

ADMINISTRATIVE RULE REVIEW

New Rule	Rule No. 150-317-1100	Last Revised Date December 9, 2019
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Temporary Rule - DRAFT	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE: Establish 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).

1 **150-317-1100**

2 **Agent Exclusion**

3 (1) “Agent” means a person who is acting on behalf of another, and is subject to that other person’s
4 control.

5 (2) All facts and circumstances must be considered to determine if a person is an agent.

6 (3) An agent may exclude the fair market value of property, money and other amounts from their
7 commercial activity only to the extent the property, money and other amounts are received or acquired on
8 behalf of the person who controls the agent.

9 (4) An agent must include the agent’s fee, commission or remuneration in the agent’s commercial
10 activity. An agent’s commercial activity includes any property, money and other amounts that an agent
11 retains from the property, money and other amounts received on behalf of the principal to pay the agent’s
12 commission, fee or remuneration.

13 (5) *Examples.*

14 **Example 1:** On June 30, 2020, York Escrow Company agrees to hold \$60,000 for a real estate down
15 payment on behalf of Mr. Thomas. Mr. Thomas has the ability to direct payment of the real estate down
16 payment. York Escrow Company charges Mr. Thomas a three percent fee (\$1,800) for the escrow
17 services. York Escrow Company does not include the \$60,000 real estate down payment in its
18 commercial activity. However, York Escrow Company must include the \$1,800 fee in its commercial
19 activity.

20 **Example 2:** On January 1, 2020, Rothko Piano Company (an accrual basis taxpayer) agrees to renovate a
21 concert piano for Mr. Smith. It is intended that the renovated piano will be used for concerts. Mr. Smith
22 retains control of all aspects of the renovation project. Mr. Smith provides a piano with a fair market
23 value of \$10 million to Rothko Piano. The renovation period is nine months. Rothko Piano charges a fee

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- 1 of \$500,000 due on completion of the piano renovation. In addition, Rothko Piano’s fee includes a
 2 commission of \$1,000 for each concert performed using the piano.
- 3 Rothko Piano does not include the fair market value of the piano in its commercial activity, as it is
 4 holding the piano pursuant to an agency agreement with Mr. Smith. However, Rothko Piano must
 5 include the \$500,000 fee in its 2020 commercial activity. In addition, Rothko Piano includes the concert
 6 commissions in its commercial activity after each concert is performed.
- 7 **Example 3:** Human Resource Services, Inc. (HRS) provides payroll, human resources, and benefits
 8 services for small businesses for a fee. As part of its services provided to small businesses, HRS
 9 processes employee payroll; assists the businesses with hiring and firing, FMLA and OFLA regulations;
 10 and manages employee insurance benefits. The small businesses pay HRS fees for its services in a lump
 11 sum with the amounts due the small businesses’ employees for wages earned. HRS does not include in its
 12 commercial activity the amount it is holding for the benefit of the small businesses’ employees, but it
 13 must include in its commercial activity the fees small businesses pay HRS for its services.
- 14 **Example 4:** Assume the same facts as Example 3, except that HRS has a contractual obligation with each
 15 small business to pay the small business’s employees according to the small business’s payroll schedule
 16 (e.g. weekly, bi-weekly, semi-monthly, or monthly) and is reimbursed by the small business for the
 17 amount of wages that HRS paid the small business’s employees. The reimbursement amounts paid to
 18 HRS for wages that HRS paid the small business’s employees on behalf of the business is not includible
 19 in HRS’s commercial activity.
- 20 **Stat. Auth.:** ORS 305.100, Oregon Laws 2019, chapter 122, section 72
- 21 **Stats. Implemented:** Oregon Laws 2019, chapter 122, section 58, as amended by Oregon Laws 2019,
 22 chapter 579, section 50