarendon is an engineering company based in Oregon. Deanwood is headquartered outside of Oregon and sells tangible personal property throughout the United States. Eisenhower provides consulting services to third parties and has no employees or property in Oregon. During the calendar year, Clarendon realized commercial activity of $2.3 million in Oregon from transactions with persons outside the unitary group. Deanwood realized commercial activity in Oregon of $230,000 from transactions with persons outside the unitary group. Eisenhower provided one hour of consulting service to a third party in Oregon, from which it realized $1,000 of commercial activity. Clarendon and Deanwood each have substantial nexus with Oregon. Eisenhower does not. Because they are members of a unitary group at least one of which has substantial nexus with Oregon, the unitary group is required to register, file, and pay the corporate activity tax as a single taxpayer on the total amount of commercial activity realized by Clarendon, Deanwood, and Eisenhower.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.100, 317A.106, 317A.116

ADOPT: 150-317-1025

RULE TITLE: Corporate Activity Tax: Unitary Groups with Non-U.S. Members – Reporting Requirements

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Allows certain unitary groups with non-U.S. members that have no commercial activity in Oregon or expenses related to commercial activity in Oregon to omit information about those members from the group Corporate Activity Tax return.

RULE TEXT:

(1) General Rule: For purposes of the Corporate Activity Tax (CAT), a unitary group is defined as being a group of persons with more than 50 percent common ownership, either direct or indirect, that is engaged in business activities that constitute a unitary business. Unitary group members may include entities formed in the United States and entities formed outside the United States ("non-U.S. members"). Generally, a unitary group must file a group return that includes all members that are part of the unitary group.

(2) Special Rule: Certain unitary groups may file a modified group return omitting from the return a non-U.S. member's information as provided in section (3) if:

(a) The non-U.S. member has no commercial activity sourced to Oregon under ORS 317A.128;

(b) The non-U.S. member has no commercial activity excluded under ORS 317A.100(1)(b) that would otherwise be sourced to Oregon if it were included in commercial activity, including but not limited to ORS 317A.100(1)(b)(FF) (receipts from transactions among members of a unitary group); and

(c) The omission of the information of one or more non-U.S. members described in subsection (a) and (b) of this section (2) does not result in omission of more than 5 percent of total amounts of commercial activity that would otherwise be included in the denominator of any method used for apportioning commercial activity for purposes of the subtraction under ORS 317A.119 as calculated under OAR 150-317-1200.

(3) Omission of Information and Relationship to Subtraction Under ORS 317A.119.

(a) If a unitary group has one or more non-U.S. members described in section (2) of this rule, the group may omit all financial information of or relating to the non-U.S. member or members from the group's CAT return that would otherwise be required to be reported on the return according to the department's forms and instructions.

(b) For purposes of the subtraction under ORS 317A.119 and OAR 150-317-1200, the unitary group's labor costs or cost inputs attributable to receipts from an item that is commercial activity and any amounts used to apportion costs to Oregon in the manner provided in ORS 317A.119(2) may not include any financial information of a non-U.S. member or members whose financial information is omitted under section (2).

(4) If the omission of the non-U.S. group member's information under section (3) of this rule does not fairly represent the extent of the unitary group's labor costs or cost inputs attributable to commercial activity in Oregon under ORS 317A.119, the unitary group may not omit the non-U.S. member's information from the return.

(5) If a unitary group omits the financial information of non-U.S. group members from the CAT return under section (3) of this rule, the group must maintain a list of omitted members and keep the list in the unitary group's records. The list must include the name of the entity, the tax identification number of the entity (including federal tax identification number, if applicable) and any other identifying information related to the entity omitted from the return, including contact information for the entity. The list must be made available to the department upon request of the department.

(6) Upon examination of the return that is filed, the department may determine the omission of the non-U.S. member's information is not proper under sections (2) and (3) of this rule and may include the financial information of that member in whole or in part in the unitary group's Oregon return as required under ORS 317A.100 to 317A.158.

(7) Notwithstanding sections (2) and (3) of this rule, if property is transferred into Oregon under ORS 317A.109(1)(b) that is included in taxable commercial activity of the unitary group, the group must maintain information about any member that transferred property to or received property in a location outside this state within one year before the transfer of the property into this state. The information must be made available to the department upon request of the department.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.106, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.106, 317A.119, 317A.134, 317A.137

ADOPT: 150-317-1030

REPEAL: Temporary 150-317-1030 from REV 15-2019

RULE TITLE: Sourcing Commercial Activity to Oregon from Sales of Tangible Personal Property

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provide guidance for sourcing of sales of tangible personal property for taxpayers who have business activity inside and outside of Oregon for purposes of the corporate activity tax.

RULE TEXT:

(1) Definitions.

(a) "Purchaser within Oregon" includes the ultimate recipient of property if the taxpayer, at the designation of the purchaser, delivers property to the ultimate recipient within Oregon.

(b) "Tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam, and prewritten computer software.

(2) Gross receipts from the sales of tangible personal property are sourced to Oregon if the property is delivered to a purchaser within Oregon regardless of the f.o.b. point or other conditions of sale, whether transported by seller, purchaser, or common carrier.

Example 1: A seller with a place of business in State A is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including Oregon, makes arrangements to hire a common carrier to pick up merchandise, f.o.b. plant, at the seller's place of business and have it delivered to the purchaser's outlet in Oregon. The seller must treat this as a sale of property delivered to a purchaser in Oregon.

Example 2: A seller with a place of business in Oregon is a distributor of merchandise to retail outlets in multiple states. A purchaser with retail outlets in several states, including State A, sends its own truck to pick up the merchandise at the seller's place of business and have it transported to the purchaser's outlet in State A. The seller must treat this as a sale of property delivered to a purchaser in State A.

(3) Property is deemed to be delivered to a purchaser within Oregon if the recipient is located in Oregon, even though the property is ordered from outside of Oregon.

Example 3: A taxpayer in Oregon sold merchandise to a purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to deliver the merchandise to the purchaser's customer in Oregon pursuant to purchaser's instructions. The sale by the taxpayer is in Oregon.

Example 4: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including Oregon. The order for the purchase was placed by the purchaser's central purchasing department located in State B. Of the total purchase order, $25,000 was shipped directly to purchaser's branch store in Oregon. The branch store in Oregon is the "purchaser within Oregon" with respect to $25,000 of the taxpayer's sales.

(4) Property is delivered to a purchaser within Oregon if the delivery terminates in Oregon, even though the property is subsequently transferred by the purchaser to another state.

Example 5: The taxpayer makes a sale to a purchaser who maintains a central warehouse in Oregon at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in Oregon are property delivered to a "purchaser within Oregon."

(5) When property being delivered by a seller from the state of origin to a purchaser in another state is diverted while

enroute to a purchaser in Oregon, the sale is in Oregon.

Example 6: The taxpayer, a business in State A, begins shipment of their product to the purchaser's place of business in State B. While enroute the product is diverted to the purchaser's place of business in Oregon to package the merchandise with the purchaser's logo. The sale by the taxpayer is in Oregon.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.128

ADOPT: 150-317-1040

REPEAL: Temporary 150-317-1040 from REV 15-2019

RULE TITLE: Sourcing Commercial Activity to Oregon of Other than Sales of Tangible Personal Property

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance for sourcing of commercial activity from other than sales of tangible personal property for taxpayers who have business activity across state lines under ORS 317A.128

RULE TEXT:

1) General Rule. Receipts, other than receipts from sale of tangible personal property, are sourced to Oregon under ORS 317A.128, section (1)(a), (b), (d), and (e), as described in this rule. This rule does not address sourcing of receipts of financial institutions or insurers as defined in ORS 317A.100. In general, the provisions in this rule establish uniform rules for determining whether receipts other than receipts from the sale of tangible personal property are sourced to this state and reasonably approximating the state or states of assignment where the state or states cannot be determined.

(a) Outline of Topics.

(A) General Rules

(i) Outline of Topics

(ii) Definitions

(iii) General Principles of Application; Contemporaneous Records

(iv) Rules of Reasonable Approximation

(B) Sale, Rental, Lease, or License of Real Property

(C) Rental, Lease, or License of Tangible Personal Property

(D) Sale of Service

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(b) Definitions.

(A) "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

(B) "Business customer" means a customer that is a business operating in any form, including a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state, or local government, or to an agency or instrumentality of that government are treated as sales to a business customer and must be assigned consistent with the rules for those sales.

(C) "Individual customer" means a customer that is not a business customer.

(D) "Intangible property" generally means property that is not physical or whose representation by physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks; trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how; methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary, musical, or artistic compositions; information; ideas; contract rights including broadcast rights; agreements not to compete; goodwill and going concern value; securities; and, except as otherwise provided in this rule, computer software.
(E) "Place of order" means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.
(F) "Population" means the most recent population data maintained by the U.S. Census Bureau for the year in question as of the close of the taxable period.
(G) "Related party" means:
(i) A stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of the Internal Revenue Code if the stockholder and the members of the stockholder's family own, directly, indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;
(ii) A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation, if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent of the value of the taxpayer's outstanding stock;
(iii) A corporation, or a party related to the corporation in a manner that would require an attribution of stock from the corporation to the party or from the party to the corporation under the attribution rules of the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially, or constructively, at least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Internal Revenue Code apply for purposes of determining whether the ownership requirements of this definition have been met.
(iv) The provisions of this rule regarding sales between related parties do not apply to sales that are excluded from commercial activity under ORS 317A.100 (1)(b)(FF) as transactions among members of a unitary group.
(H) "State where a contract of sale is principally managed by the customer" means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the day-to-day execution and performance of a contract entered into by the taxpayer with the customer.
(c) General Principles of Application; Contemporaneous Records. In order to satisfy the requirements of this rule, a taxpayer's assignment of receipts other than receipts from sales of tangible personal property must be consistent with the following principles:
(A) This rule provides various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the taxpayer must attempt to determine the state or states of assignment (that is, apply the primary rule in the hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or states.
(B) A taxpayer's method of assigning its receipts, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the regulatory standards set forth in this rule, rather than for tax avoidance purposes. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.
(d) Rules of Reasonable Approximation.
(A) In General. In general, this rule establishes uniform rules for determining whether and to what extent receipts other than receipts from the sale of tangible personal property are sourced to Oregon. This rule also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot be determined. In some instances, the

