

ADMINISTRATIVE RULE REVIEW

<p>Adopt Rule</p> <p>Permanent Rule</p>	Rule No. <b>150-317-1040</b>	
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	NOTICE OF INTENDED ACTION	
	Bulletin Dated <b>May 2020</b>	Hearing Scheduled <b>May 26, 2020</b>

PURPOSE: 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 ORS 317A.128

- 1 **150-317-1040**
- 2 **Sourcing Commercial Activity to Oregon of Other than Sales of Tangible Personal Property**
- 3 (1) *General Rule*. Receipts, other than receipts from sale of tangible personal property, are sourced to
- 4 Oregon under ORS 317A.128, section (1)(a), (b), (d), and (e), as described in this rule. This rule does not
- 5 address sourcing of receipts of financial institutions or insurers as defined in ORS 317A.100. In general,
- 6 the provisions in this rule establish uniform rules for determining whether receipts other than receipts
- 7 from the sale of tangible personal property are sourced to this state and reasonably approximating the
- 8 state or states of assignment where the state or states cannot be determined.
- 9 (a) *Outline of Topics*.
- 10 (A) General Rules
- 11 (i) Outline of Topics
- 12 (ii) Definitions
- 13 (iii) General Principles of Application; Contemporaneous Records
- 14 (iv) Rules of Reasonable Approximation
- 15 (B) Sale, Rental, Lease, or License of Real Property
- 16 (C) Rental, Lease, or License of Tangible Personal Property
- 17 (D) Sale of Service
- 18 (i) General Rule
- 19 (ii) In-Person Services
- 20 (iii) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically
- 21 Through the Customer
- 22 (iv) Professional Services
- 23 (E) License or Lease of Intangible Property
- 24 (i) General rule
- 25 (ii) License of a Marketing Intangible
- 26 (iii) License of a Production Intangible

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- 1 (iv) License of a Mixed Intangible
- 2 (v) License of Intangible Property where Substance of the Transaction Resembles a Sale of Goods or
- 3 Services
- 4 (F) Sale of Intangible Property: Assignment of Receipts
- 5 (G) Special Rules
- 6 (i) Software Transactions
- 7 (ii) Sales or Licenses of Digital Goods and Services
- 8 (b) *Definitions.*
- 9 (A) “Billing address” means the location indicated in the books and records of the taxpayer as the
- 10 primary mailing address relating to a customer’s account as of the time of the transaction as kept in good
- 11 faith in the normal course of business and not for tax avoidance purposes.
- 12 (B) “Business customer” means a customer that is a business operating in any form, including a sole
- 13 proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to a foreign, state,
- 14 or local government, or to an agency or instrumentality of that government are treated as sales to a
- 15 business customer and must be assigned consistent with the rules for those sales.
- 16 (C) “Individual customer” means a customer that is not a business customer.
- 17 (D) “Intangible property” generally means property that is not physical or whose representation by
- 18 physical means is merely incidental and includes, without limitation, copyrights; patents; trademarks;
- 19 trade names; brand names; franchises; licenses; trade secrets; trade dress; information; know-how;
- 20 methods; programs; procedures; systems; formulae; processes; technical data; designs; licenses; literary,
- 21 musical, or artistic compositions; information; ideas; contract rights including broadcast rights;
- 22 agreements not to compete; goodwill and going concern value; securities; and, except as otherwise
- 23 provided in this rule, computer software.
- 24 (E) “Place of order” means the physical location from which a customer places an order for a sale other
- 25 than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.
- 26 (F) “Population” means the most recent population data maintained by the U.S. Census Bureau for the

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- 1 year in question as of the close of the taxable period.
- 2 (G) “Related party” means:
- 3 (i) A stockholder who is an individual, or a member of the stockholder's family set forth in section 318 of
- 4 the Internal Revenue Code if the stockholder and the members of the stockholder's family own, directly,
- 5 indirectly, beneficially, or constructively, in the aggregate, at least 50 percent of the value of the
- 6 taxpayer's outstanding stock;
- 7 (ii) A stockholder, or a stockholder's partnership, limited liability company, estate, trust, or corporation,
- 8 if the stockholder and the stockholder's partnerships, limited liability companies, estates, trusts, and
- 9 corporations own directly, indirectly, beneficially or constructively, in the aggregate, at least 50 percent
- 10 of the value of the taxpayer's outstanding stock;
- 11 (iii) A corporation, or a party related to the corporation in a manner that would require an attribution of
- 12 stock from the corporation to the party or from the party to the corporation under the attribution rules of
- 13 the Internal Revenue Code if the taxpayer owns, directly, indirectly, beneficially, or constructively, at
- 14 least 50 percent of the value of the corporation's outstanding stock. The attribution rules of the Internal
- 15 Revenue Code apply for purposes of determining whether the ownership requirements of this definition
- 16 have been met.
- 17 (iv) The provisions of this rule regarding sales between related parties do not apply to sales that are
- 18 excluded from commercial activity under ORS 317A.100 (1)(b)(FF) as transactions among members of a
- 19 unitary group.
- 20 (H) “State where a contract of sale is principally managed by the customer” means the primary location
- 21 at which an employee or other representative of a customer serves as the primary contact person for the
- 22 taxpayer with respect to the day-to-day execution and performance of a contract entered into by the
- 23 taxpayer with the customer.
- 24 (c) *General Principles of Application; Contemporaneous Records.* In order to satisfy the requirements of
- 25 this rule, a taxpayer’s assignment of receipts other than receipts from sales of tangible personal property
- 26 must be consistent with the following principles:

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1 (A) This rule provides various assignment rules that apply sequentially in a hierarchy. For each sale to  
 2 which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule  
 3 applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so  
 4 with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable  
 5 rule first requires a taxpayer to determine the state or states of assignment, and if the taxpayer cannot do  
 6 so, the rule requires the taxpayer to reasonably approximate the state or states. In these cases, the  
 7 taxpayer must attempt to determine the state or states of assignment (that is, apply the primary rule in the  
 8 hierarchy) in good faith and with reasonable effort before it may reasonably approximate the state or  
 9 states.

10 (B) A taxpayer’s method of assigning its receipts, including the use of a method of approximation, where  
 11 applicable, must reflect an attempt to obtain the most accurate assignment of receipts consistent with the  
 12 regulatory standards set forth in this rule, rather than for tax avoidance purposes. A method of  
 13 assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer,  
 14 depending upon the applicable facts.

