

ADMINISTRATIVE RULE REVIEW

Adopt Rule Permanent Rule - DRAFT	Rule No. 150-317-1050	
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PURPOSE: Provide guidance to assist taxpayers in determining the sourcing of commercial activity for financial institutions for the purposes of the Corporate Activity Tax under Oregon Revised Statute (ORS) 317A.

1 **150-317-1050**

2 **Sourcing of Commercial Activity for Financial Institutions in This State**

3 (1) *General Rule.* Commercial activity for financial institutions is sourced to this state if it is from
 4 business conducted in this state. Commercial activity for financial institutions is the items of income as
 5 reported on the form required under ORS 317A.100(1)(a)(B)(i)-(iii). The provisions in this rule establish
 6 uniform rules for determining whether the items of income as reported on the appropriate form filed by a
 7 financial institution are sourced to this state.

8 (2) A taxpayer may request an alternative method, and the Department of Revenue may require or permit
 9 an alternative method under ORS 317A.128(2)-(3).

10 (3) *Definitions as used in this rule, unless context otherwise requires:*

11 (a) "Billing address" means the location indicated in the books and records of the taxpayer on first day of
 12 the taxable year (or such later dates in the taxable year when the customer relationship began) as the
 13 address where any notice, statement, or bill relating to a customer account is mailed.

14 (b) "Borrow or credit card holder located in this state" means:

15 (A) A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its
 16 commercial domicile in this state; or

17 (B) A borrower that is not engaged in trade or business or a credit card holder whose billing address is in
 18 this state.

19 (c) "Card issuers reimburse fee" means the fee a taxpayer receives from a merchant's bank because one
 20 of the persons to whom the taxpayer has issued a credit, debit, or similar type of card has charged
 21 merchandise or services to the card.

22 (d) "Credit card" means a card, or other means of providing information, that entitles the holder to charge
 23 the cost of purchase, or a cash advance, against a line of credit.

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- 1 (e) Debit card means a card, or other means of providing information, that enables the holder to charge
 2 the cost of purchases, or a cash withdrawal, against the holder’s bank account or a remaining balance on
 3 the card.
- 4 (f) “Financial institutions” means a person, corporation or other business entity under ORS 314.610,
 5 excluding credit unions.
- 6 (g) “Form” means forms FR Y-9 filed by a holding company; call report filed by a bank organization.
- 7 (h) “Items of income” means the individual items reported on the form filed by a holding company or
 8 bank organization or items reported by a nonbank financial organization in accordance with generally
 9 accepted accounting principles under ORS 314.605. If such individual items are net for the purposes of
 10 the form, those individual items are net for the purpose of this tax under ORS 317A.100(1)(a)(B)(i)-(iii).
- 11 (i) “Loan” means any extension of credit resulting from direct negotiations between the taxpayer and its
 12 customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include
 13 participations, syndications, and leases treated as loans for federal income tax purposes. Loans do not
 14 include: loans representing property acquired in lieu of or pursuant to a foreclosure under IRC section
 15 595; futures or forward contracts; options; notional principal contracts such as swaps; credit card
 16 receivables, including purchased credit card relationships; noninterest bearing balances due from other
 17 depository institutions; cash items in the process of collection; federal funds sold; securities purchased
 18 under agreements to resell; assets held in a trading account; securities; interests in a REMIC, or other
 19 mortgage-backed or asset-backed security; and other similar items.
- 20 (j) “Loan secured by real property” means that 50 percent or more of the aggregate value of the collateral
 21 used to secure a loan or other obligation, when valued at fair market value as of the time the original loan
 22 or obligation was incurred, was real property.
- 23 (k) “Merchant discount” means the fee (or negotiated discount) charged to a merchant by the taxpayer for