reasonable approximation must be made in accordance with specific rules of approximation prescribed in this rule. In other cases, the applicable rule permits a taxpayer to reasonably approximate the state or states of assignment using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in this rule.
(B) Reasonable Approximation Based Upon Known Sales. In an instance where, applying the applicable rules set forth in section (4) of this rule (Sale of a Service), a taxpayer can ascertain the state or states of assignment of a substantial portion of its receipts from sales of substantially similar services ("assigned receipts"), but not all of those sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of those sales generally tracks that of the assigned receipts, it must source receipts from those sales which it believes tracks the geographic distribution of the assigned receipts in the same proportion as its assigned receipts. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services.
(C) Related-Party Transactions – Information Imputed from Customer to Taxpayer. Where a taxpayer has receipts subject to this rule from sales with a related-party customer, information that the customer has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.
(2) Sale, Rental, Lease, or License of Real Property. In the case of a sale, rental, lease, or license of real property, the receipts are sourced to Oregon if and to the extent that the property is in Oregon.
(3) Rental, Lease, or License of Tangible Personal Property. In the case of a rental, lease, or license of tangible personal property, the receipts are sourced to Oregon if and to the extent that the property is in Oregon. If property is mobile property that is located both within and without Oregon during the period of the lease or other contract, the receipts assigned to Oregon are the receipts from the contract period multiplied by a fraction where the numerator is the number of days used in Oregon and the denominator is the total number of days of the rental, lease, or license.
(4) Sale of a Service.
(a) General Rule. The receipts from a sale of a service are in Oregon if and to the extent that the service is delivered to a location in Oregon. In general, the term "delivered to a location" refers to the location of the taxpayer's market for the service, which may not be the location of the taxpayer's employees or property. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth at sections (4)(b)-(d) of this rule.
(b) In-Person Services.
(A) In General. Except as otherwise provided in section (4)(b) of this rule, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing, x-rays, and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other similar services as described in section (4)(d) of this rule, although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of section (4)(b) of this rule.
(B) Assignment of Receipts - Rule of Determination. Except as otherwise provided in section (4)(b)(B) of this rule, if the service provided by the taxpayer is an in-person service, the service is delivered to the location where the service is received. Therefore, the receipts from a sale are in Oregon if and to the extent the customer receives the in-person service in Oregon. In assigning its receipts from sales of in-person services, a taxpayer must first attempt to determine the location where a service is received, as follows:

(i) If the service is performed with respect to the body of an individual customer in Oregon (e.g. hair cutting or x-ray services) or in the physical presence of the customer in Oregon (e.g. live entertainment or athletic performances), the service is received in Oregon.
(ii) If the service is performed with respect to the customer's real estate in Oregon or if the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in Oregon, the service is received in Oregon.
(iii) If the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be delivered to the customer, whether the service is performed within or outside Oregon, the service is received in Oregon if the property is delivered to the customer in Oregon.
(C) Rule of Reasonable Approximation. In an instance in which the state or states where a service is actually received cannot be determined, the taxpayer must reasonably approximate such state or states.
(D) Examples. Note that for purposes of the examples it is irrelevant whether the services are performed by an employee of the taxpayer or by an independent contractor acting on the taxpayer's behalf.

Example 1: Salon Corp has retail locations in Oregon and in other states where it provides hair cutting services to individual and business customers, the latter of whom are paid for through the means of a company account. The receipts from sales of services provided at Salon Corp's in-state locations are in Oregon. The receipts from sales of services provided at Salon Corp's locations outside Oregon, even when provided to residents of Oregon, are not receipts from in-state sales.
Example 2: Landscape Corp provides landscaping and gardening services in Oregon and in neighboring states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who is a resident of another state and who is located outside Oregon at the time the services are performed. The receipts from sale of services provided at the in-state location are in Oregon.
Example 3: Same facts as Example 2, except that Landscape Corp provides the landscaping services to Retail Corp, a corporation with retail locations in several states, and the services are with respect to those locations of Retail Corp that are in Oregon and in other states. The receipts from the sale of services provided to Retail Corp are in Oregon to the extent the services are provided in Oregon.
Example 4: Camera Corp provides camera repair services at an in-state retail location to walk-in individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought to its in-state location at a facility that is in another state. In these cases, the repaired camera is then returned to the customer at Camera Corp's in-state location. The receipts from sale of these services are in Oregon.
Example 5: Same facts as Example 4, except that a customer located in Oregon mails the camera directly to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in Oregon by mail. The receipts from sale of the service are in Oregon.
Example 6: Teaching Corp provides seminars in Oregon to individual and business customers. The seminars and the materials used in connection with the seminars are prepared outside the state, the teachers who teach the seminars include teachers that are resident outside the state, and the students who attend the seminars include students that are resident outside the state. Because the seminars are taught in Oregon, the receipts from sales of the services are in Oregon.

(c) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.
(A) In General. If the service provided by the taxpayer is not an in-person service within the meaning of section (4)(b) of this rule or a professional service within the meaning of section (4)(d) of this rule, and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the receipts from a sale are in Oregon if and to the extent that the service is delivered in Oregon. For purposes of section (4)(c) of this rule, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties,

rather than the customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of advertising to the customer's intended audience. (See section (4)(c)(B)(i) of this rule and Example 7 under section (4)(c)(B)(i)(III) of this rule.) A service can be delivered to or on behalf of a customer by physical means or through electronic transmission. A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient.
(B) Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of section (4)(c) of this rule, a service delivered by an electronic transmission is not a delivery by a physical means.) If a rule of assignment set forth in section (4)(c) of this rule depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer must treat the customer as a business customer.
(i) Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers, or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g., where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of the corporate activity tax) where the taxpayer installs the custom software at the customer's site. The rules in section (4)(c)(B)(i) of this rule apply whether the taxpayer's customer is an individual customer or a business customer.
(I) Rule of Determination. In assigning the receipts from a sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where the service is delivered. If the taxpayer is able to determine the state or states where the service is delivered, it must assign the receipts to that state or states.
(II) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the service is actually delivered, it must reasonably approximate the state or states.
(III) Examples:

Example 7: Direct Mail, a company based outside Oregon, provides direct mail services to its customer, Business LLP. Business LLP contracts with Direct Mail to deliver printed fliers to a list of customers that is provided to it by Business LLP. Some of Business LLP's customers are in Oregon and some are in other states. Direct Mail will use the postal service to deliver the printed fliers to Business LLP's customers. The receipts from the sale of Direct Mail services to Business LLP are assigned to Oregon to the extent that the services are delivered on behalf of Business LLP to Oregon customers (i.e., to the extent that the fliers are delivered on behalf of Business LLP to Business LLP's intended audience in Oregon).
Example 8: Ad LLP is a partnership based outside Oregon that provides advertising and advertising-related services in Oregon and in neighboring states. Ad LLP enters into a contract at a location outside Oregon with an individual customer who is not an Oregon resident to design advertisements for billboards to be displayed in Oregon and to design fliers to be mailed to Oregon residents. All of the design work is performed outside Oregon. The receipts from the sale of the design services are in Oregon because the service is physically delivered on behalf of the customer to the customer's intended audience in Oregon.
Example 9: Same facts as Example 8, except that the contract is with a business customer that is based outside Oregon. The receipts from the sale of the design services are in Oregon because the services are physically delivered on behalf of the customer to the customer's intended audience in Oregon.

Example 10: Fulfillment Co., a company based outside Oregon, provides product delivery fulfillment services in Oregon and in neighboring states to Sales Co., a company located outside Oregon that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Co. to be delivered in Oregon, Fulfillment Co. will, pursuant to its contract with Sales Co., deliver that property from its fulfillment warehouse located outside Oregon. The receipts from the sale of the fulfillment services of Fulfillment Co. to Sales Co. are assigned to Oregon to the extent that Fulfillment Co.'s deliveries on behalf of Sales Co. are to recipients in Oregon.
Example 11: Software Enterprise, a software development company, enters into a contract with a business customer, Buyer Company, which is physically located in Oregon, to develop custom software to be used in Buyer Company's business. Software Enterprise develops the custom software outside Oregon, and then physically installs the software on Buyer Company's computer hardware located in Oregon. The development and sale of the custom software is properly characterized as a service transaction, and the receipts from the sale are assigned to Oregon because the software is physically delivered to the customer in Oregon.
Example 12: Same facts as Example 11, except that Buyer Company has offices in Oregon and several other states, but is commercially domiciled outside Oregon and orders the software from a location outside Oregon. The receipts from the development and sale of the custom software service are assigned to Oregon because the software is physically delivered to the customer in Oregon.

(ii) Delivery to a Customer by Electronic Transmission. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases, or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply.
(I) Services Delivered By Electronic Transmission to an Individual Customer.
(I-a) Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in Oregon if and to the extent that the taxpayer's customer receives the service in Oregon. If the taxpayer can determine the state or states where the service is received, it must assign the receipts from that sale to that state or states.
(I-b) Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it must reasonably approximate the state or states. If a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it must reasonably approximate the state or states using the customer's billing address.
(II) Services Delivered By Electronic Transmission to a Business Customer.
(II-a) Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in Oregon if and to the extent that the taxpayer's customer receives the service in Oregon. If the taxpayer can determine the state or states where the service is received, it must assign the receipts from that sale to the state or states. For purposes of section (4)(c)(B)(ii)(II) of this rule, it is intended that the state or states where the service is received reflect the location at which the service is directly used by the employees or designees of the customer.
(II-b) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it must reasonably approximate the state or states.
(II-c) Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, the taxpayer must reasonably approximate the state or states as set forth in this rule. In these cases, unless the taxpayer can apply the safe harbor set forth in

section (4)(c)(B)(ii)(II)(II-d) of this rule, the taxpayer must reasonably approximate the state or states in which the service is received as follows: first, by assigning the receipts from the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the receipts from the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the receipts from the sale using the customer's billing address; provided, however, if the taxpayer derives more than five percent of its receipts from sales of services from any single customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.
(II-d) Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission, a taxpayer may not be able to determine, or reasonably approximate under section (4)(c)(B)(ii)(II)(II-b) of this rule, the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at section (4)(c)(B)(ii)(II)(II-c) of this rule, apply the safe harbor stated in this subsection. Under this safe harbor, a taxpayer may assign its receipts from sales to a particular customer based upon the customer's billing address in a taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and (2) does not derive more than five percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of services delivered by electronic transmission to a business customer, and not otherwise.
(II-e) Related-Party Transactions. In the case of a sale of a service by electronic transmission to a business customer that is a related party, the taxpayer may not use the secondary rule of reasonable approximation in section (4)(c)(B)(ii)(II)(II-c) of this rule but may use the rule of reasonable approximation in section (4)(c)(B)(ii)(II)(II-b) of this rule, and the safe harbor in section (4)(c)(B)(ii)(II)(II-d) of this rule, provided that the department may aggregate sales to related parties in determining whether the sales exceed five percent of receipts from sales of all services under that safe harbor provision if necessary or appropriate to prevent distortion.
(III) Examples. In these examples, unless otherwise stated, assume that the taxpayer is not related to the customer to which the service is delivered. Also, assume if relevant, unless otherwise stated, that the safe harbor set forth at section (4)(c)(B)(ii)(II)(II-d) of this rule does not apply.