15 (d) *Rules of Reasonable Approximation.*

16 (A) *In General.* In general, this rule establishes uniform rules for determining whether and to what extent  
 17 receipts other than receipts from the sale of tangible personal property are sourced to Oregon. This rule  
 18 also sets forth rules of reasonable approximation, which apply if the state or states of assignment cannot  
 19 be determined. In some instances, the reasonable approximation must be made in accordance with  
 20 specific rules of approximation prescribed in this rule. In other cases, the applicable rule permits a  
 21 taxpayer to reasonably approximate the state or states of assignment using a method that reflects an effort  
 22 to approximate the results that would be obtained under the applicable rules or standards set forth in this  
 23 rule.

24 (B) *Reasonable Approximation Based Upon Known Sales.* In an instance where, applying the applicable  
 25 rules set forth in section (4) of this rule (Sale of a Service), a taxpayer can ascertain the state or states of  
 26 assignment of a substantial portion of its receipts from sales of substantially similar services (“assigned

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- 1 receipts”), but not all of those sales, and the taxpayer reasonably believes, based on all available  
2 information, that the geographic distribution of some or all of the remainder of those sales generally  
3 tracks that of the assigned receipts, it must source receipts from those sales which it believes tracks the  
4 geographic distribution of the assigned receipts in the same proportion as its assigned receipts. This rule  
5 also applies in the context of licenses and sales of intangible property where the substance of the  
6 transaction resembles a sale of goods or services.
- 7 *(C) Related-Party Transactions – Information Imputed from Customer to Taxpayer.* Where a taxpayer  
8 has receipts subject to this rule from sales with a related-party customer, information that the customer  
9 has that is relevant to the sourcing of receipts from these transactions is imputed to the taxpayer.
- 10 *(2) Sale, Rental, Lease, or License of Real Property.* In the case of a sale, rental, lease, or license of real  
11 property, the receipts are sourced to Oregon if and to the extent that the property is in Oregon.
- 12 *(3) Rental, Lease, or License of Tangible Personal Property.* In the case of a rental, lease, or license of  
13 tangible personal property, the receipts are sourced to Oregon if and to the extent that the property is in  
14 Oregon. If property is mobile property that is located both within and without Oregon during the period  
15 of the lease or other contract, the receipts assigned to Oregon are the receipts from the contract period  
16 multiplied by a fraction where the numerator is the number of days used in Oregon and the denominator  
17 is the total number of days of the rental, lease, or license.
- 18 *(4) Sale of a Service.*
- 19 *(a) General Rule.* The receipts from a sale of a service are in Oregon if and to the extent that the service  
20 is delivered to a location in Oregon. In general, the term “delivered to a location” refers to the location of  
21 the taxpayer’s market for the service, which may not be the location of the taxpayer’s employees or  
22 property. The rules to determine the location of the delivery of a service in the context of several specific  
23 types of service transactions are set forth at sections (4)(b)-(d) of this rule.
- 24 *(b) In-Person Services.*
- 25 *(A) In General.* Except as otherwise provided in section (4)(b) of this rule, in-person services are services  
26 that are physically provided in person by the taxpayer, where the customer or the customer’s real or

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1 tangible property upon which the services are performed is in the same location as the service provider at  
 2 the time the services are performed. This rule includes situations where the services are provided on  
 3 behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without  
 4 limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction  
 5 contractor services; pest control; landscape services; medical and dental services, including medical  
 6 testing, x-rays, and mental health care and treatment; child care; hair cutting and salon services; live  
 7 entertainment and athletic performances; and in-person training or lessons. In-person services include  
 8 services within the description above that are performed at (1) a location that is owned or operated by the  
 9 service provider or (2) a location of the customer, including the location of the customer's real or  
 10 tangible personal property. Various professional services, including legal, accounting, financial and  
 11 consulting services, and other similar services as described in section (4)(d) of this rule, although they  
 12 may involve some amount of in-person contact, are not treated as in-person services within the meaning  
 13 of section (4)(b) of this rule.

14 (B) *Assignment of Receipts.*

15 (i) *Rule of Determination.* Except as otherwise provided in section (4)(b)(B) of this rule, if the service  
 16 provided by the taxpayer is an in-person service, the service is delivered to the location where the service  
 17 is received. Therefore, the receipts from a sale are in Oregon if and to the extent the customer receives  
 18 the in-person service in Oregon. In assigning its receipts from sales of in-person services, a taxpayer  
 19 must first attempt to determine the location where a service is received, as follows:

20 (I) If the service is performed with respect to the body of an individual customer in Oregon (e.g. hair  
 21 cutting or x-ray services) or in the physical presence of the customer in Oregon (e.g. live entertainment or  
 22 athletic performances), the service is received in Oregon.

23 (II) If the service is performed with respect to the customer's real estate in Oregon or if the service is  
 24 performed with respect to the customer's tangible personal property at the customer's residence or in the  
 25 customer's possession in Oregon, the service is received in Oregon.

26 (III) If the service is performed with respect to the customer's tangible personal property and the tangible

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- 1 personal property is to be delivered to the customer, whether the service is performed within or outside  
 2 Oregon, the service is received in Oregon if the property is delivered to the customer in Oregon.  
 3 (C) *Rule of Reasonable Approximation.* In an instance in which the state or states where a service is  
 4 actually received cannot be determined, the taxpayer must reasonably approximate such state or states.  
 5 (D) *Examples.* Note that for purposes of the examples it is irrelevant whether the services are performed  
 6 by an employee of the taxpayer or by an independent contractor acting on the taxpayer’s behalf.  
 7 **Example 1:** Salon Corp has retail locations in Oregon and in other states where it provides hair cutting  
 8 services to individual and business customers, the latter of whom are paid for through the means of a  
 9 company account. The receipts from sales of services provided at Salon Corp’s in-state locations are in  
 10 Oregon. The receipts from sales of services provided at Salon Corp’s locations outside Oregon, even  
 11 when provided to residents of Oregon, are not receipts from in-state sales.  
 12 **Example 2:** Landscape Corp provides landscaping and gardening services in Oregon and in neighboring  
 13 states. Landscape Corp provides landscaping services at the in-state vacation home of an individual who  
 14 is a resident of another state and who is located outside Oregon at the time the services are performed.  
 15 The receipts from sale of services provided at the in-state location are in Oregon.  
 16 **Example 3:** Same facts as Example 2, except that Landscape Corp provides the landscaping services to  
 17 Retail Corp, a corporation with retail locations in several states, and the services are with respect to those  
 18 locations of Retail Corp that are in Oregon and in other states. The receipts from the sale of services  
 19 provided to Retail Corp are in Oregon to the extent the services are provided in Oregon.  
 20 **Example 4:** Camera Corp provides camera repair services at an in-state retail location to walk-in  
 21 individual and business customers. In some cases, Camera Corp actually repairs a camera that is brought  
 22 to its in-state location at a facility that is in another state. In these cases, the repaired camera is then  
 23 returned to the customer at Camera Corp’s in-state location. The receipts from sale of these services are  
 24 in Oregon.  
 25 **Example 5:** Same facts as Example 4, except that a customer located in Oregon mails the camera directly  
 26 to the out-of-state facility owned by Camera Corp to be fixed, and receives the repaired camera back in



