

ADMINISTRATIVE RULE REVIEW

New Rule	Rule No. 150-317-1400	
	Page Page 1 of 3	Last Revised Date January 23, 2020
	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE: Provides guidance to sellers and wholesalers regarding the exclusion from commercial activity for property purchased for resale out of state, as provided by Oregon Laws 2019, chapter 122, section 58(1)(b)(DD), as amended by Oregon Laws 2019, chapter 579, section 50.

1 **150-317-1400**

2 **Determining Property Resold Out of State, and Methods of Determining**

3 (1) *Out-of-State Resale Certificate*. A wholesaler purchasing property for the purpose of resale may, at  
4 the time the purchase is made, provide the seller of the property with an out-of-state resale certificate,  
5 declaring the amount of purchased property that the wholesaler will resell out of Oregon. The out-of-state  
6 resale certificate qualifies as the certification required under Oregon Laws 2019, chapter 122, section  
7 58(1)(b)(DD), as amended by Oregon Laws 2019, chapter 579, section 50. Any document provided by  
8 the wholesaler to the seller at the time of the sale may serve as an out-of-state resale certificate provided  
9 that the document contains:

- 10 (a) The wholesaler's legal name and Oregon address;
- 11 (b) The wholesaler's federal tax identification number;
- 12 (c) The date of the purchase;
- 13 (d) The total amount of purchased property;
- 14 (e) The purchase price paid by the wholesaler;
- 15 (f) The dollar amount of purchased property that the wholesaler will resell outside of Oregon; and
- 16 (g) The signature of the wholesaler, their authorized representative, or employee, certifying that the  
17 person is a wholesaler as that term is defined in Oregon Laws 2019, chapter 122, section 58(20), as  
18 amended by Oregon Laws 2019, chapter 579, section 50.

19 (2) *Reasonable Methods to Determine the Amount of Purchased Property Sold Out of State*. The  
20 wholesaler must determine the amount of purchased property that will be sold out of Oregon based on the  
21 facts available at the time the wholesaler purchases the property from the seller. If, at the time of  
22 purchase, the wholesaler is unable to determine the amount of the purchased property that the wholesaler  
23 will resell out of Oregon, the wholesaler may use the approximation ratio prescribed in section (3) of this  
24 rule to estimate the amount of purchased property that will be sold in Oregon and out of state.

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1 (3) *Approximation Ratio to Estimate Out-of-State Sales.* The approximation ratio is a fraction. The  
 2 numerator is the amount of commercial activity the wholesaler realized from sales to Oregon customers  
 3 in the prior year. The denominator is the amount of commercial activity the wholesaler realized from all  
 4 sales during the prior year. Wholesalers located in multiple states may only include in the numerator and  
 5 denominator their commercial activity realized from property delivered from their Oregon locations.  
 6 Sales of property delivered from the wholesaler’s locations outside of Oregon are not included in the  
 7 ratio.

8 **Example 1:** Alpha Corp. is a wholesaler with one location in Klamath Falls, Oregon. Alpha generally  
 9 purchases widgets for resale to out-of-state customers. In March 2020, Alpha purchases 5,000 widgets  
 10 from Indigo LLC, paying a total of \$500,000 for the purchased widgets. At the time of the purchase,  
 11 Alpha is unable to determine the exact number of widgets that will be sold out-of-state, and, therefore,  
 12 must approximate using the ratio in section (3). In 2019, Alpha realized a total of \$2 million dollars of  
 13 commercial activity from the sale of widgets delivered from their Klamath Falls location to customers  
 14 everywhere, including \$100,000 to Oregon customers delivered from Alpha’s Klamath Falls location.  
 15 Alpha calculates their approximation ratio by dividing Oregon commercial activity by everywhere  
 16 commercial activity ( $\$100,000 / \$2,000,000$ ), resulting in an approximation ratio of 0.05. Alpha applies  
 17 the approximation ratio of 0.05 to the purchase price ( $\$500,000 \times 0.05 = \$25,000$ ). Of the total \$500,000  
 18 widget purchase, Alpha approximates that \$25,000 will be resold in Oregon, and \$475,000 will be resold  
 19 out of Oregon. Alpha provides Indigo LLC with an out-of-state resale certificate documenting that  
 20 \$475,000 worth of the purchased widgets will be sold out of Oregon. While Indigo LLC realized  
 21 \$500,000 of commercial activity from the sale to Alpha, only \$25,000 of receipts from the sale will be  
 22 included in Indigo’s commercial activity; Indigo will exclude \$475,000 of receipts.

23 (4) *Alternative Methods of Determining Out-of-State Sales.* (a) If the wholesaler knows or reasonably  
 24 should have known at the time of the wholesaler’s purchase that the approximation ratio in section (3)

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1 does not fairly and accurately approximate the wholesaler’s in-state and out-of-state sales, the wholesaler  
 2 may not use the ratio in section (3) but may use a reasonable alternative method of approximation. The  
 3 wholesaler must document the method used, including a complete explanation of the alternative method,  
 4 how the method was determined, and why the approximation ratio method prescribed in section (3) of  
 5 this rule is not a fair approximation of the wholesaler’s sales. Once an alternative method has been used,  
 6 the wholesaler must continue to use the same method, unless the alternative method is no longer a fair  
 7 and accurate approximation of the in-state and out-of-state sales. All changes to the alternative method  
 8 must be documented and retained in the wholesaler’s records.

9 **Example 2:** The facts are the same as Example 1, except that Alpha knows in March 2020 that it expects  
 10 to sell half its widget inventory from the Klamath Falls location to Oregon customers during 2020.  
 11 Alpha may not use the approximation ration in section (3), but may use an alternative method to  
 12 reasonably approximate the ratio of in-state and out-of-state sales. Of the total \$500,000 widget  
 13 purchase, Alpha approximates that \$250,000 will be resold to Oregon customers. Alpha provides Indigo  
 14 with an out-of-state resale certificate documenting that \$250,000 of the purchased widgets will be resold  
 15 out of Oregon. Indigo may exclude \$250,000 of receipts from its sale to Alpha from Indigo’s  
 16 commercial activity.

17 (5) If the department, upon audit, determines that the wholesaler’s approximation ratio under section (3)  
 18 or alternative method of approximation under section (4) does not fairly and accurately reflect the  
 19 wholesaler’s in-state and out-of-state sales, the wholesaler must immediately discontinue use of the ratio  
 20 or alternative method.

21 **Stat. Auth.:** ORS 305.100, Oregon Laws 2019, chapter 122, section 72

22 **Stats. Implemented:** Oregon Laws 2019, chapter 122, section 58(1)(b)(DD) as amended by Oregon  
 23 Laws 2019, chapter 579, section 50