Example 13: Support Corp, a corporation that is based outside Oregon, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business customers are located in Oregon and other states. Support Corp supplies its services on a case by case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its receipts to these locations. The receipts from sales made to Support Corp's individual and business customers are in Oregon to the extent that Support Corp's services are received in Oregon. See sections (4)(c)(B)(ii)(I) and (II) of this rule.
Example 14: Online Corp, a corporation based outside Oregon, provides web-based services through the means of the Internet to individual customers who are resident in Oregon and in other states. These customers access Online Corp's web services primarily in their states of residence, and sometimes while traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp can either determine the state or states where the services are received, or, where it cannot determine the state or states, has sufficient information regarding the place of receipt to reasonably approximate the state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the receipts from sales for which it cannot determine or reasonable approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to Oregon the receipts from sales for which it does not know the customers' location in the same proportion as those receipts for which it has this information. See section (1)(d)(B) of this rule.

Example 15: Same facts as 14, except that Online Corp reasonably believes that the geographic distribution of the receipts from sales for which it cannot determine or reasonably approximate the location of the receipt of its web-based services do not generally track the sales for which it does have this information. Online Corp must assign the receipts from sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses. See section (4)(c)(B)(ii)(I) of this rule.
Example 16: Net Corp, a corporation based outside Oregon, provides web-based services to a business customer, Business Corp, a company with offices in Oregon and two neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in Oregon were responsible for 75 percent of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for 25 percent of Business Corp's use of Net Corp's services. In this case, 75 percent of the receipts from the sale are received in Oregon. See section (4)(c)(B)(ii)(II)(II-a). Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate the location or locations. Under these circumstances, if Net Corp derives five percent or less of its receipts from sales to Business Corp, Net Corp must assign the receipts under section (4)(c)(B)(ii)(II)(II-c) of this rule to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than five percent of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.
Example 17: Net Corp, a corporation based outside Oregon, provides web-based services through the means of the Internet to more than 250 individual and business customers in Oregon and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received and lacks sufficient information regarding the place of receipt to reasonably approximate the state or states. Also assume that Net Corp does not derive more than five percent of its receipts from sales of services to a single customer. Net Corp may apply the safe harbor stated in section (4)(c)(B)(ii)(II)(II-d) of this rule and may assign its receipts using each customer's billing address.

(iii) Services Delivered Electronically Through or on Behalf of an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.
(I) Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in Oregon if and to the extent that the end users or other third-party recipients are in Oregon. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in Oregon to the extent that the audience for the advertising is in Oregon. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in Oregon to the extent that the end users or other third-party recipients receive the services in Oregon. The rules in this subparagraph apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.
(II) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, it must reasonably approximate the state or states.

(III) Select Secondary Rules of Reasonable Approximation.
(III-a) If a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, and if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate that location, the taxpayer must reasonably approximate the audience in a state for the advertising using the following secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer must reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less information about its audience, the taxpayer must reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in that area.
(III-b) If a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling that service to end users or other third-party recipients, and if the taxpayer lacks sufficient information regarding the location of the end users or other third-party recipients from which it can determine or reasonably approximate that location, the taxpayer must reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells the services, relative to the total population in that area.
(III-c) When using the secondary reasonable approximation methods provided above, with regard to the relevant specific geographic area, include only the areas where the service was substantially and materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the area where the service was substantially and materially delivered or resold does not include areas outside the United States.
(IV) Examples:

Example 18: Cable TV Corp, a corporation that is based outside of Oregon, has two revenue streams. First, Cable TV Corp sells advertising time to business customers pursuant to which the business customers' advertisements will run as commercials during Cable TV Corp's televised programming. Some of these business customers, though not all of them, have a physical presence in Oregon. Second, Cable TV Corp sells monthly subscriptions to individual customers in Oregon and in other states. The receipts from Cable TV Corp's sale of advertising time to its business customers are assigned to Oregon to the extent that the audience for Cable TV Corp's televised programming during which the advertisements run is in Oregon. See (4)(c)(B)(iii)(I) of this rule. If Cable TV Corp is unable to determine the actual location of its audience for the programming and lacks sufficient information regarding audience location to reasonably approximate the location, Cable TV Corp must approximate its Oregon audience using the percentage that reflects the ratio of its Oregon subscribers in the geographic area in which Cable TV Corp's televised programming featuring the advertisements is delivered relative to its total number of subscribers in that area. See section (4)(c)(B)(iii)(III)(III-a) of this rule. To the extent that Cable TV Corp's sales of monthly subscriptions represent the sale of a service, the receipts from these sales are properly assigned to Oregon in any case in which the programming is received by a customer in Oregon. See section (4)(c)(B)(ii)(I) of this rule. In any case in which Cable TV Corp cannot determine the actual location where the programming is received and lacks sufficient information regarding the location of receipt to reasonably approximate the location, the receipts from these sales of Cable TV Corp's monthly subscriptions are assigned to Oregon where its customer's billing address is in Oregon. See section (4)(c)(B)(ii)(I)(I-b) of this rule. Note that whether and to the extent that the monthly subscription fee represents a fee for a service or for a license of intangible property does not affect the analysis or result as to the state or states to which the receipts are properly assigned. See section (5)(e) of this rule.
Example 19: Network Corp, a corporation that is based outside of Oregon, sells advertising time to business customers pursuant to which the customers' advertisements will run as commercials during Network Corp's televised programming as distributed by unrelated cable television and satellite television transmission companies. The receipts from Network Corp's sale of advertising time to its business customers are assigned to Oregon to the extent that the

audience for Network Corp's televised programming during which the advertisements will run is in Oregon. See section (4)(c)(B)(iii)(I) of this rule. If Network Corp cannot determine the actual location of the audience for its programming during which the advertisements will run and lacks sufficient information regarding audience location to reasonably approximate the location, Network Corp must approximate the receipts from sales of advertising that constitute Oregon sales by multiplying the amount of advertising receipts by a percentage that reflects the ratio of the Oregon population in the specific geographic area in which the televised programming containing the advertising is run relative to the total population in that area. See sections (4)(c)(B)(iii)(III)(III-b) and (III-c) of this rule.

Example 20: Web Corp, a corporation that is based outside Oregon, provides Internet content to viewers in Oregon and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its website. The receipts from Web Corp's sale of advertising space to its business customers are assigned to Oregon to the extent that the viewers of the Internet content are in Oregon, as measured by viewings or clicks. See section (4)(c)(B)(iii)(I) of this rule. If Web Corp is unable to determine the actual location of its viewers and lacks sufficient information regarding the location of its viewers to reasonably approximate the location, Web Corp must approximate the amount of its Oregon receipts by multiplying the amount of receipts from sales of advertising by a percentage that reflects the Oregon population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in that area. See section (4)(c)(B)(iii)(III) of this rule.

Example 21: Retail Corp, a corporation that is based outside of Oregon, sells tangible property through its retail stores located in Oregon and other states and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp and must assign the proceeds from this service to the state or states from which the phone calls are placed by the customers or prospective customers. If Answer Co cannot determine the actual locations from which phone calls are placed and lacks sufficient information regarding the locations to reasonably approximate the locations, Answer Co must approximate the amount of its Oregon receipts by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Oregon population in the specific geographic area from which the calls are placed relative to the total population in that area. See section (4)(c)(B)(iii)(III)(III-a) of this rule.

Example 22: Web Corp, a corporation that is based outside of Oregon, sells tangible property to customers via its Internet website. Design Co designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co's services are delivered to Web Corp, the proceeds from which are assigned pursuant to section (4)(c)(B)(ii) of this rule. The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's services and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

Example 23: Wholesale Corp, a corporation that is based outside Oregon, develops an Internet-based information database outside Oregon and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both, but for purposes of analysis it does not matter. See section (5)(e) of this rule. Assume that on the particular facts applicable in this example Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its receipts from sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end

users actually receive access to Wholesale Corp's database and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate the location, Wholesale Corp must approximate the extent to which its services are received by end users in Oregon by using a percentage that reflects the ratio of the Oregon population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in that area. See section (4)(c)(B)(iii)(II) of this rule. Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both. See section (5)(e) of this rule.

(d) Professional Services.
(A) In General. Except as otherwise provided in section (4)(d) of this rule, professional services are services that require specialized knowledge and in some cases require a professional certification, license, or degree. These services include the performance of technical services that require the application of specialized knowledge. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services (including credit card processing services), data processing services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services. Nothing in this paragraph applies to services provided by a financial institution described in ORS 317A.100(5).
(B) Overlap with Other Categories of Services.
(i) Certain services that fall within the definition of "professional services" set forth in section (4)(d) of this rule are nevertheless treated as "in-person services" within the meaning of section (4)(b) of this rule and are assigned under the rules of that section. Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services." However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial, and consulting services, are assigned as professional services under the rules of section (4)(d) of this rule, notwithstanding the fact that these services may involve some amount of in-person contact.
(ii) Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. In some cases, all or most communications between the service provider and the service recipient may be by mail or by electronic means. However, in these cases, despite this transmission, the assignment rules that apply are those set forth in (4)(d) of this rule, and not those set forth in section (4)(c) of this rule, pertaining to services delivered to a customer or through or on behalf of a customer.
(C) Assignment of Receipts. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, the location of delivery in the case of professional services is not susceptible to a general rule of determination and must be reasonably approximated. The assignment of receipts from a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer must treat the customer as a business customer. For purposes of assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that contracts for the service, irrespective of whether another person pays for or also benefits from the taxpayer's services.
(i) General Rule. Receipts from sales of professional services other than those services described in section (4)(d)(C)(ii) of this rule (architectural and engineering services) and section (4)(d)(C)(iii) of this rule (transactions with related parties) are assigned in accordance with section (4)(d)(C)(i) of this rule.
(I) Professional Services Delivered to Individual Customers. Except as otherwise provided in section (4)(d) of this rule (see in particular section (4)(d)(C)(iii) of this rule), in any instance in which the service provided is a professional service

and the taxpayer's customer is an individual customer, the state or states in which the service is delivered must be reasonably approximated as set forth in section (4)(d)(C)(i)(I) of this rule. In particular, the taxpayer must assign the receipts from a sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five percent of its receipts from sales of all services from an individual customer, the taxpayer must identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.
(II) Professional Services Delivered to Business Customers. Except as otherwise provided in section (4)(d) of this rule, in any instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered must be reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe harbor set forth at section (4)(d)(C)(i)(III) of this rule, the taxpayer must assign the receipts from the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if the place of customer management is not reasonably determinable, to the customer's place of order; and third, if the customer place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than five percent of its receipts from sales of all services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.
(III) Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in sections (4)(d)(C)(i)(I) and (II) of this rule, a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether individual or business, and (2) does not derive more than five percent of its receipts from sales of all services from that customer. This safe harbor applies only for purposes of section (4)(d)(C)(i) of this rule and not otherwise.
(ii) Architectural and Engineering Services with respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of section (4)(d) of this rule. However, unlike in the case of the general rule that applies to professional services, (1) the receipts from a sale of an architectural service are assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in the state or states; and (2) the receipts from a sale of an engineering service are assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in the state or states, including real estate improvements located in, or expected to be located in, the state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in section (4)(d)(C)(ii) of this rule, the receipts from a sale of these services must be assigned under the general rule for professional services. See section (4)(d)(C)(i) of this rule.
(iii) Related-Party Transactions. In any instance in which the professional service is sold to a related party, rather than applying the rule for professional services delivered to business customers in section (4)(d)(C)(i)(II) of this rule, the state or states to which the service is assigned is the place of receipt by the related party as reasonably approximated using the following hierarchy: (1) if the service primarily relates to specific operations or activities of a related party conducted in one or more locations, then to the state or states in which those operations or activities are conducted in proportion to the related-party's payroll at the locations to which the service relates in the state or states; or (2) if the service does not relate primarily to operations or activities of a related party conducted in particular locations, but instead relates to the operations of the related party generally, then to the state or states in which the related party has employees, in proportion to the related-party's payroll in those states. The taxpayer may use the safe harbor provided by section (4)(d)(C)(i)(III) of this rule provided that the department may aggregate the receipts from sales to related parties in applying the five percent rule if necessary or appropriate to avoid distortion.
(iv) Examples: Unless otherwise stated, assume in each of these examples, that the safe harbor set forth at section (4)(d)(C)(i)(III) of this rule does not apply.