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1 Oregon by mail. The receipts from sale of the service are in Oregon.

2 **Example 6:** Teaching Corp provides seminars in Oregon to individual and business customers. The  
3 seminars and the materials used in connection with the seminars are prepared outside the state, the  
4 teachers who teach the seminars include teachers that are resident outside the state, and the students who  
5 attend the seminars include students that are resident outside the state. Because the seminars are taught in  
6 Oregon, the receipts from sales of the services are in Oregon.

7 (c) *Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically*  
8 *Through the Customer.*

9 (A) *In General.* If the service provided by the taxpayer is not an in-person service within the meaning of  
10 section (4)(b) of this rule or a professional service within the meaning of section (4)(d) of this rule, and  
11 the service is delivered to or on behalf of the customer, or delivered electronically through the customer,  
12 the receipts from a sale are in Oregon if and to the extent that the service is delivered in Oregon. For  
13 purposes of section (4)(c) of this rule, a service that is delivered “to” a customer is a service in which the  
14 customer and not a third party is the recipient of the service. A service that is delivered “on behalf of” a  
15 customer is one in which a customer contracts for a service but one or more third parties, rather than the  
16 customer, is the recipient of the service, such as fulfillment services, or the direct or indirect delivery of  
17 advertising to the customer’s intended audience. (See section (4)(c)(B)(i) of this rule and Example 7  
18 under section (4)(c)(B)(i)(III) of this rule.) A service can be delivered to or on behalf of a customer by  
19 physical means or through electronic transmission. A service that is delivered electronically “through” a  
20 customer is a service that is delivered electronically to a customer for purposes of resale and subsequent  
21 electronic delivery in substantially identical form to an end user or other third-party recipient.

22 (B) *Assignment of Receipts.* The assignment of receipts to a state or states in the instance of a sale of a  
23 service that is delivered to the customer or on behalf of the customer, or delivered electronically through  
24 the customer, depends upon the method of delivery of the service and the nature of the customer.

25 Separate rules of assignment apply to services delivered by physical means and services delivered by  
26 electronic transmission. (For purposes of section (4)(c) of this rule, a service delivered by an electronic



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1 transmission is not a delivery by a physical means.) If a rule of assignment set forth in section (4)(c) of  
 2 this rule depends on whether the customer is an individual or a business customer, and the taxpayer  
 3 acting in good faith cannot reasonably determine whether the customer is an individual or business  
 4 customer, the taxpayer must treat the customer as a business customer.

5 (i) *Delivery to or on Behalf of a Customer by Physical Means Whether to an Individual or Business*  
 6 *Customer.* Services delivered to a customer or on behalf of a customer through a physical means include,  
 7 for example, product delivery services where property is delivered to the customer or to a third party on  
 8 behalf of the customer; the delivery of brochures, fliers, or other direct mail services; the delivery of  
 9 advertising or advertising-related services to the customer’s intended audience in the form of a physical  
 10 medium; and the sale of custom software (e.g., where software is developed for a specific customer in a  
 11 case where the transaction is properly treated as a service transaction for purposes of the corporate  
 12 activity tax) where the taxpayer installs the custom software at the customer’s site. The rules in section  
 13 (4)(c)(B)(i) of this rule apply whether the taxpayer’s customer is an individual customer or a business  
 14 customer.

15 (I) *Rule of Determination.* In assigning the receipts from a sale of a service delivered to a customer or on  
 16 behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or  
 17 states where the service is delivered. If the taxpayer is able to determine the state or states where the  
 18 service is delivered, it must assign the receipts to that state or states.

19 (II) *Rule of Reasonable Approximation.* If the taxpayer cannot determine the state or states where the  
 20 service is actually delivered, it must reasonably approximate the state or states.

21 (III) *Examples:*

22 **Example 7:** Direct Mail, a company based outside Oregon, provides direct mail services to its customer,  
 23 Business LLP. Business LLP contracts with Direct Mail to deliver printed fliers to a list of customers that  
 24 is provided to it by Business LLP. Some of Business LLP’s customers are in Oregon and some are in  
 25 other states. Direct Mail will use the postal service to deliver the printed fliers to Business LLP’s  
 26 customers. The receipts from the sale of Direct Mail services to Business LLP are assigned to Oregon to

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- 1 the extent that the services are delivered on behalf of Business LLP to Oregon customers (i.e., to the  
 2 extent that the fliers are delivered on behalf of Business LLP to Business LLP’s intended audience in  
 3 Oregon).
- 4 **Example 8:** Ad LLP is a partnership based outside Oregon that provides advertising and advertising-  
 5 related services in Oregon and in neighboring states. Ad LLP enters into a contract at a location outside  
 6 Oregon with an individual customer who is not an Oregon resident to design advertisements for  
 7 billboards to be displayed in Oregon and to design fliers to be mailed to Oregon residents. All of the  
 8 design work is performed outside Oregon. The receipts from the sale of the design services are in Oregon  
 9 because the service is physically delivered on behalf of the customer to the customer’s intended audience  
 10 in Oregon.
- 11 **Example 9:** Same facts as Example 8, except that the contract is with a business customer that is based  
 12 outside Oregon. The receipts from the sale of the design services are in Oregon because the services are  
 13 physically delivered on behalf of the customer to the customer’s intended audience in Oregon.
- 14 **Example 10:** Fulfillment Co., a company based outside Oregon, provides product delivery fulfillment  
 15 services in Oregon and in neighboring states to Sales Co., a company located outside Oregon that sells  
 16 tangible personal property through a mail order catalog and over the Internet to customers. In some cases  
 17 when a customer purchases tangible personal property from Sales Co. to be delivered in Oregon,  
 18 Fulfillment Co. will, pursuant to its contract with Sales Co., deliver that property from its fulfillment  
 19 warehouse located outside Oregon. The receipts from the sale of the fulfillment services of Fulfillment  
 20 Co. to Sales Co. are assigned to Oregon to the extent that Fulfillment Co.’s deliveries on behalf of Sales  
 21 Co. are to recipients in Oregon.
- 22 **Example 11:** Software Enterprise, a software development company, enters into a contract with a  
 23 business customer, Buyer Company, which is physically located in Oregon, to develop custom software  
 24 to be used in Buyer Company’s business. Software Enterprise develops the custom software outside  
 25 Oregon, and then physically installs the software on Buyer Company’s computer hardware located in  
 26 Oregon. The development and sale of the custom software is properly characterized as a service