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- 1 the privilege of participating in a program whereby a credit, debit, or similar type of card is accepted in
 2 payment for merchandise or services sold to the card holder, net of any cardholder charge-back and
 3 unreduced by any interchange transaction or issuer reimbursement fee paid to another for charges or
 4 purchases made its cardholder.
- 5 (l) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro
 6 rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit
 7 originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The
 8 participation may or may not be known to the borrower.
- 9 (m) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.
- 10 (n) "Principal base of operations" with respect to transportation property means the place of more or less
 11 permanent nature from which said property is regularly directed or controlled. With respect to an
 12 employee, the "principal base of operations" means the place of more or less permanent nature from
 13 which the employee regularly:
- 14 (A) Starts his or her work and to which the employee customarily returns in order to receive instructions
 15 from the employer, or
- 16 (B) Communicates with customers or other persons, or
- 17 (C) Performs any other functions necessary to the exercise of the employee's trade or profession at some
 18 other point or points.
- 19 (o) "Real property owned" and "tangible personal property owned" means real and tangible personal
 20 property, respectively,
- 21 (A) On which the taxpayer may claim depreciation for federal income tax purposes; or
- 22 (B) Property to which the taxpayer holds legal title and on which no other person may claim depreciation
 23 for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and

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- 1 tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a
 2 foreclosure.
- 3 (p) “Regular place of business” means an office at which the taxpayer conducts business in a regular and
 4 systematic manner and that is continuously maintained, occupied, and used by employees of the
 5 taxpayer.
- 6 (q) “State” is defined in ORS 314.610(8).
- 7 (r) “Syndication” means an extension of credit in which two or more persons fund and each person is at
 8 risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- 9 (s) “Transportation property” means vehicles and vessels capable of moving under their own power, such
 10 as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to
 11 such property, such as rolling stock, barges, trailers, or the like.
- 12 (4) *Sourcing.*
- 13 (a) *In general.* Except as provided elsewhere in OAR 150-317-1050, commercial activity for financial
 14 institutions is sourced to this state as indicated below.
- 15 (b) *Receipts from the sale, rental, lease, or license of real property.* Receipts from the sales, rental, lease,
 16 or license of real property owned by the taxpayer are sourced to this state if and to the extent the property
 17 is in this state or receipts from the sublease of real property if the property is in this state.
- 18 (c) *Receipts from the lease of tangible personal property.*
- 19 (A) Except as described in paragraph (B) of this subsection, receipts from the lease or rental of tangible
 20 personal property owned by the taxpayer are sourced to this state if the property is located within this
 21 state when it is first placed in service by the lessee.
- 22 (B) Receipts from the lease or rental of transportation property owned by the taxpayer are sourced to this
 23 state to the extent that the property is used in this state. The extent an aircraft is deemed to be used in

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- 1 this state is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction,
 2 the numerator of which is the number of landings of the aircraft in this state and the denominator of
 3 which is the total number of landings of the aircraft. If the extent of the use of any transportation
 4 property within this state cannot be determined, then the property is deemed to be used wholly in the
 5 state in which the property has its principal base of operations. A motor vehicle is deemed to be used
 6 wholly in the state in which it is registered.
- 7 *(d) Interest, fees, and penalties imposed in connection with loans secured by real property.*
- 8 (A) Interest, fees, and penalties imposed in connection with loans secured by real property are sourced to
 9 this state if the property is located within this state. If the property is located both within this state and
 10 one or more other states, the receipts described in this subsection are sourced to this state if more than 50
 11 percent of the fair market value of the real property is located within this state. If more than 50 percent
 12 of the fair market value of the real property is not located within any one state, then the receipts
 13 described in this subsection must be sourced to this state if the borrower is located in this state.
- 14 (B) The determination of whether the real property securing a loan is located within this state is made as
 15 of the time the original agreement was made, and any and all subsequent substitutions of collateral are
 16 disregarded.
- 17 *(e) Interest, fees, and penalties imposed in connection with loans not secured by real property.* Interest,
 18 fees, and penalties imposed in connection with loans not secured by real property are sourced to this state
 19 if the borrower is located in this state.
- 20 *(f) Net gains from the sale of loans.* Net gains from the sale of loans are sourced to this state as below.
 21 Net gains from the sale of loans includes income recorded under the coupon stripping rules of IRC
 22 section 1286.
- 23 (A) The amount of net gains (but not less than zero) from the sale of loans secured by real property is

