

ADMINISTRATIVE RULE REVIEW

New Rule Temporary Rule – DRAFT	Rule No. 150-317-1140	
	Page Page 1 of 5	Last Revised Date January 21, 2020
	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE: Provide guidance to assist taxpayers in determining whether receipts from wholesale sales of food items are excludable under Oregon Laws 2019, chapter 122, section 58(1)(b)(EE), as amended by Oregon Laws 2019, chapter 579, section 50.

1 **150-317-1140**

2 **Wholesale Sale of Groceries Exclusion**

3 (1) *Definitions*

4 (a) “Processing” means transforming or changing the physical characteristics of an item, including
 5 incorporation or consumption of an item as an ingredient or component in the production or manufacture
 6 of another item. “Processing” includes activities such as (but not limited to): baking, canning, churning,
 7 cooking, concentrating, cutting, dehydrating, drying, extracting, freezing, heating, grinding, mixing,
 8 pasteurizing, preserving, or otherwise altering, manufacturing, or producing an item. For purposes of this
 9 rule, “processing” does not include activities conducted by a retail store in assembling, cleaning,
 10 preparing, storing, handling or displaying groceries for retail sale to the final consumer for home
 11 consumption. Retail store activities such as preparing filleted or gutted fish, produce trimming, and
 12 processed meat and cheese slicing, are not processing as defined in this rule, provided that such activities
 13 are conducted by a retail store as part of the services they offer to their customers.

14 (b) “Store” for purposes of this rule, refers to the location from which a taxpayer sells goods at retail to
 15 the final consumer for home consumption. “Store” includes both physical locations and online
 16 storefronts.

17 (c) “Wholesale sale” is the sale of goods to a purchaser for the purpose of resale without further
 18 processing in the regular course of the purchaser’s trade or business. A wholesale sale of groceries, for
 19 purposes of the exclusion in Oregon Laws 2019, chapter 122, section 58(1)(b)(EE), as amended by
 20 Oregon Laws 2019, chapter 579, section 50, may be determined by using factors such as (but not limited
 21 to):

22 (A) The sale is of grocery items in a quantity usable for resale, or materially in excess of the total
 23 quantity of goods that are, on average, purchased by a member of the consuming public.

24 (B) The items are sold at a discounted price from the fair market value of the items if sold at retail.

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- 1 (C) The sale is made to another business entity.
- 2 (2) The list of factors in sections (1)(c)(A) through (1)(c)(C) are nonexclusive. The factors will be
- 3 considered based on facts and circumstances and only to the extent that they are relevant. The department
- 4 may consider any other relevant factors and circumstances.
- 5 (3) *Excludable Receipts from Wholesale Sales.* A person may exclude receipts realized from the
- 6 wholesale sale of groceries, as that term is defined in Oregon Laws 2019, chapter 122, section 58(8), as
- 7 amended by Oregon Laws 2019, chapter 579, section 50, provided that the sales transaction meets the
- 8 following requirements:
- 9 (a) The transaction is a wholesale sale;
- 10 (b) The items sold in the transaction are food or food products that meet the definition of groceries, in a
- 11 form that may be resold to the final consumer for home consumption without processing;
- 12 (c) The sale is made to a purchaser for the purpose of reselling the groceries to the final consumer for
- 13 home consumption; and
- 14 (d) The wholesale seller obtains written verification from the purchaser that the purchased groceries will
- 15 be resold without processing, by a store that typically sells groceries to the final consumer for home
- 16 consumption.
- 17 (4) *Documentation Required for Verification.* A wholesale seller must retain sufficient documentation to
- 18 demonstrate the requirements in section (3) have been met. Any document may serve as verification,
- 19 provided that it contains the following information:
- 20 (a) The purchaser’s name and address;
- 21 (b) The date of the purchase, the item(s) purchased, and the amount purchased; and
- 22 (c) Verification from the purchaser of the amount of the purchase that will be resold, without processing,
- 23 to the final consumer for home consumption.
- 24 (5) *Safe Harbor for Wholesale Sales to Stores Authorized as Retail Food Stores, or Qualifying as Retail*

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1 *Food Stores for purposes of the Supplemental Nutrition Assistance Program (SNAP).* A wholesale seller
 2 is not required to obtain separate verification from the purchaser if the purchaser is a qualified SNAP
 3 retailer with a current permit to accept SNAP benefits issued by the U.S. Department of Agriculture, and
 4 the purchase was made for the purpose of resale of groceries at a store authorized as a retail food store
 5 under 7 U.S.C. 2012(o). The wholesale seller must retain sufficient documentation to demonstrate that
 6 the sale was made to an authorized retail food store under 7 U.S.C. 2012(o).