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- 1 transaction, and the receipts from the sale are assigned to Oregon because the software is physically  
 2 delivered to the customer in Oregon.
- 3 **Example 12:** Same facts as Example 11, except that Buyer Company has offices in Oregon and several  
 4 other states, but is commercially domiciled outside Oregon and orders the software from a location  
 5 outside Oregon. The receipts from the development and sale of the custom software service are assigned  
 6 to Oregon because the software is physically delivered to the customer in Oregon.
- 7 (ii) *Delivery to a Customer by Electronic Transmission.* Services delivered by electronic transmission  
 8 include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber  
 9 optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or  
 10 not the service provider owns, leases, or otherwise controls the transmission equipment. In the case of the  
 11 delivery of a service by electronic transmission to a customer, the following rules apply.
- 12 (I) *Services Delivered By Electronic Transmission to an Individual Customer.*
- 13 (I-a) *Rule of Determination.* In the case of the delivery of a service to an individual customer by  
 14 electronic transmission, the service is delivered in Oregon if and to the extent that the taxpayer's  
 15 customer receives the service in Oregon. If the taxpayer can determine the state or states where the  
 16 service is received, it must assign the receipts from that sale to that state or states.
- 17 (I-b) *Rules of Reasonable Approximation.* If the taxpayer cannot determine the state or states where the  
 18 customer actually receives the service, but has sufficient information regarding the place of receipt from  
 19 which it can reasonably approximate the state or states where the service is received, it must reasonably  
 20 approximate the state or states. If a taxpayer does not have sufficient information from which it can  
 21 determine or reasonably approximate the state or states in which the service is received, it must  
 22 reasonably approximate the state or states using the customer's billing address.
- 23 (II) *Services Delivered By Electronic Transmission to a Business Customer.*
- 24 (II-a) *Rule of Determination.* In the case of the delivery of a service to a business customer by electronic  
 25 transmission, the service is delivered in Oregon if and to the extent that the taxpayer's customer receives  
 26 the service in Oregon. If the taxpayer can determine the state or states where the service is received, it

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1 must assign the receipts from that sale to the state or states. For purposes of section (4)(c)(B)(ii)(II) of  
 2 this rule, it is intended that the state or states where the service is received reflect the location at which  
 3 the service is directly used by the employees or designees of the customer.

4 (II-b) *Rule of Reasonable Approximation*. If the taxpayer cannot determine the state or states where the  
 5 customer actually receives the service, but has sufficient information regarding the place of receipt from  
 6 which it can reasonably approximate the state or states where the service is received, it must reasonably  
 7 approximate the state or states.

8 (II-c) *Secondary Rule of Reasonable Approximation*. In the case of the delivery of a service to a business  
 9 customer by electronic transmission where a taxpayer does not have sufficient information from which it  
 10 can determine or reasonably approximate the state or states in which the service is received, the taxpayer  
 11 must reasonably approximate the state or states as set forth in this rule. In these cases, unless the taxpayer  
 12 can apply the safe harbor set forth in section (4)(c)(B)(ii)(II)(II-d) of this rule, the taxpayer must  
 13 reasonably approximate the state or states in which the service is received as follows: first, by assigning  
 14 the receipts from the sale to the state where the contract of sale is principally managed by the customer;  
 15 second, if the state where the customer principally manages the contract is not reasonably determinable,  
 16 by assigning the receipts from the sale to the customer’s place of order; and third, if the customer’s place  
 17 of order is not reasonably determinable, by assigning the receipts from the sale using the customer’s  
 18 billing address; provided, however, if the taxpayer derives more than five percent of its receipts from  
 19 sales of services from any single customer, the taxpayer is required to identify the state in which the  
 20 contract of sale is principally managed by that customer.

21 (II-d) *Safe Harbor*. In the case of the delivery of a service to a business customer by electronic  
 22 transmission, a taxpayer may not be able to determine, or reasonably approximate under section  
 23 (4)(c)(B)(ii)(II)(II-b) of this rule, the state or states in which the service is received. In these cases, the  
 24 taxpayer may, in lieu of the rule stated at section (4)(c)(B)(ii)(II)(II-c) of this rule, apply the safe harbor  
 25 stated in this subsection. Under this safe harbor, a taxpayer may assign its receipts from sales to a  
 26 particular customer based upon the customer’s billing address in a taxable year in which the taxpayer (1)

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1 engages in substantially similar service transactions with more than 250 customers, whether business or  
 2 individual, and (2) does not derive more than five percent of its receipts from sales of all services from  
 3 that customer. This safe harbor applies only for purposes of services delivered by electronic transmission  
 4 to a business customer, and not otherwise.

5 (II-e) *Related-Party Transactions*. In the case of a sale of a service by electronic transmission to a  
 6 business customer that is a related party, the taxpayer may not use the secondary rule of reasonable  
 7 approximation in section (4)(c)(B)(ii)(II)(II-c) of this rule but may use the rule of reasonable  
 8 approximation in section (4)(c)(B)(ii)(II)(II-b) of this rule, and the safe harbor in section  
 9 (4)(c)(B)(ii)(II)(II-d) of this rule, provided that the department may aggregate sales to related parties in  
 10 determining whether the sales exceed five percent of receipts from sales of all services under that safe  
 11 harbor provision if necessary or appropriate to prevent distortion.

12 (III) *Examples*. In these examples, unless otherwise stated, assume that the taxpayer is not related to the  
 13 customer to which the service is delivered. Also, assume if relevant, unless otherwise stated, that the safe  
 14 harbor set forth at section (4)(c)(B)(ii)(II)(II-d) of this rule does not apply.

