



TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

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CHAPTER 150
DEPARTMENT OF REVENUE

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FILING CAPTION: Temporary rules, guidance for the Corporate Activity Tax, Oregon Laws 2019, chapters 122 and 579.

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NEED FOR THE RULE(S):

These rules provide guidance relating to the Corporate Activity Tax (CAT) established under Oregon Laws 2019, chapter 122, sections 58 to 76 (enrolled HB 3427) as amended by Oregon Laws 2019, chapter 579, sections 50 to 60 (enrolled HB 2164), which becomes effective January 1, 2020. These rules clarify terms and processes applicable to the new tax. Taxpayers need guidance in order to be compliant with the new laws.

JUSTIFICATION OF TEMPORARY FILING:

1. Without guidance, taxpayers may not be able to determine or know, before the first quarterly estimated tax payment due on April 30, 2020:

- Whether their business activity meets the definition of commercial activity;
- Whether they have substantial nexus with Oregon;
- Whether they are engaged in a unitary business or understand the filing requirements for unitary groups;
- How to source commercial activity from sales of tangible personal property to Oregon and from other than sales of tangible personal property for taxpayers who have business activity across state lines;
- Whether they are acting as an agent for purposes of the exclusion provided by Oregon Laws 2019, chapter 122, section 58(1)(b)(M), as amended by Oregon Laws 2019, chapter 579, section 50;
- Whether property brought into this state is included in taxable commercial activity for purposes of Oregon Laws 2019, chapter 122, section 61, as amended by Oregon Laws 2019, chapter 579, section 51;
- How to compute the cost input or labor cost subtraction for the CAT under Oregon Laws 2019, chapter 122, section 64, as amended by Oregon Laws 2019, chapter 579, section 53;
- Determine when estimated corporate activity tax 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;
- That estimated tax payments for the CAT must be made via electronic funds transfer;
- Correct amounts of corporate activity estimated tax payments or requirements for interest imposed on

underpayment of estimated tax, including estimated tax payment obligations for unitary groups of taxpayers filing a single return and for those who must apportion their commercial activity;

--The length of available extensions of time to file CAT returns and the manner to make an extension request;

--Circumstances qualifying as "good cause" for requesting an extension of time to file CAT returns.

2. Persons who are subject to the Corporate Activity Tax will suffer the above consequences on account of lack of published guidance about when they are subject to the tax, whether certain persons are engaged in a unitary business such that they must file and pay tax as a single taxpayer, what activity is included or excluded in commercial activity, how to determine that commercial activity is sourced to Oregon, how to compute the allowable subtraction from commercial activity, how and when to make estimated tax payments, and when extensions may be requested. The Department of Revenue would bear the burden of answering taxpayers' questions and providing education and outreach to taxpayers.

3. Without temporary rules, taxpayers will not have the information necessary to determine if they are subject to the Corporate Activity Tax, to determine what is necessary for record keeping, to make estimated payments, or to file correct CAT returns.

4. Promulgating temporary rules effective January 1, 2020 will provide guidance for taxpayers as of the effective date of the new Corporate Activity Tax and before the first quarterly estimated tax payment deadline of April 30, 2020.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Laws 2019, chapter 122 (enrolled HB 3427), sections 58 to 76, as amended by Oregon Laws 2019, chapter 579, sections 50 to 60 (enrolled HB 2164).

<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB3427/Enrolled>

<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2164/Enrolled>

RULES:

150-317-1000, 150-317-1010, 150-317-1020, 150-317-1030, 150-317-1040, 150-317-1100, 150-317-1130, 150-317-1200, 150-317-1300, 150-317-1310, 150-317-1320, 150-317-1330

ADOPT: 150-317-1000

RULE TITLE: Definition of Commercial Activity

RULE SUMMARY: Provides guidance to assist taxpayers regarding the definition of commercial activity for purposes of the Oregon Corporate Activity Tax (CAT), described in Oregon Laws, chapters 122, section 58(1), as amended by Oregon Laws 2019, chapter 579, section 50.

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, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, section 58, as amended by Oregon Laws 2019, chapter 579, section 50

ADOPT: 150-317-1010

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

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) under Oregon Laws 2019, chapter 122, section 63, as amended by Oregon Laws 2019, chapter 579, section 52.