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- 1 sourced to this state by multiplying such net gains by a fraction, the numerator of which is the amount
 2 sourced to this state pursuant to subsection (d) of this section and the denominator of which is the total
 3 amount of interest, fees, and penalties imposed in connection with loans secured by real property.
- 4 (B) The amount of net gains (but not less than zero) from the sale of loans not secured by real property
 5 is sourced to this state by multiplying such net gains by a fraction, the numerator of which is the amount
 6 sourced to this state pursuant to subsection (e) of this section and the denominator of which is the total
 7 amount of interest, fees, and penalties imposed in connection with loans not secured by real property.
- 8 (g) *Receipts from fees, interest, and penalties charged to card holders.* Fees, interest, and penalties
 9 charged to credit, debit, or similar card holders; including but not limited to, annual fees and overdraft
 10 fees, are sourced to this state if the billing address of the card holder is in this state.
- 11 (h) *Net gains from the sale of credit card receivables.* All net gains (but not less than zero) from the sale
 12 of credit card receivables are sourced to this state by multiplying such net gains by a fraction, the
 13 numerator of which is the amount sourced to this state pursuant to subsection (g) of this section and the
 14 denominator of which is the taxpayer's total amount of interest and fees or penalties in the nature of
 15 interest from credit card receivables and fees charged to card holders
- 16 (i) *Card issuer's reimbursement fees.*
- 17 (A) All credit card issuer's reimbursement fees, interest, and penalties charged to credit card holders are
 18 sourced to this state by multiplying such fees, interest and penalties by a fraction, the numerator of which
 19 is the amount sourced to this state pursuant to subsection (g) of this section and the denominator of which
 20 is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders
- 21 (B) All debit card issuer's reimbursement fees, interest, and penalties charged to debit card holders are
 22 sourced to this state by multiplying such fees, interest and penalties by a fraction, the numerator of which
 23 is the amount sourced to this state pursuant to subsection (g) of this section and the denominator of

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- 1 which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders
- 2 (C) All other card issuer's reimbursement fees, interest, and penalties charged to all other card holders are
- 3 sourced to this state by multiplying such fees, interest and penalties by a fraction, the numerator of which
- 4 is the amount sourced to this state pursuant to subsection (g) of this section and the denominator of which
- 5 is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders.
- 6 (j) *Receipts from merchant discount.*
- 7 (A) If the taxpayer can readily determine the location of the merchant, receipts from merchant discount
- 8 are sourced to this state if the merchant is in this state.
- 9 (B) If the taxpayer cannot readily determine the location of the merchant, such receipts from the
- 10 merchant discount are sourced to this state as follows:
- 11 (i) In the case of a merchant discount related to the use of a credit card, such receipts multiplied by a
- 12 fraction the numerator of which is the amount of fees, interest, and penalties charged to credit card
- 13 holders that is sourced to this state pursuant to subsection (g) of this section and the denominator of
- 14 which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders, and
- 15 (ii) In the case of a merchant discount related to the use of a debit card, such receipts multiplied by a
- 16 fraction the numerator of which is the amount of fees, interest, and penalties charged to debit card
- 17 holders that is sourced to this state pursuant to subsection (g) of this section and the denominator of
- 18 which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders.
- 19 (iii) In the case of a merchant discount related to the use of all other types of cards, such receipts
- 20 multiplied by a fraction the numerator of which is the amount of fees, interest, and penalties charged to
- 21 all other card holders that is sourced to this state pursuant to subsection (g) of this section and the
- 22 denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other
- 23 card holders.

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- 1 (k) *Receipts from ATM fees.* All ATM fees that are not forwarded directly to another bank are sourced to
2 this state if the billing address of the card holder is in this state.
- 3 (A) All fees charged to a cardholder for the use at an ATM of a card issued by the taxpayer are sourced
4 to this state if the cardholder's billing address is in this state.
- 5 (B) All fees charged to a cardholder, other than the taxpayer's cardholder, for the use of such card at an
6 ATM owned or rented by the taxpayer are sourced to this state if the ATM is in this state.
- 7 (l) *Loan servicing fees.*
- 8 (A) Loan servicing fees derived from loans secured by real property are sourced to this state by
9 multiplying such fees by a fraction, the numerator of which is the amount sourced to this state pursuant to
10 subsection (d) of this section and the denominator of which is the total amount of interest and fees or
11 penalties in the nature of interest from loans secured by real property.
- 12 (B) Loan servicing fees derived from loans not secured by real property are sourced to this state by
13 multiplying such fees by a fraction, the numerator of which is the amount sourced to this state of
14 pursuant to subsection (e) of this section and the denominator of which is the total amount of interest and
15 fees or penalties in the nature of interest from loans not secured by real property.
- 16 (C) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or
17 the unsecured loans of another, such fees are sourced to this state if the borrower is located in this state.
- 18 (m) *Receipts from services not otherwise sourced under this rule.* Receipts from the sale of a service not
19 otherwise sourced under this rule are sourced to this state, if and to the extent the service is delivered to a
20 customer at a location in this state.
- 21 (A) *Services Delivered to Individual Customers.* In any instance in which the taxpayer's customer is an
22 individual customer, the state or states in which the service is delivered must be reasonably approximated
23 as follows: the taxpayer must assign the receipts from a sale to the customer's state of primary residence,