15 **Example 13:** Support Corp, a corporation that is based outside Oregon, provides software support and  
 16 diagnostic services to individual and business customers that have previously purchased certain software  
 17 from third-party vendors. These individual and business customers are located in Oregon and other  
 18 states. Support Corp supplies its services on a case by case basis when directly contacted by its customer.  
 19 Support Corp generally provides these services through the Internet but sometimes provides these  
 20 services by phone. In all cases, Support Corp verifies the customer's account information before  
 21 providing any service. Using the information that Support Corp verifies before performing a service,  
 22 Support Corp can determine where its services are received, and therefore must assign its receipts to  
 23 these locations. The receipts from sales made to Support Corp's individual and business customers are in  
 24 Oregon to the extent that Support Corp's services are received in Oregon. See sections (4)(c)(B)(ii)(I)  
 25 and (II) of this rule.

26 **Example 14:** Online Corp, a corporation based outside Oregon, provides web-based services through the

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1 means of the Internet to individual customers who are resident in Oregon and in other states. These  
 2 customers access Online Corp’s web services primarily in their states of residence, and sometimes while  
 3 traveling, in other states. For a substantial portion of its receipts from the sale of services, Online Corp  
 4 can either determine the state or states where the services are received, or, where it cannot determine the  
 5 state or states, has sufficient information regarding the place of receipt to reasonably approximate the  
 6 state or states. However, Online Corp cannot determine or reasonably approximate the state or states of  
 7 receipt for all of the sales of its services. Assuming that Online Corp reasonably believes, based on all  
 8 available information, that the geographic distribution of the receipts from sales for which it cannot  
 9 determine or reasonable approximate the location of the receipt of its services generally tracks those for  
 10 which it does have this information, Online Corp must assign to Oregon the receipts from sales for which  
 11 it does not know the customers’ location in the same proportion as those receipts for which it has this  
 12 information. See section (1)(d)(B) of this rule.

13 **Example 15:** Same facts as 14, except that Online Corp reasonably believes that the geographic  
 14 distribution of the receipts from sales for which it cannot determine or reasonably approximate the  
 15 location of the receipt of its web-based services do not generally track the sales for which it does have  
 16 this information. Online Corp must assign the receipts from sales of its services for which it lacks  
 17 information as provided to its individual customers using the customers’ billing addresses. See section  
 18 (4)(c)(B)(ii)(I) of this rule.

19 **Example 16:** Net Corp, a corporation based outside Oregon, provides web-based services to a business  
 20 customer, Business Corp, a company with offices in Oregon and two neighboring states. Particular  
 21 employees of Business Corp access the services from computers in each Business Corp office. Assume  
 22 that Net Corp determines that Business Corp employees in Oregon were responsible for 75 percent of  
 23 Business Corp’s use of Net Corp’s services, and Business Corp employees in other states were  
 24 responsible for 25 percent of Business Corp’s use of Net Corp’s services. In this case, 75 percent of the  
 25 receipts from the sale are received in Oregon. See section (4)(c)(B)(ii)(II)(II-a). Assume alternatively that  
 26 Net Corp lacks sufficient information regarding the location or locations where Business Corp’s



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1 employees used the services to determine or reasonably approximate the location or locations. Under  
 2 these circumstances, if Net Corp derives five percent or less of its receipts from sales to Business Corp,  
 3 Net Corp must assign the receipts under section (4)(c)(B)(ii)(II)(II-c) of this rule to the state where  
 4 Business Corp principally managed the contract, or if that state is not reasonably determinable, to the  
 5 state where Business Corp placed the order for the services, or if that state is not reasonably  
 6 determinable, to the state of Business Corp’s billing address. If Net Corp derives more than five percent  
 7 of its receipts from sales of services to Business Corp, Net Corp is required to identify the state in which  
 8 its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

9 **Example 17:** Net Corp, a corporation based outside Oregon, provides web-based services through the  
 10 means of the Internet to more than 250 individual and business customers in Oregon and in other states.  
 11 Assume that for each customer Net Corp cannot determine the state or states where its web services are  
 12 actually received and lacks sufficient information regarding the place of receipt to reasonably  
 13 approximate the state or states. Also assume that Net Corp does not derive more than five percent of its  
 14 receipts from sales of services to a single customer. Net Corp may apply the safe harbor stated in section  
 15 (4)(c)(B)(ii)(II)(II-d) of this rule and may assign its receipts using each customer’s billing address.

16 (iii) *Services Delivered Electronically Through or on Behalf of an Individual or Business Customer.* A  
 17 service delivered electronically “on behalf of” the customer is one in which a customer contracts for a  
 18 service to be delivered electronically but one or more third parties, rather than the customer, is the  
 19 recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to  
 20 the customer’s intended audience. A service delivered electronically “through” a customer to third-party  
 21 recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent  
 22 electronic delivery in substantially identical form to end users or other third-party recipients.

23 (I) *Rule of Determination.* In the case of the delivery of a service by electronic transmission, where the  
 24 service is delivered electronically to end users or other third-party recipients through or on behalf of the  
 25 customer, the service is delivered in Oregon if and to the extent that the end users or other third-party  
 26 recipients are in Oregon. For example, in the case of the direct or indirect delivery of advertising on



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1 behalf of a customer to the customer’s intended audience by electronic means, the service is delivered in  
 2 Oregon to the extent that the audience for the advertising is in Oregon. In the case of the delivery of a  
 3 service to a customer that acts as an intermediary in reselling the service in substantially identical form to  
 4 third-party recipients, the service is delivered in Oregon to the extent that the end users or other third-  
 5 party recipients receive the services in Oregon. The rules in this subparagraph apply whether the  
 6 taxpayer’s customer is an individual customer or a business customer and whether the end users or other  
 7 third-party recipients to which the services are delivered through or on behalf of the customer are  
 8 individuals or businesses.

9 (II) *Rule of Reasonable Approximation.* If the taxpayer cannot determine the state or states where the  
 10 services are actually delivered to the end users or other third-party recipients either through or on behalf  
 11 of the customer, it must reasonably approximate the state or states.