RULE TEXT:

- (1) For purposes of Oregon Laws 2019, chapter 122, section 63, as amended by Oregon Laws 2019, chapter 579, section 52, 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, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, section 63, as amended by Oregon Laws 2019, chapter 579, section 52

RULE TITLE: Factors Used in Determining Whether a Group of Persons are Engaged in a Unitary Business and Filing Requirements for Unitary Groups

RULE SUMMARY: Provides guidance to assist taxpayers in determining whether they are engaged in a unitary business under Oregon Laws 2019, chapter 122, section 58(18), as amended by Oregon Laws 2019, chapter 579, section 50, and explain 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 Oregon Laws 2019, chapter 122, section 58(14), as amended by Oregon Laws 2019, chapter 579, section 50.
- (2) The presence of all of the factors described in Oregon Laws 2019, chapter 122, section 58(18)(a)(A)-(C), as amended by Oregon Laws 2019, chapter 579, section 50, 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 of a commonly controlled 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 Oregon Laws 2019, chapter 122, section 66, as amended by Oregon Laws 2019, chapter 579, section 54, and the subtraction under Oregon Laws 2019, chapter 122, section 64, as amended by Oregon Laws 2019, chapter 579, section 53.
- (6) Unitary Business Unaffected by Formal Business Organization. A unitary business may exist within a single entity or among a commonly controlled 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 Oregon Laws 2019, chapter 122, section 58(18)(a)(A) to (C), as amended by Oregon Laws 2019, chapter 579, section 50: 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) Filing requirements. In accordance with Oregon Laws 2019, chapter 122, section 60, persons who compose a unitary group, as defined in Oregon Laws 2019, chapter 122, section 58(19), as amended by Oregon Laws 2019, chapter 579, Section 50, 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).

(11) Example 1: 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, which provides consulting services to third parties, 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 \$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.

STATUTORY/OTHER AUTHORITY: ORS 305.100; Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, section 58, as amended by Oregon Laws 2019, chapter 579, section 50;

ADOPT: 150-317-1030

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

RULE SUMMARY: Provide guidance for sourcing of commercial activity from the sale of tangible personal property for taxpayers who have business activity inside and outside of Oregon under Oregon Laws 2019, chapter 122, section 66, as amended by Oregon Laws 2019, chapter 579, section 54.

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.

Example 1: 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.

(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 2: 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 3: 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 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 attributed to Oregon.

STATUTORY/OTHER AUTHORITY: ORS 305.100, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapters 122, section 66, as amended by Oregon Laws 2019, chapter 579, section 54

ADOPT: 150-317-1040

RULE TITLE: Sourcing Commercial Activity Other Than Sales of Tangible Personal Property in This State

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 Oregon Laws 2019, chapter 122, section 66, as amended by Oregon Laws 2019, chapter 579, section 54.

RULE TEXT:

(1) General Rule. Receipts, other than receipts from sale of tangible personal property, are sourced to Oregon under Oregon Laws 2019, chapter 122, section 66(1)(a), (b), (d), and (e), as amended by Oregon Laws, chapter 579, section 54 as described in this rule. This rule does not address sourcing of receipts of financial institutions or insurers as defined in Oregon Laws 2019, chapter 122, section 58, as amended by Oregon Laws 2019, chapter 579, section 50. 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

(i) General Rule

(ii) In-Person Services

(iii) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer

(iv) Professional Services

(E) License or Lease of Intangible Property

(i) General rule

(ii) License of a Marketing Intangible

(iii) License of a Production Intangible

(iv) License of a Mixed Intangible

(v) License of Intangible Property where Substance of the Transaction Resembles a Sale of Goods or Services

(F) Sale of Intangible Property: Assignment of Receipts

(G) Special Rules

(i) Software Transactions

(ii) Sales or Licenses of Digital Goods and Services

(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 Oregon Laws 2019, chapter 122, section 58(1)(b)(FF), as amended by Oregon Laws 2019, chapter 579, section 50 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.

(i) 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 Oregon Laws 2019, chapter 122, section 58(5), as amended by Oregon Laws 2019, chapter 579, section 50.