Example 24: Broker Corp provides securities brokerage services to individual customers who are resident in Oregon and in other states. Broker Corp is not a financial institution described in ORS 317A.100(5). Assume that Broker Corp knows the state of primary residence for many of its customers, and where it does not know the state of primary residence, it knows the customer's billing address. Also assume that Broker Corp does not derive more than five percent of its receipts from sales of all services from any one individual customer. If Broker Corp knows its customer's state of primary residence, it must assign the receipts to that state. If Broker Corp does not know its customer's state of primary residence, but rather knows the customer's billing address, it must assign the receipts to that state. See section (4)(d)(C)(i)(I) of this rule.

Example 25: Same facts as Example 24, except that Broker Corp has several individual customers from whom it derives, in each instance, more than five percent of its receipts from sales of all services. Receipts from sales to customers from whom Broker Corp derives five percent or less of its receipts from sales of all services must be assigned as described in Example 24. For each customer from whom it derives more than five percent of its receipts from sales of all services, Broker Corp is required to determine the customer's state of primary residence and must assign the receipts from the services provided to that customer to that state. In any case in which a five percent customer's state of primary residence is Oregon, receipts from a sale made to that customer must be assigned to Oregon; in any case in which a five percent customer's state of primary residence is not Oregon, receipts from a sale made to that customer are not assigned to Oregon.

Example 26: Architecture Corp provides building design services as to buildings located, or expected to be located, in Oregon to individual customers who are resident in Oregon and other states, and to business customers that are based in Oregon and other states. The receipts from Architecture Corp's sales are assigned to Oregon because the locations of the buildings to which its design services relate are in Oregon, or are expected to be in Oregon. For purposes of assigning these receipts, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for the services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services, or is billed for the services. Further, these receipts are assigned to Oregon even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Oregon or are electronically delivered to its customer in a state other than Oregon. See sections (4)(d)(B)(ii) and (C)(ii) of this rule.

Example 27: Law Corp provides legal services to individual clients who are resident in Oregon and in other states. In some cases, Law Corp may prepare one or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know the state of primary residence, it knows the client's billing address. Also assume that Law Corp does not derive more than five percent of its receipts from sales of all services from any one individual client. If Law Corp knows its client's state of primary residence, it must assign the receipts to that state. If Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it must assign the receipts to that state. For purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state. See sections (4)(d)(B)(ii) and (C)(i) of this rule.

Example 28: Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one case, the agreement is principally managed in Oregon; in the other cases, the agreement is principally managed in a state other than Oregon. If the agreement for legal services is principally managed by the client in Oregon, the receipts from sale of the services are assigned to Oregon; in the other cases, the receipts are not assigned to Oregon. In the case of receipts that are assigned to Oregon, the receipts are so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state. See sections (4)(d)(B)(ii) and (C)(i) of this rule.

Example 29: Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in Oregon, the receipts from the sale of Consulting Corp's services are assigned to Oregon. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly. See section (4)(d)(C)(i)(II) of this rule.
Example 30: Advisor Corp, a corporation that provides investment advisory services and is not a financial institution described in ORS 317A.100(5), provides investment advisory services to Investment Co. Investment Co. is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are resident in numerous states, which may or may not include Oregon. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Oregon, receipts from the sale of Advisor Corp's services are assigned to Oregon. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states. See section (4)(d)(C)(i)(II) of this rule.
Example 31: Advisor Corp, a corporation that provides investment advisory services and is not a financial institution described in ORS 317A.100(5), provides investment advisory services to Investment Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that its agreement with Investment Fund LP is principally managed by Investment Fund LP in Oregon, receipts from the sale of Advisor Corp's services are assigned to Oregon. See section (4)(d)(C)(i)(II) of this rule. Note that it is not relevant for purposes of the analysis that the partners in Investment Fund LP are residents of numerous states.
Example 32: Design Corp is a corporation based outside Oregon that provides graphic design and similar services in Oregon and in neighboring states. Design Corp enters into a contract at a location outside Oregon with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than five percent of its receipts from sales of services from the individual customer. All of the design work is performed outside Oregon. Receipts from the sale are in Oregon if the customer's billing address is in Oregon.

(5) License or Lease of Intangible Property.
(a) General Rules.
(A) Receipts from the license of intangible property are in Oregon if and to the extent the intangible is used in Oregon. In general, the term "use" is construed to refer to the location of the taxpayer's market for the use of the intangible property that is being licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer. The rules that apply to determine the location of the use of intangible property in the context of several specific types of licensing transactions are set forth at sections (5)(b)-(e) of this rule. For purposes of the rules set forth in section (5) of this rule, a lease of intangible property is to be treated the same as a license of intangible property.
(B) In general, a license of intangible property that conveys all substantial rights in that property is treated as a sale of intangible property for purposes of this rule. See section (6) of this rule. Note, however, that for purposes of sections (5) and (6) of this rule, a sale or exchange of intangible property is treated as a license of that property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use, or disposition of the property.
(C) Intangible property licensed as part of the sale or lease of tangible property is treated under this rule as the sale or lease of tangible property.
(b) License of a Marketing Intangible. Where a license is granted for the right to use intangible property in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that marketing intangible are assigned to Oregon

to the extent that those fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by consumers or other ultimate customers in Oregon. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a film, television, or multimedia production or event for commercial distribution; and a franchise agreement. In each of these instances the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to Oregon, it must assign that amount or proportion to Oregon. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from Oregon consumers, the portion of the licensing fee to be assigned to Oregon must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Oregon population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services, or other items relative to the total population in that area. If the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to Oregon must be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Oregon population in the specific geographic area in which the licensee's goods, services, or other items are ultimately and materially marketed using the intangible property relative to the total population of that area. Unless the taxpayer demonstrates that the marketing intangible is materially used in the marketing of items outside the United States, the fees from licensing that marketing intangible will be presumed to be derived from within the United States.

(c) License of a Production Intangible. If a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for that right are assigned to Oregon to the extent that the use for which the fees are paid takes place in Oregon. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in that process. In the case of a license of a production intangible to a party other than a related party where the location of actual use is unknown, it is presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual). If the department can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in Oregon, it is presumed that the entire use is in this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside Oregon. In the case of a license of a production intangible to a related party, the taxpayer must assign the receipts to where the intangible property is actually used.

(d) License of a Mixed Intangible. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the department will accept that separate statement for purposes of this rule. If a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the department can reasonably establish otherwise.

(e) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.

(A) In general. In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In these cases, the receipts from the licensing transaction are assigned by applying the rules set forth in sections (4)(c)(B)(ii) and (iii) of this rule, as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under section (5)(e) of this rule include, without limitation, the license of database access, the license of access to information, the license of digital goods (see section (7)(b) of this rule), and the license of certain software (e.g., where the transaction is not the license of

pre-written software that is treated as the sale of tangible personal property, see section (7)(a) of this rule).
(B) Sublicenses. Pursuant to section (5)(e)(A) of this rule, the rules of section (4)(c)(B)(iii) of this rule may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth at section (4)(c)(B)(iii) of this rule that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users. For this purpose, the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because that property is bundled with additional services or items of property.
(C) Examples: In these examples, unless otherwise stated, assume that the customer is not a related party.

Example 33: Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the products at multiple store locations, including store locations that are both within and without Oregon. Further, the licensing fees that are paid by Dealer Co are broken out on a per store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The portion of the fees to be assigned to Oregon are determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its Oregon stores relative to Dealer Co's total receipts. See section (5)(b) of this rule.
Example 34: Program Corp, a corporation that is based outside Oregon, licenses programming that it owns to licensees, such as cable networks, that in turn will offer the programming to their customers on television or other media outlets in Oregon and in all other U.S. states. Each of these licensing contracts constitutes the license of a marketing intangible. For each licensee, assuming that Program Corp lacks evidence of the actual number of viewers of the programming in Oregon, the component of the licensing fee paid to Program Corp by the licensee that constitutes Program Corp's Oregon receipts is determined by multiplying the amount of the licensing fee by a percentage that reflects the ratio of the Oregon audience of the licensee for the programming relative to the licensee's total U.S. audience for the programming. See section (5)(e) of this rule. Note that the analysis and result as to the state or states to which receipts are properly assigned would be the same to the extent that the substance of Program Corp's licensing transactions may be determined to resemble a sale of goods or services, instead of the license of a marketing intangible. See section (5)(e) of this rule.
Example 35: Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract, Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co. or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question will be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Oregon receipts of Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Oregon population in the specific geographic region relative to the total population in that region. See section (5)(b) of this rule. If Moniker Corp is able to reasonably establish that the marketing intangible was materially used throughout a foreign country, then the population of that country will be included in the population ratio calculation. However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially used in the foreign country in areas outside a particular major city, then none of the foreign country's population beyond the population of the major city is include in the population ratio calculation.