12 (III) *Select Secondary Rules of Reasonable Approximation.*

13 (III-a) If a taxpayer’s service is the direct or indirect electronic delivery of advertising on behalf of its  
 14 customer to the customer’s intended audience, and if the taxpayer lacks sufficient information regarding  
 15 the location of the audience from which it can determine or reasonably approximate that location, the  
 16 taxpayer must reasonably approximate the audience in a state for the advertising using the following  
 17 secondary rules of reasonable approximation. If a taxpayer is delivering advertising directly or indirectly  
 18 to a known list of subscribers, the taxpayer must reasonably approximate the audience for advertising in a  
 19 state using a percentage that reflects the ratio of the state’s subscribers in the specific geographic area in  
 20 which the advertising is delivered relative to the total subscribers in that area. For a taxpayer with less  
 21 information about its audience, the taxpayer must reasonably approximate the audience in a state using  
 22 the percentage that reflects the ratio of the state’s population in the specific geographic area in which the  
 23 advertising is delivered relative to the total population in that area.

24 (III-b) If a taxpayer’s service is the delivery of a service to a customer that then acts as the taxpayer’s  
 25 intermediary in reselling that service to end users or other third-party recipients, and if the taxpayer lacks  
 26 sufficient information regarding the location of the end users or other third-party recipients from which it

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1 can determine or reasonably approximate that location, the taxpayer must reasonably approximate the  
 2 extent to which the service is received in a state by using the percentage that reflects the ratio of the  
 3 state’s population in the specific geographic area in which the taxpayer’s intermediary resells the  
 4 services, relative to the total population in that area.

5 (III-c) When using the secondary reasonable approximation methods provided above, with regard to the  
 6 relevant specific geographic area, include only the areas where the service was substantially and  
 7 materially delivered or resold. Unless the taxpayer demonstrates the contrary, it will be presumed that the  
 8 area where the service was substantially and materially delivered or resold does not include areas outside  
 9 the United States.

10 (IV) *Examples:*

11 **Example 18:** Cable TV Corp, a corporation that is based outside of Oregon, has two revenue streams.  
 12 First, Cable TV Corp sells advertising time to business customers pursuant to which the business  
 13 customers’ advertisements will run as commercials during Cable TV Corp’s televised programming.  
 14 Some of these business customers, though not all of them, have a physical presence in Oregon. Second,  
 15 Cable TV Corp sells monthly subscriptions to individual customers in Oregon and in other states. The  
 16 receipts from Cable TV Corp’s sale of advertising time to its business customers are assigned to Oregon  
 17 to the extent that the audience for Cable TV Corp’s televised programming during which the  
 18 advertisements run is in Oregon. See (4)(c)(B)(iii)(I) of this rule. If Cable TV Corp is unable to  
 19 determine the actual location of its audience for the programming and lacks sufficient information  
 20 regarding audience location to reasonably approximate the location, Cable TV Corp must approximate its  
 21 Oregon audience using the percentage that reflects the ratio of its Oregon subscribers in the geographic  
 22 area in which Cable TV Corp’s televised programming featuring the advertisements is delivered relative  
 23 to its total number of subscribers in that area. See section (4)(c)(B)(iii)(III)(III-a) of this rule. To the  
 24 extent that Cable TV Corp’s sales of monthly subscriptions represent the sale of a service, the receipts  
 25 from these sales are properly assigned to Oregon in any case in which the programming is received by a  
 26 customer in Oregon. See section (4)(c)(B)(ii)(I) of this rule. In any case in which Cable TV Corp cannot

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1 determine the actual location where the programming is received and lacks sufficient information  
 2 regarding the location of receipt to reasonably approximate the location, the receipts from these sales of  
 3 Cable TV Corp’s monthly subscriptions are assigned to Oregon where its customer’s billing address is in  
 4 Oregon. See section (4)(c)(B)(ii)(I)(I-b) of this rule. Note that whether and to the extent that the monthly  
 5 subscription fee represents a fee for a service or for a license of intangible property does not affect the  
 6 analysis or result as to the state or states to which the receipts are properly assigned. See section (5)(e) of  
 7 this rule.

8 **Example 19:** Network Corp, a corporation that is based outside of Oregon, sells advertising time to  
 9 business customers pursuant to which the customers’ advertisements will run as commercials during  
 10 Network Corp’s televised programming as distributed by unrelated cable television and satellite  
 11 television transmission companies. The receipts from Network Corp’s sale of advertising time to its  
 12 business customers are assigned to Oregon to the extent that the audience for Network Corp’s televised  
 13 programming during which the advertisements will run is in Oregon. See section (4)(c)(B)(iii)(I) of this  
 14 rule. If Network Corp cannot determine the actual location of the audience for its programming during  
 15 which the advertisements will run and lacks sufficient information regarding audience location to  
 16 reasonably approximate the location, Network Corp must approximate the receipts from sales of  
 17 advertising that constitute Oregon sales by multiplying the amount of advertising receipts by a  
 18 percentage that reflects the ratio of the Oregon population in the specific geographic area in which the  
 19 televised programming containing the advertising is run relative to the total population in that area. See  
 20 sections (4)(c)(B)(iii)(III)(III-b) and (III-c) of this rule.

21 **Example 20:** Web Corp, a corporation that is based outside Oregon, provides Internet content to viewers  
 22 in Oregon and other states. Web Corp sells advertising space to business customers pursuant to which the  
 23 customers’ advertisements will appear in connection with Web Corp’s Internet content. Web Corp  
 24 receives a fee for running the advertisements that is determined by reference to the number of times the  
 25 advertisement is viewed or clicked upon by the viewers of its website. The receipts from Web Corp’s  
 26 sale of advertising space to its business customers are assigned to Oregon to the extent that the viewers of

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1 the Internet content are in Oregon, as measured by viewings or clicks. See section (4)(c)(B)(iii)(I) of this  
 2 rule. If Web Corp is unable to determine the actual location of its viewers and lacks sufficient  
 3 information regarding the location of its viewers to reasonably approximate the location, Web Corp must  
 4 approximate the amount of its Oregon receipts by multiplying the amount of receipts from sales of  
 5 advertising by a percentage that reflects the Oregon population in the specific geographic area in which  
 6 the content containing the advertising is delivered relative to the total population in that area. See section  
 7 (4)(c)(B)(iii)(III) of this rule.