7 (6) *Examples.*

8 **Example 1:** Braddock Wholesale LLC purchases prepackaged frozen vegetables and meals from a food
 9 manufacturer and sells the items, without processing the purchased items in any way, to their customers.
 10 One of Braddock's customers, Harris Grocery, has six stores located throughout the state. All six Harris
 11 stores are authorized as retail food stores under 7 U.S.C. 2012(o). Braddock sells prepackaged frozen
 12 vegetables and frozen meals to Harris Grocery. Under the terms of the sales agreement, Braddock
 13 delivers 1,000 frozen meals and 5,000 10-ounce packages of frozen broccoli directly to each Harris store.
 14 Braddock retains records of the sales contracts documenting that the items sold were groceries in a form
 15 that may be resold to consumers for home consumption without further processing, and that Braddock
 16 delivered the purchased groceries directly to a store that is authorized as a retail food store under 7
 17 U.S.C. 2012(o). The sales contract, with the information specified above, is sufficient to verify that the
 18 receipts from the wholesale sales transaction are excludable under Oregon Laws 2019, chapter 122,
 19 section 58(1)(b)(EE), as amended by Oregon Laws 2019, chapter 579, section 50.

20 **Example 2:** Assume the same facts in Example 1, except that Braddock's customer is Columbia
 21 Cupboards LLC (Columbia). Columbia has three stores located across the state. None of Columbia's
 22 stores are authorized as retail food stores under 7 U.S.C. 2012(o). As such, Braddock must obtain
 23 verification from Columbia that the frozen meals are purchased for the purpose of resale, without
 24 processing, and that the meals are typically sold to the ultimate final consumer for consumption at home.

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- 1 Under the terms of the sales agreement between Braddock Wholesale and Columbia Cupboards LLC,
 2 Braddock delivers 100 frozen meals to each of Columbia’s three stores. The sales agreement specifically
 3 states that the purchaser (Columbia) is purchasing the frozen meals for resale without any further
 4 processing, and the meals will be sold by three Columbia Cupboard stores, all of which typically sell
 5 groceries to the final consumer for home consumption. The sales agreement, with the information
 6 specified above, verifies that the receipts from the wholesale sales transaction are excludable under
 7 Oregon Laws 2019, chapter 122, section 58(1)(b)(EE), as amended by Oregon Laws 2019, chapter 579,
 8 section 50.
- 9 **Example 3:** Assume the same facts as Example 1, except that Braddock’s customer is Foxtrot Airlines.
 10 Foxtrot Airlines purchases 5,000 frozen meals from Braddock. The meals will be heated and served to
 11 the airline’s customers during flights. Because Foxtrot Airlines will process (heat) the frozen meals
 12 before the meals are served to its passengers, and because Foxtrot Airlines does not typically sell directly
 13 to the final consumer for home consumption, Braddock cannot exclude the receipts from the transaction
 14 as a wholesale sale of groceries. Braddock will include the receipts from the sale to Foxtrot Airlines as
 15 commercial activity.
- 16 **Example 4:** Assume the same facts as Example 1, except that Braddock’s customer is Farragut
 17 Corporation. Farragut Corporation operates 144 grocery stores across the state, under the name Good
 18 Grocery. All Good Grocery stores are authorized as retail food stores under 7 U.S.C. 2012(o). In
 19 addition, Farragut Corporation has fifty separately located restaurants operating under the name
 20 Greenbelt Diner. Farragut Corporation purchases 500,000 10-ounce packages of frozen broccoli from
 21 Braddock. Under the terms of the sales agreement, all of the items are delivered to a centralized
 22 warehouse owned by Farragut Corporation. Farragut will then distribute the prepackaged broccoli as
 23 needed to their grocery stores and restaurants. The prepackaged frozen broccoli is in a form that may be
 24 resold to the final consumer for home consumption without further processing. However, Braddock

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1 cannot determine whether the prepackaged frozen broccoli, after being delivered, will be sold at
 2 Farragut’s Good Grocery stores which typically sell groceries to consumers for home consumption, or
 3 used by Farragut’s Greenbelt Diners, where the broccoli will be cooked and incorporated as an ingredient
 4 in hot meals served to patrons. Braddock obtains written verification from Farragut Corporation, who
 5 certifies that of the 500,000 packages of frozen broccoli purchased, 400,000 packages will be sold in
 6 Farragut’s Good Grocery stores, which are authorized as retail food stores under 7 U.S.C. 2012(o), and
 7 100,000 packages will be used by Farragut’s Greenbelt Diners. Braddock may exclude from commercial
 8 activity the receipts from the sale of 400,000 packages of frozen broccoli as receipts from the wholesale
 9 sale of groceries excluded under Oregon Laws 2019, chapter 122, section 58(1)(b)(EE), as amended by
 10 Oregon Laws 2019, chapter 579, section 50. Braddock must include in commercial activity its receipts
 11 from the sale of 100,000 packages of frozen broccoli that will be used by Farragut’s Greenbelt Diners.
 12 **Publications:** Contact the Oregon Department of Revenue for information about how to obtain a copy of
 13 the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS
 14 183.355(1)(b).
 15 **Stat. Auth.:** ORS 305.100, Oregon Laws 2019, chapter 122, section 72
 16 **Stats. Implemented:** Oregon Laws 2019, chapter 122, section 58(1)(b)(EE) and 58(8), as amended by
 17 Oregon Laws 2019, chapter 579, section 50