Example 36: Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify any other fees. The appliances are both manufactured and sold in Oregon and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the department can reasonably establish that the actual use of the intangible property takes place in part in Oregon, the royalty is assigned based to the location of that use rather than to the location of the licensee's commercial domicile, in accordance with section (5)(a) of this rule. It is presumed that the entire use is in Oregon except to the extent that the taxpayer can demonstrate that the actual location of some or all of the use takes place outside Oregon. Assuming that Formula, Inc can demonstrate the percentage of manufacturing that takes place in Oregon using the patent relative to the manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will constitute Formula, Inc's Oregon receipts. See section (5)(e) of this rule.
Example 37: Axel Corp enters into a license agreement with Biker Co. in which Biker Co. is granted the right to produce motor scooters using patented technology owned by Axel Corp, and also to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside Oregon. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co.'s receipts that are derived from Oregon customers. Also assume that Biker Co. is granted the right to sell the scooters in a U.S. geographic region in which the Oregon population constitutes 25 percent of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co. to Axel Corp and does not specify what percentage of the fee derives from Biker Co.'s right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or the department reasonably establishes otherwise. Assuming that neither party establishes otherwise, 25 percent of the licensing fee constitutes Oregon receipts. See sections (5)(b) and (d) of this rule.
Example 38: Same facts as Example 37, except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract constitutes both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the department will: (1) assign no part of the licensing fee paid for the production intangible to Oregon, and (2) assign 25 percent of the licensing fee paid for the marketing intangible to Oregon. See section (5)(d) of this rule.
Example 39: Better Burger Corp, which is based outside Oregon, enters into franchise contracts with franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in Oregon. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better Burger name and service marks, food processes, and cooking know-how, as well as fees for management services. The upfront fees for the receipt of the Oregon franchises constitute fees paid for the licensing of a marketing intangible. These fees constitute Oregon receipts because the franchises are for the right to make Oregon sales. The monthly franchise fees paid by Oregon franchisees constitute fees paid for (1) the license of marketing intangibles (the Better Burger name and service marks), (2) the license of production intangibles (food processes and know-how), and (3) personal services (management fees). The fees paid for the license of the marketing intangibles and the production intangibles constitute Oregon receipts because in each case the use of the intangibles is to take place in Oregon. See sections (5)(b) and (c) of this rule. The fees paid for the personal services are to be assigned pursuant to section (4) of this rule.
Example 40: Online Corp, a corporation based outside Oregon, licenses an information database through the means of the Internet to individual customers that are resident in Oregon and in other states. These customers access Online

Corp's information database primarily in their states of residence and sometimes while traveling in other states. The license is a license of intangible property that resembles a sale of goods or services, and receipts are assigned in accordance with section (5)(e) of this rule. If Online Corp can determine or reasonably approximate the state or states where its database is accessed, it must do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp must assign the receipts made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. In this case, Online Corp's receipts from sales made to its individual customers are in Oregon in any case in which the customer's billing address is in Oregon. See section (4)(c)(B)(ii)(I) of this rule.
Example 41: Net Corp, a corporation based outside Oregon, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in Oregon and two neighboring states. The license is a license of intangible property that resembles a sale of goods or services, and receipts are assigned in accordance with section (5)(e) of this rule. Assume that Net Corp cannot determine where its database is accessed but reasonably approximates that 75 percent of Business Corp's database access took place in Oregon, and 25 percent of Business Corp's database access took place in other states. In that case, 75 percent of the receipts from database access is in Oregon. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives five percent or less of its receipts from database access from Business Corp, Net Corp must assign the receipts under section (4)(c)(B)(ii)(II) of this rule to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp derives more than five percent of its receipts from database access from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state. See section (4)(c)(B)(ii)(II) of this rule.
Example 42: Net Corp, a corporation based outside Oregon, licenses an information database through the means of the Internet to more than 250 individual and business customers in Oregon and in other states. The license is a license of intangible property that resembles a sale of goods or services, and receipts from that license are assigned in accordance with section (5)(e) of this rule. Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Also assume that Net Corp does not derive more than five percent of its receipts from sales of database access from any single customer. Net Corp may apply the safe harbor stated in section (4)(c)(B)(ii)(II)(II-d) of this rule and may assign its receipts to a state or states using each customer's billing address.
Example 43: Web Corp, a corporation based outside of Oregon, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are resident in Oregon and in other states. These end users access Web Corp's information database primarily in their states of residence and sometimes while traveling in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services, and receipts are assigned by applying the rules set forth in section (4)(c)(B)(iii) of this rule. If Web Corp can determine or reasonably approximate the state or states where its database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient information from which it can determine or reasonably approximate the location where its database is accessed by end users, Web Corp must approximate the extent to which its database is accessed in Oregon using a percentage that represents the ratio of the Oregon population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in that area. See section (4)(c)(B)(iii)(III) of this rule.

(6) Sale of Intangible Property: Assignment of Receipts. The assignment of receipts to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this

section (6), a sale or exchange of intangible property includes a license of that property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from the transaction are not contingent on the productivity, use, or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use, or disposition of the property, see section (5)(a) of this rule.
(a) Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to the extent that the intangible property is used or is authorized to be used within the state. If the intangible property is used or may be used only in this state, the taxpayer must assign the receipts from the sale to Oregon. If the intangible property is used or is authorized to be used in Oregon and one or more other states, the taxpayer must assign the receipts from the sale to Oregon to the extent that the intangible property is used in or authorized for use in Oregon, through the means of a reasonable approximation.
(b) Sale that Resembles a License (Receipts are Contingent on Productivity, Use, or Disposition of the Intangible Property). In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in section (5) of this rule (pertaining to the license or lease of intangible property).
(c) Sale that Resembles a Sale of Goods and Services. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use, or disposition of the property, the receipts from the sale are assigned by applying the rules set forth in section (5)(e) of this rule (relating to licenses of intangible property that resemble sales of goods and services). Examples of these transactions include those that are analogous to the license transactions cited as examples in section (5)(e) of this rule.
(d) If receipts from the sale of intangible property used in Oregon are not sourced as provided elsewhere in this section and the sale was a transaction or activity in the regular course of the taxpayer's business, the receipts are sourced to Oregon if and to the extent the property is used in Oregon.
(7) Special Rules.
(a) Software Transactions. A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In these cases, the receipts are in Oregon as determined under ORS 317A.128 and related rules for the sale of tangible personal property. In all other cases, the receipts from a license or sale of software are to be assigned to Oregon as determined otherwise under this rule (e.g., depending on the facts, as the development and sale of custom software, see section (4)(c) of this rule; as a license of a marketing intangible, see section (5)(b) of this rule; as a license of a production intangible, see section (5)(c) of this rule; as a license of intangible property where the substance of the transaction resembles a sale of goods or services, see section (5)(e) of this rule; or as a sale of intangible property, see section (6) of this rule).
(b) Sales or Licenses of Digital Goods or Services. In general. In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio, and software products, or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are set forth in sections (4)(c)(B)(ii) or (iii) of this rule, as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service. See sections (5)(e) and (6)(c) of this rule.
[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.128, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.128

ADOPT: 150-317-1100

REPEAL: Temporary 150-317-1100 from REV 15-2019

RULE TITLE: Agent Exclusion

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to assist taxpayers in determining whether they are acting as an agent for purposes of the exclusion provided by ORS 317A.100(1)(b)(M) of the Corporate Activity Tax (CAT). A temporary rule has been in effect since January 1, 2020. The permanent rule adopts the language of the temporary rule, but deletes one of the examples, amends two of the examples regarding payroll service agencies and employment staffing agencies, and adds two examples related to construction projects.

RULE TEXT:

(1) "Agent" means a person who is acting on behalf of another and is subject to that other person's control.
(2) All facts and circumstances must be considered to determine if a person is an agent.
(3) An agent may exclude the fair market value of property, money and other amounts from their commercial activity only to the extent the property, money and other amounts are received or acquired on behalf of the person who controls the agent.
(4) An agent must include the agent's fee, commission or remuneration in the agent's commercial activity. An agent's commercial activity includes any property, money and other amounts that an agent retains from the property, money and other amounts received on behalf of the principal to pay the agent's commission, fee or remuneration.
(5) Examples.

Example 1: On June 30, 2020, York Escrow Company agrees to hold $60,000 for a real estate transaction down payment on behalf of Mr. Thomas. Mr. Thomas has the ability to direct payment of the real estate down payment. York Escrow Company charges Mr. Thomas a three percent fee ($1,800) for the escrow services. York Escrow Company does not include the $60,000 real estate down payment in its commercial activity. However, York Escrow Company must include the $1,800 fee in its commercial activity.
Example 2: Human Resource Services, Inc. (HRS) provides payroll, human resources, and benefits services to XYZ Corporation for a fee. As part of its services provided to XYZ, HRS processes employee payroll; assists XYZ with hiring and firing, FMLA and OFLA regulations; and manages employee insurance benefits. XYZ pays fees to HRS for its services in a lump sum that includes the compensation amounts owed to XYZ's employees and other payroll amounts. Based on the totality of facts and circumstances, HRS acts as the agent of XYZ when paying wages and payroll amounts to XYZ's employees. Therefore, HRS does not include in its commercial activity the amount it receives from XYZ that corresponds to the compensation of XYZ's employees' wages and related payroll amounts, but it must include in its commercial activity the fees that it receives from XYZ for its services.
Example 3: Staffing Solutions, Inc. provides workers to Office Works. Office Works has the right to control the workers as to the details and means of the work performed for Office Works. Staffing Solutions is responsible for paying the employees' wages and related payroll amounts, serves as the employer of record for taxes, and provides the workers with health insurance and other benefits. Office Works reimburses Staffing Solutions, according to its payroll schedule frequency, for wages paid to the workers and payroll taxes, plus a fee. Based on the totality of facts and circumstances, Staffing Solutions acts as the agent of Office Works in making payments of wages and payroll taxes to the workers performing services under the direction and control of Office Works. The reimbursement amounts paid for wages to the workers while on assignment at Office Works and related payroll taxes are not included in Staffing Solutions' commercial activity. Staffing Solutions must include in its commercial activity all other fees and amounts it receives from Office Works.
Example 4: Jones Corporation owns a plot of land in Oregon and enters into a fixed-price $10 million contract with a general contractor, Strong-R Construction, to construct a mixed-use building on the land. Strong-R Construction agrees to provide specified services for the $10 million contract and bears all risks involved in completing the project in a cost-

effective manner. Strong-R Construction may perform the necessary services itself, or it may bid out some or all the work to subcontractors. According to the terms of the contract, Strong-R Construction is solely responsible and liable for completing the project as agreed and does not need to inform or disclose to Jones Corporation any details as to the costs or the manner in which the work is conducted or completed. Based on the totality of the facts and circumstances, Strong-R Construction does not qualify as an agent for purposes of the agency exclusion and includes the entire $10 million in Oregon commercial activity.