8 **Example 21:** Retail Corp, a corporation that is based outside of Oregon, sells tangible property through  
 9 its retail stores located in Oregon and other states and through a mail order catalog. Answer Co, a  
 10 corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone  
 11 calls from individuals placing orders for products found in Retail Corp’s catalogs. In this case, the phone  
 12 answering services of Answer Co are being delivered to Retail Corp’s customers and prospective  
 13 customers. Therefore, Answer Co is delivering a service electronically to Retail Corp’s customers or  
 14 prospective customers on behalf of Retail Corp and must assign the proceeds from this service to the  
 15 state or states from which the phone calls are placed by the customers or prospective customers. If  
 16 Answer Co cannot determine the actual locations from which phone calls are placed and lacks sufficient  
 17 information regarding the locations to reasonably approximate the locations, Answer Co must  
 18 approximate the amount of its Oregon receipts by multiplying the amount of its fee from Retail Corp by a  
 19 percentage that reflects the Oregon population in the specific geographic area from which the calls are  
 20 placed relative to the total population in that area. See section (4)(c)(B)(iii)(III)(III-a) of this rule.

21 **Example 22:** Web Corp, a corporation that is based outside of Oregon, sells tangible property to  
 22 customers via its Internet website. Design Co designed and maintains Web Corp’s website, including  
 23 making changes to the site based on customer feedback received through the site. Design Co’s services  
 24 are delivered to Web Corp, the proceeds from which are assigned pursuant to section (4)(c)(B)(ii) of this  
 25 rule. The fact that Web Corp’s customers and prospective customers incidentally benefit from Design  
 26 Co’s services and may even interact with Design Co in the course of providing feedback, does not

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1 transform the service into one delivered “on behalf of” Web Corp to Web Corp’s customers and  
 2 prospective customers.

3 **Example 23:** Wholesale Corp, a corporation that is based outside Oregon, develops an Internet-based  
 4 information database outside Oregon and enters into a contract with Retail Corp whereby Retail Corp  
 5 will market and sell access to this database to end users. Depending on the facts, the provision of  
 6 database access may be either the sale of a service or the license of intangible property or may have  
 7 elements of both, but for purposes of analysis it does not matter. See section (5)(e) of this rule. Assume  
 8 that on the particular facts applicable in this example Wholesale Corp is selling database access in  
 9 transactions properly characterized as involving the performance of a service. When an end user  
 10 purchases access to Wholesale Corp’s database from Retail Corp, Retail Corp in turn compensates  
 11 Wholesale Corp in connection with that transaction. In this case, Wholesale Corp’s services are being  
 12 delivered through Retail Corp to the end user. Wholesale Corp must assign its receipts from sales to  
 13 Retail Corp to the state or states in which the end users receive access to Wholesale Corp’s database. If  
 14 Wholesale Corp cannot determine the state or states where the end users actually receive access to  
 15 Wholesale Corp’s database and lacks sufficient information regarding the location from which the end  
 16 users access the database to reasonably approximate the location, Wholesale Corp must approximate the  
 17 extent to which its services are received by end users in Oregon by using a percentage that reflects the  
 18 ratio of the Oregon population in the specific geographic area in which Retail Corp regularly markets and  
 19 sells Wholesale Corp’s database relative to the total population in that area. See section (4)(c)(B)(iii)(II)  
 20 of this rule. Note that it does not matter for purposes of the analysis whether Wholesale Corp’s sale of  
 21 database access constitutes a service or a license of intangible property, or some combination of both.  
 22 See section (5)(e) of this rule.

23 (d) *Professional Services.*

24 (A) *In General.* Except as otherwise provided in section (4)(d) of this rule, professional services are  
 25 services that require specialized knowledge and in some cases require a professional certification,  
 26 license, or degree. These services include the performance of technical services that require the

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1 application of specialized knowledge. Professional services include, without limitation, management  
 2 services, bank and financial services, financial custodial services, investment and brokerage services,  
 3 fiduciary services, tax preparation, payroll and accounting services, lending services, credit card services  
 4 (including credit card processing services), data processing services, legal services, consulting services,  
 5 video production services, graphic and other design services, engineering services, and architectural  
 6 services. Nothing in this paragraph applies to services provided by a financial institution described in  
 7 ORS 317A.100(5).

8 (B) *Overlap with Other Categories of Services.*

9 (i) Certain services that fall within the definition of “professional services” set forth in section (4)(d) of  
 10 this rule are nevertheless treated as “in-person services” within the meaning of section (4)(b) of this rule  
 11 and are assigned under the rules of that section. Specifically, professional services that are physically  
 12 provided in person by the taxpayer such as carpentry, certain medical and dental services or child care  
 13 services, where the customer or the customer’s real or tangible property upon which the services are  
 14 provided is in the same location as the service provider at the time the services are performed, are “in-  
 15 person services” and are assigned as such, notwithstanding that they may also be considered to be  
 16 “professional services.” However, professional services where the service is of an intellectual or  
 17 intangible nature, such as legal, accounting, financial, and consulting services, are assigned as  
 18 professional services under the rules of section (4)(d) of this rule, notwithstanding the fact that these  
 19 services may involve some amount of in-person contact.

20 (ii) Professional services may in some cases include the transmission of one or more documents or other  
 21 communications by mail or by electronic means. In some cases, all or most communications between the  
 22 service provider and the service recipient may be by mail or by electronic means. However, in these  
 23 cases, despite this transmission, the assignment rules that apply are those set forth in (4)(d) of this rule,  
 24 and not those set forth in section (4)(c) of this rule, pertaining to services delivered to a customer or  
 25 through or on behalf of a customer.

26 (C) *Assignment of Receipts.* In the case of a professional service, it is generally possible to characterize



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1 the location of delivery in multiple ways by emphasizing different elements of the service provided, no  
 2 one of which will consistently represent the market for the services. Therefore, the location of delivery in  
 3 the case of professional services is not susceptible to a general rule of determination and must be  
 4 reasonably approximated. The assignment of receipts from a sale of a professional service depends in  
 5 many cases upon whether the customer is an individual or business customer. In any instance in which  
 6 the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or  
 7 business customer, the taxpayer must treat the customer as a business customer. For purposes of  
 8 assigning the receipts from a sale of a professional service, a taxpayer's customer is the person that  
 9 contracts for the service, irrespective of whether another person pays for or also benefits from the  
 10 taxpayer's services.

11 (i) *General Rule.* Receipts from sales of professional services other than those services described in  
 12 section (4)(d)(C)(ii) of this rule (architectural and engineering services) and section (4)(d)(C)(iii) of this  
 13 rule (transactions with related parties) are assigned in accordance with section (4)(d)(C)(i) of this rule.