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- 1 or, if the taxpayer cannot reasonably identify the customer’s state of primary residence, to the state of the
 2 customer’s billing address; provided, however, in any instance in which the taxpayer derives more than
 3 five percent of its receipts from sales of all services from an individual customer, the taxpayer must
 4 identify the customer’s state of primary residence and assign the receipts from the service or services
 5 provided to that customer to that state.
- 6 (B) *Services Delivered to Business Customers.* In any instance in which the taxpayer’s customer is a
 7 business customer, the state or states in which the service is delivered must be reasonably approximated
 8 as follows: unless the taxpayer may use the safe harbor in paragraph (C) of this subsection, the taxpayer
 9 must assign the receipts from the sale as follows: (1) by assigning the receipts to the state where the
 10 contract of sale is principally managed by the customer; (2) if the place of customer management is not
 11 reasonably determinable, to the customer’s place of order; and (3) if the customer place of order is not
 12 reasonably determinable, to the customer’s billing address; provided, however, in any instance in which
 13 the taxpayer derives more than five percent of its receipts from sales of all services from a customer, the
 14 taxpayer is required to identify the state in which the contract of sale is principally managed by the
 15 customer.
- 16 (C) *Safe Harbor; Large Volume of Transactions.* Notwithstanding the rules set forth in paragraphs (A)
 17 and (B) of this subsection, a taxpayer may source its receipts from sales to a particular customer based on
 18 the customer’s billing address in any taxable year in which the taxpayer (1) engages in substantially
 19 similar service transactions with more than 250 customers, whether individual or business, and (2) does
 20 not derive more than five percent of its receipts from sales of all services from that customer.
- 21 (D) *Related Party Transactions.* In any instance in which the professional service is sold to a related
 22 party, rather than applying the rule for professional services delivered to business customers in paragraph
 23 (B) of this subsection, the items sourced to this state which the service is assigned is the place of receipt

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- 1 by the related party as reasonably approximated using the following hierarchy: (1) if the service primarily
 2 relates to specific operations or activities of a related party conducted in one or more locations, then
 3 those operations or activities are conducted in proportion to the related party’s payroll at the locations to
 4 which the service relates in this state; or (2) if the service does not relate primarily to operations or
 5 activities of a related party conducted in particular locations, but instead relates to the operations of the
 6 related party generally, to this state in which the related party has employees.. The taxpayer may use the
 7 safe harbor provided by paragraph (C) of this subsection provided that the department may aggregate the
 8 receipts from sales to related parties in applying the five percent rule if necessary or appropriate to avoid
 9 distortion.
- 10 (n) *Receipts from the financial institution’s investment assets and activities and trading assets and*
 11 *activities.*
- 12 (A) Interest, dividends, net gains (but not less than zero), and other income from investment assets and
 13 activities and from trading assets and activities that are reported on the taxpayer’s financial statements,
 14 call reports, or similar reports are sourced to this state if it is from business conducted in this state.
 15 Investment assets and activities and trading assets and activities include but are not limited to: investment
 16 securities, trading account assets, federal funds; securities purchased and sold under agreements to resell
 17 or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps,
 18 equities, and foreign currency transactions.
- 19 (B) Interest, net gains (but not less than zero), and other income from investment assets and activities and
 20 from trading assets and activities described in paragraph (A) are sourced to this state to the extent that
 21 they are attributable to this state.
- 22 (i) The amount of interest, net gains (but not less than zero) and other income from investment assets and
 23 activities in the investment account to be attributed to this state is determined by multiplying all such