(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 Oregon Laws 2019, chapter 122, section 58(5), as amended by Oregon Laws 2019, chapter 579, section 50. 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 Oregon Laws 2019, chapter 122, section 58(5), as amended by Oregon Laws 2019, chapter 579, section 50, 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 Oregon Laws 2019, chapter 122, section 58(5), as amended by Oregon Laws 2019, chapter 579, section 50, 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 Oregon Laws 2019, chapter 122, section 66, as amended by Oregon Laws 2019, chapter 579, section 54 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, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, section 66, as amended by Oregon Laws 2019, chapter 579, section 54

ADOPT: 150-317-1100

RULE TITLE: Agent Exclusion

RULE SUMMARY: Provides guidance to assist taxpayers in determining whether they are acting as an agent for purposes of the exclusion provided by Oregon Laws 2019, chapter 122, section 58(1)(b)(M), as amended by Oregon Laws 2019, chapter 579, section 50 of the Corporate Activity Tax (CAT).

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 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: On January 1, 2020, Rothko Piano Company (an accrual basis taxpayer) agrees to renovate a concert piano for Mr. Smith. It is intended that the renovated piano will be used for concerts. Mr. Smith retains control of all aspects of the renovation project. Mr. Smith provides a piano with a fair market value of \$10 million to Rothko Piano. The renovation period is nine months. Rothko Piano charges a fee of \$500,000 due on completion of the piano renovation. In addition, Rothko Piano's fee includes a commission of \$1,000 for each concert performed using the piano. Rothko Piano does not include the fair market value of the piano in its commercial activity, as it is holding the piano pursuant to an agency agreement with Mr. Smith. However, Rothko Piano must include the \$500,000 fee in its 2020 commercial activity. In addition, Rothko Piano includes the concert commissions in its commercial activity after each concert is performed.

Example 3: Human Resource Services, Inc. (HRS) provides payroll, human resources, and benefits services for small businesses for a fee. As part of its services provided to small businesses, HRS processes employee payroll; assists the businesses with hiring and firing, FMLA and OFLA regulations; and manages employee insurance benefits. The small businesses pay HRS fees for its services in a lump sum with the amounts due the small businesses' employees for wages earned. HRS does not include in its commercial activity the amount it is holding for the benefit of the small businesses' employees, but it must include in its commercial activity the fees small businesses pay HRS for its services.

Example 4: Assume the same facts as Example 3, except that HRS has a contractual obligation with each small business to pay the small business's employees according to the small business's payroll schedule (e.g. weekly, bi-weekly, semi-monthly, or monthly) and is reimbursed by the small business for the amount of wages that HRS paid the small business's employees. The reimbursement amounts paid to HRS for wages that HRS paid the small business's employees on behalf of the business is not includible in HRS's commercial activity.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2019, chapter 122, section 72, ORS 305.100

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, section 58, as amended by Oregon Laws 2019, chapter 579, section 50

ADOPT: 150-317-1130

RULE TITLE: Property Brought into Oregon

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) under Oregon Laws 2019, chapter 122, section 61, as amended by Oregon Laws 2019, chapter 579, section 51.

RULE TEXT:

(1) Oregon Laws 2019, chapter 122, section 61 as amended by Oregon Laws 2019, chapter 579, section 51 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.

(4) 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.

(5) 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.

(6) 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, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: ORS Oregon Laws 2019, chapter 122, section 61 as amended by Oregon Laws 2019, chapter 579, section 5

ADOPT: 150-317-1200

RULE TITLE: Cost Input or Labor Cost Subtraction

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) under Oregon Laws 2019, chapter 122, section 64, as amended by Oregon Laws 2019, chapter 579, section 53.

RULE TEXT:

- (1) The subtraction provided in Oregon Laws 2019, chapter 122, section 64 includes all labor cost or cost input expenses of a taxpayer regardless of the place the labor cost or cost input is incurred. If a taxpayer excludes the 15 percent of labor costs paid to subcontractors from the taxpayer's commercial activity pursuant to Oregon Laws 2019, chapter 579, section 58, the taxpayer must reduce the total cost inputs described in Oregon Laws 2019 chapter 122, section 64(1)(a) [before applying the 35 percent limitation in Oregon Laws 64(1)] by an amount equal to the amount excluded from commercial activity pursuant to Oregon Laws 2019, chapter 579, section 58.
- (2) A taxpayer must apportion the labor cost or cost input subtraction, computed as provided in section (1), by means of a 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 taxpayer's total commercial activity everywhere plus exclusions from commercial activity. A taxpayer determines the costs apportioned to Oregon by multiplying the total labor costs everywhere or total cost inputs everywhere by the taxpayer's commercial activity ratio.
- (3) The subtraction is 35 percent of the taxpayer's costs apportioned to Oregon, limited to 95 percent of the taxpayer's Oregon commercial activity.
- (4) As an alternative to the method described in section (2), a taxpayer may elect the use of separate accounting to remove all cost inputs or labor cost from the subtraction that are attributable to a person's receipts from an item that is not Oregon commercial activity.