Example 5: ABC Corporation (ABC) enters into a cost-reimbursable contract with DEF Construction (DEF) to construct or equip an office building in Oregon. ABC agrees to pay DEF for all costs incurred for completed work by subcontractors, plus a fee equal to five percent of the total project costs. Under the terms of the contract, DEF must act on behalf of and under the direction and control of ABC related to the use of subcontractors. Such direction and control includes, but is not limited to, the bidding and awarding of subcontracts, the setting of a schedule of activities and deliverables, and the management of project costs. DEF acts as a conduit regarding any payments made to the subcontractors, by remitting monies received from ABC to the subcontractors, provided that project deliverables are completed according to the terms of the subcontracts. ABC pays $10 million of project costs to DEF. If DEF turns around and remits the entire $10 million to the subcontractors for the total costs of the project work completed by the subcontractors, that amount may be excluded from commercial activity. However, any portion of the $10 million not remitted directly to the subcontractors that is used instead for other expenses such as materials or other labor must be included in commercial activity. Assume that DEF remits the entire $10 million directly to the subcontractors and collects a $500,000 fee ($10,000,000 * 5%) from ABC as compensation for the services provided to ABC. Based on the totality of facts and circumstances, DEF includes only the $500,000 fee in its commercial activity.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.100

ADOPT: 150-317-1120

REPEAL: Temporary 150-317-1120 from REV 3-2020

RULE TITLE: Exclusion for subcontracting payments

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Defines the term "single-family residential construction" for purpose of Oregon Revised Statute (ORS) 317A.122 which provides general contractors an exclusion from their commercial activity equal to 15 percent of the payments made to subcontractors for labor costs pursuant to a contract for single-family residential construction. Furthermore, clarify that the subcontractor labor payment exclusion is in addition to the subtraction allowed under ORS 317A.119.

RULE TEXT:

(1) Definition. For the purposes of ORS 317A.122, single-family residential construction means the construction of new single-family housing such as single-family detached or semidetached houses and townhouses or row houses where each housing unit:

(a) Is separated from the adjacent unit by a ground-to-roof wall;

(b) Has no housing units constructed above or below;

(c) Does not share heating or air-conditioning systems; and

(d) Does not share utilities.

(2) Additional allowance. The exclusion defined in ORS 317A.122 is allowed in addition to the subtraction defined in ORS 317.119.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.122, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.122

ADOPT: 150-317-1130

REPEAL: Temporary 150-317-1130 from REV 1-2020

RULE TITLE: Property Brought into Oregon

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance on when property brought into this state is included in taxable commercial activity for purposes of the Oregon Corporate Activity Tax (CAT).

RULE TEXT:

(1) ORS 317A.109 requires a person or unitary group to include the value of property transferred into Oregon for use in the business of the person or unitary group if:
(a) The person or unitary group received the property outside Oregon and transferred it into Oregon for use in the business of the person or unitary group within one year of receiving it outside Oregon, and
(b) The receipt of the property outside Oregon and its subsequent transfer into Oregon was intended, in whole or in part, to avoid the Corporate Activity Tax (CAT).
(2) A person or unitary group who intended to avoid the CAT must include the fair market value of property transferred into Oregon in their taxable commercial activity for the tax year the property was transferred into Oregon.
(3) Section (2) of this rule does not apply to the extent the sale of the property transferred into Oregon is excluded from the definition of commercial activity by law.

Example: Unitary group XYZ purchases motor vehicle fuel in Idaho on January 15, 2020 and transfers the motor vehicle fuel to Oregon on January 18, 2020. Unitary group XYZ would not include the fair market value of the motor vehicle fuel in their Oregon commercial activity because commercial activity excludes receipts from the sale of motor vehicle fuel.

(4) A person or unitary group should not include in their taxable commercial activity the fair market value of property transferred into Oregon within a year of receipt outside Oregon if the transfer of property into Oregon within a year of receipt outside Oregon was not intended to avoid the CAT in whole or in part.
(5) A person or unitary group who omits from commercial activity the fair market value of property transferred into Oregon within a year of receipt outside Oregon is required to include the fair market value upon a showing by the department that the taxpayer intended to avoid the CAT in whole or in part.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.109, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.109

ADOPT: 150-317-1150

REPEAL: Temporary 150-317-1150 from REV 2-2020

RULE TITLE: Retail Sale of Groceries Exclusion

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provide guidance to assist taxpayers in determining whether receipts from retail sales of food items may be excluded from the taxpayer's commercial activity under ORS 317A.100(1)(b)(EE)

RULE TEXT:

(1) Definition. For purposes of this rule, "store" means the location from which a taxpayer sells goods at retail to the final consumer for home consumption. "Store" includes both physical locations and online storefronts.

(2) Excludable receipts from retail sales. Receipts from retail sales of groceries are excludable from a taxpayer's commercial activity under ORS 317A.100(1)(b)(EE). The exclusion applies only to receipts from the sale of groceries as that term is defined in ORS 317A.100(8), which are sold at retail to the final consumer for home consumption. The determination as to whether an item is sold to a consumer for home consumption is based on the type of item sold and the circumstances of the sale. The determination is based on whether the seller typically expects that the sale of food from a specific store is purchased for home consumption.

(3) Factors indicating home consumption. The determination as to whether a store typically sells groceries at retail rests on specific facts and circumstances. When determining whether a store typically makes grocery retail sales, the department will consider factors such as (but not limited to):

(a) Whether the store's average gross receipts from the sale of hot food is greater than the average gross receipts from the sale of groceries.

(b) Whether the store offers on-site dining facilities, and if so, whether the percentage of total floor space allotted to dining facilities for customers is greater than the percentage of floor space dedicated to shelves displaying groceries available to customers for retail sale.

(c) Whether the store advertises itself as being engaged in the sale of hot food or ready-to-eat food.

(4) The list of factors in section (3) is nonexclusive, and the factors will be considered only to the extent that they are relevant. The department may consider any other relevant facts and circumstances.

(5) Examples.

Example 1: McPherson's Convenient Coffee Shop is located on the first floor of a large office building and is open from 6:00 a.m. to 3:00 p.m. Monday through Friday. McPherson's sells hot coffee and an assortment of baked goods, which are warmed or toasted before being served to the customer. In addition, McPherson's sells a variety of packaged snacks, candy, bottled water and juice. The store has little on-site seating; most customers consume the purchased food off-site. McPherson's markets itself as a convenient place for office workers to buy a cup of coffee or purchase a quick mid-day snack. Seventy-five percent of McPherson's sales are from hot foods. Based on the business's advertising and the fact that the majority of gross receipts are from hot prepared food, McPherson's does not typically intend or expect the food items sold from their store to be consumed at the purchaser's home. Therefore, McPherson's may not exclude any receipts under ORS 317A.100(1)(b)(EE).

Example 2: Clarendon's Cupboard is a small neighborhood convenience store open seven days a week from 5:00 a.m. to 11:00 p.m. Clarendon's sells a wide variety of items, including cigarettes, tobacco, bottled soda, candy, and some grocery staples, such as bread, eggs, milk, and cheese. From noon to 3:00 p.m., Clarendon's also sells hot prepared food for immediate consumption, such as hot dogs, fried chicken, and hot pizza by the slice. Clarendon's does not offer any on-site seating. Clarendon's advertises itself as a convenient place to buy cigarettes, purchase a hot lunch or a quick snack, and pick up a few groceries on the way home from work. Sales of cigarettes, tobacco, and other nonfood items constitute sixty percent of Clarendon's gross receipts. Receipts from the sale of cold food (i.e., grocery staples and various snacks and candy items) constitute thirty percent of Clarendon's gross receipts, while receipts from the sale of hot prepared food (i.e., hot dogs, and hot prepared pizza) constitute less than ten percent of Clarendon's gross receipts.

Based on the business's advertising, and the fact that Clarendon's gross receipts from the sale of cold food outweigh the gross receipts from the sale of hot food, the food items sold by the store are typically intended for the purchaser's consumption at home. Clarendon's may exclude receipts from the sale of grocery staples and snacks, as these items are "groceries" as defined in ORS 317A.100(8). Clarendon's may not exclude receipts from the sale of hot prepared food such as hot dogs and hot pizza, as these items are not groceries.

(6) Safe Harbor for Stores Authorized as Retail Food Stores or Qualifying as Retail Food Stores for Purposes of the Supplemental Nutrition Assistance Program (SNAP). The sale of a grocery item, as defined in ORS 317A.100(8), by a store authorized as a retail food store under 7 U.S.C. 2012(o), with a valid permit as a SNAP qualified retail food store from the U.S. Department of Agriculture, is considered the retail sale of groceries for home consumption, and excluded from the taxpayer's commercial activity. Receipts from the sale of groceries realized by a store that meets the requirements to qualify as a retail food store under 7 U.S.C. 2012(o), regardless of whether the store holds a permit as a SNAP qualified retail food store from the U.S. Department of Agriculture, are also considered the retail sales of groceries for home consumption and are excluded from the taxpayer's commercial activity, provided that the taxpayer can demonstrate that the store meets the requirements to qualify as a retail food store under 7 U.S.C. 2012(o).
(7) A store may not exclude receipts under ORS 317A.100(1)(b)(EE), if the store's receipts from the sale of hot food or hot prepared food constitutes 80 percent or more of the total receipts that the store realized from the sale of all food items. The fact that the store's receipts are at least 80 percent from sales of hot food or hot prepared food is evidence that the store does not intend to sell, or typically sell, groceries to the final consumer for home consumption; therefore, sales from the store are not excludable as retail sales of groceries.
[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.100(1)(b)(EE), 317A.100(8)

ADOPT: 150-317-1200

REPEAL: Temporary 150-317-1200 from REV 15-2019

RULE TITLE: Cost Input or Labor Cost Subtraction

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to assist taxpayers in how to compute the cost input or labor cost subtraction for purposes of the Oregon Corporate Activity Tax (CAT).

RULE TEXT:

(1) The subtraction provided in ORS 317A.119 includes all labor cost or cost input expenses of a taxpayer, whichever is greater, regardless of the place the labor cost or cost input is incurred, except for cost inputs or labor costs that are attributable to the taxpayer's receipts from an item that is not commercial activity. For purposes of the subtraction, a unitary group must include the labor costs or cost inputs of all members of the unitary group, regardless where incurred, except for expenses from transactions among members of the group as provided in ORS 317A.119(3)(a) and costs omitted as provided in OAR 150-317-1025.

(2) General Rule. Costs described in ORS 317A.119(3)(b) ("ineligible costs") are not eligible for subtraction. If a taxpayer can readily determine, from the taxpayer's books and records maintained in the ordinary course of business, how much of its total labor costs or cost inputs are ineligible costs or that it has no ineligible costs, the taxpayer may use the general rule in this section (2). A taxpayer who cannot readily determine how much of either its total labor costs or cost inputs are ineligible costs based on its books and records must use the substitute rule in section (3), except as otherwise provided in this rule.

(a) Reduction of cost inputs and labor costs by ineligible costs. A taxpayer must determine its eligible costs. "Eligible costs" equals the greater of (A) the excess of total labor costs over the amount of labor costs that are ineligible costs or (B) the excess of total cost inputs over the amount of cost inputs that are ineligible costs.

(b) Computation of subtraction for eligible costs after reduction of ineligible costs.

(A) If all the taxpayer's property and payroll is located in Oregon and all its commercial activity is sourced to Oregon under ORS 317A.128, the taxpayer's subtraction equals 35 percent of its eligible costs.