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- 1 income from such assets and activities by a fraction, the numerator of which is the average value of such
2 assets that are properly assigned to a regular place of business of the taxpayer within this state and the
3 denominator of which is the average value of all such assets.
- 4 (ii) The amount of interest from federal funds sold and purchased and from securities purchased under
5 resale agreements and securities sold under repurchase agreements attributable to this state is determined
6 by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such
7 securities by a fraction, the numerator of which is the average value of federal funds sold and securities
8 purchased under agreements to resell that are properly assigned to a regular place of business of the
9 taxpayer within this state and the denominator of which is the average value of all such funds and such
10 securities.
- 11 (iii) The amount of interest, gains, and other income from trading assets and activities, including but not
12 limited to assets and activities in the matched book, in the arbitrage book, and foreign currency
13 transactions, (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph),
14 attributable to this state is determined by multiplying the amount described in subparagraph (ii) of
15 paragraph (A) by a fraction, the numerator of which is the average value of such trading assets that are
16 properly assigned to a regular place of business of the taxpayer within this state and the denominator of
17 which is the average value of all such assets.
- 18 (iv) For purposes of this paragraph, average value is determined using the rules for determining the
19 average value of tangible personal property set forth in OAR 150-314-0088(5)(c) and (d).
- 20 (C) In lieu of using the method set forth in paragraph (B) of this subsection, the taxpayer may elect, or
21 the department may require in order to fairly represent the business activity of the taxpayer in this state,
22 the use of the method set forth in this paragraph.
- 23 (i) The amount of interest, net gains (but not less than zero), and other income from investment assets

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- 1 and activities in the investment account to be attributed to this state is determined by multiplying all such
 2 income from such assets and activities by a fraction, the numerator of which is the gross income from
 3 such assets and activities that are properly assigned to a regular place of business of the taxpayer within
 4 this state and the denominator of which is the gross income from all such assets and activities.
- 5 (ii) The amount of interest from federal funds sold and purchased and from securities purchased under
 6 resale agreements and securities sold under repurchase agreements attributable to this state is determined
 7 by multiplying the amount described in subparagraph (i) of paragraph (A) from such funds and such
 8 securities by a fraction, the numerator of which is the gross income from such funds and such securities
 9 that are properly assigned to a regular place of business of the taxpayer within this state and the
 10 denominator of which is the gross income from all such funds and such securities.
- 11 (iii) The amount of interest, gains, and other income from trading assets and activities, including but not
 12 limited to assets and activities in the matched book, in the arbitrage book, and foreign currency
 13 transactions (but excluding amounts described in subparagraphs (i) and (ii) of this paragraph) attributable
 14 to this state and included in the numerator is determined by multiplying the amount described in
 15 subparagraph (ii) of paragraph (A) by a fraction, the numerator of which is the gross income from such
 16 trading assets and activities that are properly assigned to a regular place of business of the taxpayer
 17 within this state and the denominator of which is the gross income from all such assets and activities.
- 18 (D) If the taxpayer elects or is required by the department to use the method set forth in paragraph (C) of
 19 this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior
 20 written permission from the department, or the department requires the use of a different method.
- 21 (E) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity
 22 was properly assigned to a regular place of business outside of this state by demonstrating that the day-
 23 to-day decisions regarding the asset or activity occurred at a regular place of business outside this state.

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- 1 Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur
2 at more than one regular place of business, and one such regular place of business is in this state and one
3 such regular place of business is outside this state, such asset or activity is considered to be located at the
4 regular place of business of the taxpayer where the investment or trading policies or guidelines with
5 respect to the asset or activity are established.
- 6 (o) *All other receipts.* All other receipts described in (1) and not sourced above are sourced as set forth
7 below.
- 8 (A) Receipts derived from property, transactions, and activities having a connection to Oregon are
9 sourced to this state. Receipts derived from the sale of tangible personal property have a connection to
10 Oregon if the tangible personal property is delivered in Oregon. Receipts derived from intangible
11 personal property have a connection to Oregon if the intangible property is used or held for use in
12 Oregon.
- 13 (B) A taxpayer must attach a statement to their return that describes each receipt and the property,
14 transaction, or activity from which it is derived for any receipts to be considered “other receipts.”
- 15 **[Publications:** Contact the Oregon Department of Revenue for information about how to obtain a copy
16 of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and
17 ORS 183.355(1)(b).]
- 18 **Stat. Auth.:** ORS 305.100, ORS 317.143
- 19 **Stats. Implemented:** ORS 317A.100, 317A.128