Example 1: Grocery & TV Mart has \$10 million of Oregon commercial activity and \$70 million of everywhere commercial activity plus exclusions (\$50 million in commercial activity and \$20 million in exclusions from commercial activity). Grocery & TV Mart has an everywhere labor cost of \$28 million and everywhere cost input of \$26 million.

Grocery & TV Mart computes the Oregon subtraction as follows:

Step 1: Determine the commercial activity ratio.

Oregon commercial activity of \$10 million / everywhere commercial activity plus exclusions of \$70 million = 14.2857% commercial activity ratio.

Step 2: Determine the cost subtraction. In this example, labor costs are greater than cost inputs. Total labor cost of \$28 million x commercial activity ratio of 14.2857% x 35% = \$1,399,999 cost subtraction.

Example 2: Construction Company XYZ has \$10 million of Oregon commercial activity and \$70 million of everywhere commercial activity plus exclusions (\$50 million in commercial activity and \$20 million in exclusions from commercial activity). Construction Company XYZ has an everywhere labor cost of \$2 million and everywhere cost input of \$38 million. A total of \$3 million of Construction Company XYZ's cost input represents labor costs paid to subcontractors for the construction of single-family residential construction in Oregon and qualifies as an exclusion pursuant to Oregon Laws 2019, chapter 579, section 58.

Construction Company XYZ computes the Oregon subtraction as follows:

Step 1: Determine the commercial activity ratio.

Oregon commercial activity of \$10 million / everywhere commercial activity plus exclusions of \$70 million = 14.2857% commercial activity ratio.

Step 2: Determine the cost subtraction. In this example, cost inputs are greater than labor costs. If Construction Company XYZ excludes labor costs paid to subcontractors from the commercial activity pursuant to Oregon Laws 2019, chapter 579, section 58, the everywhere cost input must be reduced by an amount equal to this exclusion. The \$38

million of total cost inputs must be reduced by \$450,000 (15% of the \$3 million of qualifying labor costs paid to subcontractors). Adjusted cost inputs of \$37,550,000 (\$38 million - \$450,000) x commercial activity ratio of 14.2857% x 35% = \$1,877,498 cost subtraction.

(5) Notwithstanding section (1), a taxpayer may petition the department for alternative apportionment, or the department may require alternative apportionment if the application of section (2) does not fairly represent the labor cost or cost input subtraction attributable to the taxpayer's commercial activity.

(6) A petition to use an alternative method of apportionment 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) 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 arrive at a fair and accurate measure of 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) Examples of alternative methods of apportionment include:

(a) A modification to the ratio which will fairly and accurately reflect the taxpayer's costs attributable to receipts from commercial activity in Oregon; or

(b) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's costs attributable to receipts from commercial activity.

STATUTORY/OTHER AUTHORITY: ORS 305.100, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, section 64, as amended by Oregon Laws 2019, chapter 579, section 53

RULE TITLE: Estimated Tax: When Estimated Payments Are Required

RULE SUMMARY: Provides guidance to taxpayers in determining when estimated corporate activity tax 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.

RULE TEXT:

(1) Estimated tax liability means the tax as computed under Oregon Laws 2019, chapter 122 and 579, 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 four 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 four months or longer but less than six months, one payment of one-half of the estimated tax is required and due on the 15th day of the fourth month, and the balance 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 15th day of the fourth month, one-third on the 15th day of the sixth month and the balance 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 15th day of the fourth month, one-fourth on the 15th day of the sixth month, one-fourth on the 15th day of the ninth month, and the balance on or before the due date of the tax return, not including extensions.