(B) Otherwise, the taxpayer must multiply the taxpayer's eligible costs by the ratio of the amount of commercial activity as would be sourced to Oregon in the manner provided under ORS 314.605 to 314.675 to the amount of commercial activity as would be sourced everywhere in the manner provided under ORS 314.605 to 314.675 ("apportioned eligible costs"), except as otherwise required or permitted under this rule. The taxpayer's subtraction equals 35 percent of its apportioned eligible costs.

(C) For purposes of apportionment under section (2)(b)(B) of this rule, commercial activity shall be sourced as provided in ORS 314.665 determined without regard to 314.665(2)(b), and sales of tangible personal property included in commercial activity are in this state under ORS 314.665(2)(a) if the property is delivered or shipped to a purchaser within this state, including the United States Government, regardless of the f.o.b. point or other conditions of the sale.

Example 1: South Street operates an automotive repair shop. All but an incidental amount of South Street's receipts are from commercial activity. South Street's labor costs are greater than its cost inputs. All South Street's employees perform their activities primarily for the purpose of producing receipts that are included in commercial activity. Because South Street can readily determine from its books and records that all its labor costs are attributable to commercial activity, South Street may use the general rule for determining its cost subtraction.

(3) Substitute Rule. If the taxpayer elects, or the taxpayer's books and records kept in the ordinary course of business do not allow one to readily identify labor costs or cost inputs attributable to commercial activity, the subtraction shall be calculated using a commercial activity ratio.

(a) Costs for commercial activity ratio. A taxpayer's costs under the commercial activity ratio ("applicable costs") equal the greater of total cost of goods everywhere or total labor costs everywhere, as those costs are determined before

application of ORS 317A.119(3)(b). Expenses from transactions among members of a unitary group must be excluded.
(b) Commercial Activity Ratio. The commercial activity ratio is a fraction, the numerator of which is the taxpayer's commercial activity sourced to Oregon and the denominator of which is the sum of the taxpayer's total commercial activity everywhere plus amounts excluded under ORS 317A.100(1)(b)(Q), ORS 317A.100(1)(b)(Y), ORS 317A.100(1)(b)(AA), ORS 317A.100(1)(b)(DD), ORS 317A.100(1)(b)(EE), and ORS 317A.100(1)(b)(TT). Receipts from transactions among unitary group members are not included in either the numerator or denominator.
(c) Ratio costs. For purposes of the substitute rule, costs attributable to commercial activity that are apportioned to Oregon ("ratio costs") are calculated by multiplying the applicable costs under subsection (a) by the taxpayer's commercial activity ratio under subsection (b). The taxpayer's subtraction equals 35 percent of the ratio costs.
(d) Modified substitute rule. If a taxpayer can readily determine, from the taxpayer's books and records maintained in the ordinary course of business, how much of its total labor costs or cost inputs are ineligible costs, but not both labor costs and cost inputs, the taxpayer may elect to compute its subtraction as the greater of the subtraction calculated using the general rule for the cost factor for which it is able to readily determine ineligible costs or the subtraction calculated using the substitute rule for the cost factor for which it is not able to readily determine ineligible costs.

Example 2: Grocery & TV Mart has $10 million of Oregon commercial activity and $70 million of everywhere commercial activity plus exclusions described in section (3)(b) of this rule ($50 million in commercial activity and $20 million in exclusions from commercial activity). Almost all Grocery & TV Mart's employees assist in sales of both groceries and televisions. Grocery & TV Mart cannot readily determine from its books and records how much of its labor costs and cost inputs are attributable to sales of groceries excluded from commercial activity under ORS 317A.100(1)(b)(EE). Grocery & TV Mart has an everywhere labor cost of $28 million and everywhere cost inputs of $26 million.
Grocery & TV Mart computes the Oregon subtraction as follows:
Step 1: Determine the amount of applicable costs. In this example, labor costs are greater than cost inputs. Applicable costs are $28 million.
Step 2: Determine the commercial activity ratio.
Oregon commercial activity of $10 million / $70 million (everywhere commercial activity plus required exclusions) = 14.2857% commercial activity ratio.
Step 3: Determine ratio costs. Total applicable costs of $28 million multiplied by commercial activity ratio of 14.2857% = $3,999,996.
Step 4: Multiply the ratio costs by 35% = $1,399,999 cost subtraction.
Example 3: Corner Market operates a convenience store and sells motor vehicle fuel. The majority of the convenience store's receipts are included in commercial activity, but groceries and motor vehicle fuel are excluded from commercial activity. Corner Market's books and records do not track cost inputs attributable to operating the convenience store; however, they do track labor costs attributable to the sale of groceries and motor vehicle fuel. Because the books and records do not show what cost inputs are attributable to commercial activity, Corner Market must apply the substitute rule for determining their available cost inputs subtraction. Because Corner Market does track labor costs attributable to operating the convenience store, they may use the general rule to determine the subtraction for labor costs. Corner Market may claim the greater of the two calculations.

(4) Limitations.
(a) The subtraction may not exceed 95 percent of the taxpayer's Oregon commercial activity.
(b) Labor costs may not include total compensation paid to a single employee in excess of $500,000.
(c) Receipts from transactions among members of a unitary group that are excluded under ORS 317A.100(1)(b)(FF) are not included in the calculation of the subtraction.
(5) Alternative Apportionment. Notwithstanding sections (2) and (3) of this rule, a taxpayer may petition the department for alternative apportionment, or the department may require alternative apportionment if the application

of section (2) or (3) does not fairly represent the taxpayer's commercial activity in Oregon.
(6) A petition to use an alternative method of apportionment under section (5) of this rule must be filed in writing with the department. The request must be signed by the taxpayer or the taxpayer's authorized representative and must be filed separately from the taxpayer's return. The request must include a complete explanation of the alternative method as well as an explanation why the application of section (2) or (3) should not be used. Upon receipt of the request, the department will review the request and issue a letter either authorizing or denying the request. If denied, the taxpayer can appeal that action as provided in ORS 305.275. An alternative apportionment method may be used only after receiving written authorization from the department. The authorization may be revoked if, upon audit, the department determines that the alternative method does not fairly represent commercial activity in Oregon. Once an alternative method has been authorized, that method must be used until a request to change is made and approved by the department or until the authorization is revoked after audit.
(7) Factors considered in approving alternative methods of apportionment include but are not limited to whether a modification:
(a) Will fairly and accurately reflect the taxpayer's costs attributable to receipts from commercial activity in Oregon; and
(b) Effectuate an equitable allocation and apportionment of the taxpayer's costs attributable to receipts from commercial activity.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.119, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.119

ADOPT: 150-317-1220

REPEAL: Temporary 150-317-1220 from REV 3-2020

RULE TITLE: Employee Compensation: Labor Cost Subtraction

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to assist taxpayers in determining who is considered an employee and what compensation includes for purposes of calculating the corporate activity tax labor cost subtraction. A temporary rule has been in effect since March 6, 2020. The permanent rule adopts the language of the temporary rule and makes a minor grammatical change to the example.

RULE TEXT:

(1) Definitions. For purposes of the labor cost subtraction, as calculated under OAR 150-317-1200:

(a) "Employee" has the meaning given that term in OAR 150-316-0255(5). "Employee" does not include:

(A) Partners in a partnership who receive guaranteed payments or distributive income;

(B) Members in a Limited Liability Company (LLC) who receive guaranteed payments or distributive income;

(C) Statutory employees described in the Internal Revenue Code (IRC) section 3121(d)(3); or

(D) Independent contractors, as defined in ORS 670.600.

(b) "Compensation" has the meaning given that term in ORS 317A.100(1)(b)(H).

(2) The labor cost subtraction, as calculated under OAR 150-317-1200, does not include:

(a) Compensation in excess of $500,000 paid to any single employee;

(b) Payroll taxes, including but not limited to, Social Security, Medicare, and Federal unemployment.

Example 1: A2zk Tech Inc. employs 50 workers who meet the requirements to be considered employees. Each employee receives a base annual salary of $375,000. In addition, the company pays commissions and bonuses based on performance. The company also provides its employees with fringe benefits, including health insurance and employer-provided retirement contributions, at a total cost of $15,000 per employee. Assume that A2zk also pays $25,000 in payroll taxes for each employee. Although A2zk Tech pays taxes for each employee, any tax amount paid for its employees is not used to calculate the total compensation. During 2020, 10 of the employees earned $150,000 each in commission and bonuses. Because the total compensation of each of those 10 employees exceeds $500,000, ($375,000 + $15,000 + $150,000 = $540,000), A2zk Tech calculates the total labor cost as [(40 * $390,000) (base salary plus benefits) + (10 * $500,000)] = $20,600,000.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.100

STATUTES/OTHER IMPLEMENTED: ORS 316.167, 317A.100, 670.600

ADOPT: 150-317-1300

REPEAL: Temporary 150-317-1300 from REV 15-2019

RULE TITLE: Estimated Tax: When Estimated Payments Are Required

NOTICE FILED DATE: 04/27/2020

RULE SUMMARY: Provides guidance to taxpayers in determining when estimated corporate activity tax (CAT) payments are required, including estimated payment due dates for short-period returns, how refund requests are handled, how to apply an overpayment to a future tax period, how estimated taxes are credited, and to require payment of estimated tax via electronic funds transfer. A temporary rule has been in effect since January 1, 2020. The permanent rule adopts the language of the temporary rule, clarifies that persons subject to unrelated business income have the same obligations as other persons under the CAT, and provides a higher estimated tax payment threshold for the first year of the tax.

RULE TEXT:

(1) Estimated tax liability means the tax as computed under ORS chapter 317A, less allowable credits.

(2) Every person required to file an Oregon Corporate Activity Tax (CAT) return and expecting to have a tax liability of $5,000 or more must make estimated tax payments. For purposes of determining whether estimated tax liability exceeds $5,000, a credit balance resulting from overpayment of tax for a prior year is not taken into account.

(3) Estimated tax payments are required, regardless of when a taxpayer exceeds $1 million of taxable commercial activity.

(4) Payments are due on the last day of the month that follows the end of each calendar quarter: April 30, July 31, October 31, and January 31.

(5) Due dates of payments for short-period returns. If a return is filed for a short period of less than 12 months, estimated tax payments are due as follows:

(a) If the period covered is less than three months, only one payment is required. It is equal to 100 percent of the estimated tax and is payable on the due date of the return.

(b) If the period covered is three months or longer but less than six months, two payments are required. One-half of the estimated tax is due on the last day of the fourth month, and the balance, if any, is due on or before the due date of the tax return, not including extensions.

(c) If the period covered is six months or longer but less than nine months, three payments are required. One-third of the estimated tax is due on the last day of the fourth month, one-third on the last day of the seventh month and the balance, if any, is due on or before the due date of the tax return, not including extensions.