(6) Tax exempt persons subject to tax on their "Unrelated Business Income" that are required to file and pay federal income tax, must also file an Oregon CAT return. If their expected Oregon tax liability is more than \$5,000, 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 are required to make estimated CAT payments by electronic funds transfer (EFT).

(11) A person disadvantaged by the requirement to pay by EFT may request an exemption. The request must be in writing and sent to the address for EFT registration. The request must explain why the requirement to pay by EFT is a disadvantage to the taxpayer. An example of a disadvantage to the taxpayer is when the taxpayer's bank or the bank of the taxpayer's payroll service is unable to provide the service. Requests for an exemption will be evaluated on a case-by-case basis. If granted, the exemption will be for a period of 12 months, during which the taxpayer is expected to make arrangements to comply with the requirement to use EFT. The department will grant only one exemption period to a taxpayer.

STATUTORY/OTHER AUTHORITY: Oregon Laws 2019, chapter 122, section 72, ORS 305.100

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chap 122, sections 70 and 74, as amended by Oregon Laws 2019, chap 579, section 56, ORS 314.415, 314.505, 314.515, 314.518, 317.290

ADOPT: 150-317-1310

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

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.

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 payment 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 each estimated tax payment 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 three months or for the first five months of the taxable year, in the case of the installment required to be paid in the sixth month;

(C) For the first six months or for the first eight months of the taxable year, in the case of the installment required to be paid in the ninth month; and

(D) For the first nine months or for the first 11 months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(e) An amount equal to 100 percent of the amount obtained by calculating Oregon taxable commercial activity for any person with seasonal commercial activity as follows:

(A) In the case of any required installment, the amount of the adjusted seasonal installment is the excess (if any) of:

(i) 100 percent of the amount determined under subparagraph (D),

(ii) the aggregate amount of all prior required installments for the taxable year.

(B) This subsection only applies if the base period percentage for any six consecutive months of the taxable year equals or exceeds 70 percent.

(C) For purposes of this subsection, the following rules and definitions apply:

(i) Base period percentage. The base period for any period of months is the average percent that the taxable commercial activity for the corresponding months in each of the three preceding taxable years bears to the taxable commercial activity for the three preceding taxable years.

(ii) Filing month. The term "filing month" means the month in which the installment is required to be paid.

(D) Determination of amount. The amount determined under this subparagraph for any installment is determined in the

following manner:

- (i) Take the taxable commercial activity for all months during the taxable year preceding the filing month,
 - (ii) Divide such amount by the base period percentage for all months during the taxable year preceding the filing month,
 - (iii) Determine the tax on the amount determined under clause (ii), and
 - (iv) Multiply the tax computed under clause (iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.
- (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 income results in a net annualized tax of \$10 or less.
- (8) Underpayment charges 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, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: OR Laws 2019, chapters 122, secs 70, 74, 77 & 78, as amended by OR Laws 2019, chapter 579, sec 56, ORS 314.525

ADOPT: 150-317-1320

RULE TITLE: Estimated Tax: Unitary Groups and Apportioned Returns

RULE SUMMARY: Provides guidance to taxpayers regarding corporate activity estimated tax payment obligations for unitary groups of taxpayers filing a single return, and for those who must apportion their commercial activity.

RULE TEXT:

(1) If two or more entities file a single Corporate Activity Tax (CAT) return as a unitary group, as described in Oregon Laws 2019, chapter 122, section 58(19), as amended by Oregon Laws 2019, chapter 579, section 50, 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 Oregon Laws 2019, chapter 122, section 64, as amended by Oregon Laws 2019, chapter 579, section 53, 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, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, sections 60, 62, and 74, Oregon Laws 2019, chapter 122, section 70, as amended by Oregon Laws 2019, chapter 579, section 56, ORS 314.505, 314.525

ADOPT: 150-317-1330

RULE TITLE: Extension of Time to File

RULE SUMMARY: Oregon Laws 2019, chapter 122, section 70(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, Oregon Laws 2019, chapter 122, section 70, as amended by Oregon Laws 2019, chapter 579, section 56, Oregon Laws 2019, chapter 122, section 72

STATUTES/OTHER IMPLEMENTED: Oregon Laws 2019, chapter 122, section 70, as amended by Oregon Laws 2019, chapter 579, section 56