(d) If the period covered is nine months or longer, but less than twelve months, four payments are required. One-fourth of the estimated tax is due on the last day of the fourth month, one-fourth on the last day of the seventh month, one-fourth on the last day of the tenth month, and the balance, if any, on or before the due date of the tax return, not including extensions.

(6) Tax-exempt persons that have "Unrelated Business Income," as defined in the Internal Revenue Code, must also register, file an Oregon CAT return, and pay the tax, if such person is otherwise subject to those requirements under ORS 317A.100 to 317A.161. If their expected Oregon tax liability is $5,000 or more, estimated tax payments must be made.

(7) Refunds prior to filing of return. Generally, estimated tax payments will not be refunded prior to the taxpayer's filing of the tax return for the year for which the estimated tax payments were made. The fact that the estimated tax payments made exceed the required payments based upon an exception to underpayment is not sufficient cause to refund such excess prior to the filing of the Oregon CAT return. On a case-by-case basis, if a taxpayer establishes to the satisfaction of the department that the facts warrant a refund, the department may issue a refund of estimated taxes prior to the filing of the tax return.

(8) Overpayments of tax.

(a) Election. When a person files a completed CAT return and the tax calculated on the return is less than the amounts

previously paid for that year, the person may make an irrevocable election to have the overpayment of tax either refunded or applied as a payment of estimated tax. The election is made by entering the amount in the appropriate space provided on the CAT return.
(b) Application to estimated tax installment. For tax years beginning on or after January 1, 2021, the department will apply the elected overpayment, unless it is subject to an offset under ORS 314.415 and related rules, to the following year's estimated tax payment due on the last day of the fourth month of the taxable year, to the extent that the overpayment of tax is attributable to estimated tax payments received prior to the following year's first quarter estimated tax due date. Payments received after the following year's first quarter estimated tax due date will be applied to estimated tax as of the date the payment is received. In the case of an amended or delinquent return, the amount will be credited to the estimated tax installment as of the date the amended or delinquent return was filed or the date a payment was received, whichever is later.
(9) Payments of estimated tax. Except as otherwise specifically provided in section (8) of this rule, the department will credit estimated tax payments as of the date that they are received. The department will apply estimated tax payments to any prior underpayment and the remainder, if any, will be applied to the next required installment.
(10) Requirement to use electronic funds transfer. For tax years beginning on or after January 1, 2020, persons or entities that are required by other tax programs to make estimated payments by electronic funds transfer (EFT) are also required to use that same method for the CAT.
(11) Any person or entity that is not required by other tax programs to make estimated tax payments by EFT may use any other method available to make estimated tax payments for the CAT.
(12) Notwithstanding section (2) of this rule, taxpayers that expect their annual tax liability for tax year 2020 to be less than $10,000 are not required to make quarterly estimated payments for tax year 2020.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 314.415, 314.505, 314.515, 314.518, 317A.137, 317.149

ADOPT: 150-317-1310

REPEAL: Temporary 150-317-1310 from REV 15-2019

RULE TITLE: Estimated Tax Payments: Delinquent or Underestimated Payment or Both, Constitutes Underpayment

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to taxpayers in determining the correct amounts of corporate activity estimated tax payments and establishes requirements for interest imposed on underpayment of estimated tax. A temporary rule has been in effect since January 1, 2020. The permanent rule adopts the language of the temporary rule and makes minor grammatical changes.

RULE TEXT:

(1) An underpayment of Corporate Activity Tax (CAT) estimated tax exists when the payments received on or before a payment due date are less than the required installment due as determined under section (3) of this rule.

(2) Returns processed on or after January 1, 2021. If none of the exceptions, as provided in section (3) of this rule, are met, interest on underpayment of estimated tax is computed on the difference between the lowest amount determined under section (3) of this rule and the total estimated tax payments for the installment period made on or before the due date.

(3) Exceptions. Underpayment charges will not be imposed if no estimated payments are required, as provided in OAR 150-317-1300, or if each estimated tax installment is equal to or more than 25 percent (or the appropriate percentage of tax for short periods provided in OAR 150-317-1300) of any one of the following:

(a) For tax years beginning on or after January 1, 2020 and ending before January 1, 2021, 80 percent of the tax for the tax year.

(b) For tax years beginning on or after January 1, 2021, 100 percent of the tax.

(c) For tax years beginning on or after January 1, 2021, 100 percent of the tax shown on the return for the preceding tax year (after credits), provided that the preceding tax year was a period of twelve months and an Oregon return showing a liability was filed for such tax year. When applying this subsection to a current taxable year of less than 12 months, the tax for the preceding tax year is reduced by multiplying it by the number of months in the short tax year and dividing the resulting amount by 12.

(d) An amount equal to 100 percent of the tax computed on annualized taxable commercial activity. For purposes of this computation, tax credits available on the date of the payment may be deducted from the annualized tax. An estimated or anticipated tax credit may not be used. Annualized taxable commercial activity is computed by entering the taxable commercial activity on an annualized basis:

(A) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month;

(B) For the first six months of the taxable year, in the case of the installment required to be paid in the seventh month;

(C) For the first nine months of the taxable year, in the case of the installment required to be paid in the tenth month; and

(D) For the 12 months of the taxable year, in the case of the installment required to be paid in the first month of the following taxable year.

(e) An amount equal to 100 percent of the amount obtained by applying Section 6655(e)(3)(C) of the Internal Revenue Code to Oregon taxable commercial activity for any person with seasonal commercial activity.

(4) Unitary group returns. If a unitary group CAT return is filed, any underpayment shall be computed on a combined basis. In computing the underpayment on a combined basis, the tax and facts shown on the returns for the preceding year must be aggregated, regardless of whether combined or separate returns were filed.

(5) If separate returns are filed and estimated tax is paid on a combined basis, the payments and prior year's tax may be divided between the various persons' liabilities in any manner designated by the taxpayers.

(6) Interest on underpayment. When an estimated tax payment is underpaid, interest accrues on the underpaid amount at the rate provided in OAR 150-305-0140 from the due date of the payment to the earlier of:

(a) the date the tax is paid, or

(b) the date the tax return is due.
(7) Underpayment interest will not be imposed for a quarter in which the annualized taxable commercial activity results in a net annualized tax of $10 or less.
(8) Underpayment penalties shall be assessed on the last return filed and received before the due date for such return. That return shall be considered the "original return," and the tax due shall be used as the basis for computing the underpayment charges.
(9) Once underpayment charges are assessed on the original return, an amended return reducing the tax liability will not reduce the underpayment charges.
[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 314.525, 317A.137, 317A.149, 317A.161

ADOPT: 150-317-1320

REPEAL: Temporary 150-317-1320 from REV 15-2019

RULE TITLE: Estimated Tax: Unitary Groups and Apportioned Returns

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provides guidance to taxpayers regarding estimated corporate activity (CAT) tax payment obligations for unitary groups of taxpayers filing a single return, and for those who must apportion their commercial activity. A temporary rule has been in effect since January 1, 2020. The permanent rule adopts the language of the temporary rule.

RULE TEXT:

(1) If two or more entities file a single Corporate Activity Tax (CAT) return as a unitary group, as described in ORS 317A.100(19), each shall be jointly and severally liable for the filing and payment of the estimated tax liability. Estimated tax payments shall be made on a combined basis.

(2) See OAR 150-317-1310 for an explanation of how to compute an underpayment of estimated tax for entities filing a single CAT return as a unitary group.

(3) Persons that are required to apportion the amount of the cost input or labor cost subtraction under ORS 317A.119 between Oregon and other states, are required to use either the current period's actual or the prior full-year's apportionment factor, as calculated under OAR 150-317-1200, to meet the annualization exception to underpayment of estimated taxes. The prior year's apportionment factor may only be used if the prior year's return covered a full 12 months.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 314.5050, 314.525, 317A.106, 317A.113, 317A.137, 317A.149

ADOPT: 150-317-1330

REPEAL: Temporary 150-317-1330 from REV 15-2019

RULE TITLE: Extension of Time to File

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Oregon Revised Statutes 317A.137 (3) grants the department rule writing authority to allow extensions of time to file the Corporate Activity Tax return for "good cause." This rule establishes the length of the extension and the manner to make a request as well as to define what circumstances qualify as "good cause."

RULE TEXT:

(1) Definition.

(a) For purposes of this rule, "good cause" means:

(A) Death or serious illness of the taxpayer or a member of the taxpayer's immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the taxpayer's home, place of business, or records needed to prepare the returns;

(C) Unavoidable and unforeseen absence of the taxpayer from the state that began before the due date of the return; or

(D) Information required to complete the return is not available or is not in the proper form.

(b) Circumstances that are not accepted by the department as "good cause" include, but are not limited to:

(A) Reliance on a professional to merely prepare a return on time;

(B) Reliance on an employee of the taxpayer to prepare a return on time;

(2) Generally, the time for making or filing an annual Corporate Activity Tax return may be extended for six months after the date prescribed for filing the return under this chapter, if the taxpayer files an application in accordance with section (3) of this rule.

(3) To request an extension of time to file, a taxpayer must:

(a) Submit a completed application for an extension of time to file on a form prescribed by the department;

(b) File the application with the department before the date prescribed for filing the return; and

(c) Certify they have "good cause" for requesting the extension.

(4) "Good cause" must have existed at the time the return was due, excluding the extension.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.137, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.137

ADOPT: 150-317-1410

REPEAL: Temporary 150-317-1410 from REV 2-2020

RULE TITLE: Motor Vehicle Resale Certificate – Documentation Required

NOTICE FILED DATE: 04/26/2020

RULE SUMMARY: Provide guidance regarding documentation that a vehicle dealer must retain in order to exclude receipts from commercial activity as provided in ORS 317A.100(1)(b)(W).

RULE TEXT:

(1) Receipts from the sale or transfer of a motor vehicle between motor vehicle dealers are excluded from commercial activity, provided that the transfer occurs for the purpose of resale and is based on the transferee's need to meet a specific customer's preference.

(2) Motor vehicle dealers must retain a resale certificate documenting the excluded transaction provided under ORS 317A.100(1)(b)(W).

(3) Any document provided before or at the time the seller bills the purchaser may serve as a resale certificate if it contains the following information:

(a) The seller's name, address, federal identification number, and dealer license number from the appropriate licensing jurisdiction;

(b) The purchaser's name, address, federal identification number, and dealer license number from the appropriate licensing jurisdiction;

(c) A description of the vehicle, including the vehicle identification number, serial number, or other identifying number, and the make, model, and year of the vehicle;

(d) A statement, signed by the purchaser, their employee, or authorized representative, affirming that the vehicle described in the document is purchased or transferred for resale to meet a specific customer's preference; and

(e) The date ownership of the vehicle is transferred.

STATUTORY/OTHER AUTHORITY: ORS 305.100, 317A.143

STATUTES/OTHER IMPLEMENTED: ORS 317A.100(1)(b)(W)