14 (I) *Professional Services Delivered to Individual Customers.* Except as otherwise provided in section  
 15 (4)(d) of this rule (see in particular section (4)(d)(C)(iii) of this rule), in any instance in which the service  
 16 provided is a professional service and the taxpayer's customer is an individual customer, the state or  
 17 states in which the service is delivered must be reasonably approximated as set forth in section  
 18 (4)(d)(C)(i)(I) of this rule. In particular, the taxpayer must assign the receipts from a sale to the  
 19 customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state  
 20 of primary residence, to the state of the customer's billing address; provided, however, in any instance in  
 21 which the taxpayer derives more than five percent of its receipts from sales of all services from an  
 22 individual customer, the taxpayer must identify the customer's state of primary residence and assign the  
 23 receipts from the service or services provided to that customer to that state.

24 (II) *Professional Services Delivered to Business Customers.* Except as otherwise provided in section  
 25 (4)(d) of this rule, in any instance in which the service provided is a professional service and the  
 26 taxpayer's customer is a business customer, the state or states in which the service is delivered must be





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1 reasonably approximated as set forth in this section. In particular, unless the taxpayer may use the safe  
2 harbor set forth at section (4)(d)(C)(i)(III) of this rule, the taxpayer must assign the receipts from the sale  
3 as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by  
4 the customer; second, if the place of customer management is not reasonably determinable, to the  
5 customer’s place of order; and third, if the customer place of order is not reasonably determinable, to the  
6 customer’s billing address; provided, however, in any instance in which the taxpayer derives more than  
7 five percent of its receipts from sales of all services from a customer, the taxpayer is required to identify  
8 the state in which the contract of sale is principally managed by the customer.

9 (III) *Safe Harbor; Large Volume of Transactions.* Notwithstanding the rules set forth in sections  
10 (4)(d)(C)(i)(I) and (II) of this rule, a taxpayer may assign its receipts from sales to a particular customer  
11 based on the customer’s billing address in any taxable year in which the taxpayer (1) engages in  
12 substantially similar service transactions with more than 250 customers, whether individual or business,  
13 and (2) does not derive more than five percent of its receipts from sales of all services from that  
14 customer. This safe harbor applies only for purposes of section (4)(d)(C)(i) of this rule and not otherwise.

15 (ii) *Architectural and Engineering Services with respect to Real or Tangible Personal Property.*  
16 Architectural and engineering services with respect to real or tangible personal property are professional  
17 services within the meaning of section (4)(d) of this rule. However, unlike in the case of the general rule  
18 that applies to professional services, (1) the receipts from a sale of an architectural service are assigned to  
19 a state or states if and to the extent that the services are with respect to real estate improvements located,  
20 or expected to be located, in the state or states; and (2) the receipts from a sale of an engineering service  
21 are assigned to a state or states if and to the extent that the services are with respect to tangible or real  
22 property located in the state or states, including real estate improvements located in, or expected to be  
23 located in, the state or states. These rules apply whether or not the customer is an individual or business  
24 customer. In any instance in which architectural or engineering services are not described in section  
25 (4)(d)(C)(ii) of this rule, the receipts from a sale of these services must be assigned under the general rule  
26 for professional services. See section (4)(d)(C)(i) of this rule.

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	NOTICE OF INTENDED ACTION	
	Bulletin Dated May 2020	Hearing Scheduled May 26, 2020

PURPOSE: 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 ORS 317A.128

1 (iii) *Related-Party Transactions*. In any instance in which the professional service is sold to a related  
 2 party, rather than applying the rule for professional services delivered to business customers in section  
 3 (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  
 4 related party as reasonably approximated using the following hierarchy: (1) if the service primarily  
 5 relates to specific operations or activities of a related party conducted in one or more locations, then to  
 6 the state or states in which those operations or activities are conducted in proportion to the related-party's  
 7 payroll at the locations to which the service relates in the state or states; or (2) if the service does not  
 8 relate primarily to operations or activities of a related party conducted in particular locations, but instead  
 9 relates to the operations of the related party generally, then to the state or states in which the related party  
 10 has employees, in proportion to the related-party's payroll in those states. The taxpayer may use the safe  
 11 harbor provided by section (4)(d)(C)(i)(III) of this rule provided that the department may aggregate the  
 12 receipts from sales to related parties in applying the five percent rule if necessary or appropriate to avoid  
 13 distortion.

14 (iv) *Examples*: Unless otherwise stated, assume in each of these examples, that the safe harbor set forth at  
 15 section (4)(d)(C)(i)(III) of this rule does not apply.

16 **Example 24:** Broker Corp provides securities brokerage services to individual customers who are  
 17 resident in Oregon and in other states. Broker Corp is not a financial institution described in ORS  
 18 317A.100(5). Assume that Broker Corp knows the state of primary residence for many of its customers,  
 19 and where it does not know the state of primary residence, it knows the customer's billing address. Also  
 20 assume that Broker Corp does not derive more than five percent of its receipts from sales of all services  
 21 from any one individual customer. If Broker Corp knows its customer's state of primary residence, it  
 22 must assign the receipts to that state. If Broker Corp does not know its customer's state of primary  
 23 residence, but rather knows the customer's billing address, it must assign the receipts to that state. See  
 24 section (4)(d)(C)(i)(I) of this rule.

25 **Example 25:** Same facts as Example 24, except that Broker Corp has several individual customers from  
 26 whom it derives, in each instance, more than five percent of its receipts from sales of all services.

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1 Receipts from sales to customers from whom Broker Corp derives five percent or less of its receipts from  
 2 sales of all services must be assigned as described in Example 24. For each customer from whom it  
 3 derives more than five percent of its receipts from sales of all services, Broker Corp is required to  
 4 determine the customer’s state of primary residence and must assign the receipts from the services  
 5 provided to that customer to that state. In any case in which a five percent customer’s state of primary  
 6 residence is Oregon, receipts from a sale made to that customer must be assigned to Oregon; in any case  
 7 in which a five percent customer’s state of primary residence is not Oregon, receipts from a sale made to  
 8 that customer are not assigned to Oregon.

9 **Example 26:** Architecture Corp provides building design services as to buildings located, or expected to  
 10 be located, in Oregon to individual customers who are resident in Oregon and other states, and to  
 11 business customers that are based in Oregon and other states. The receipts from Architecture Corp’s sales  
 12 are assigned to Oregon because the locations of the buildings to which its design services relate are in  
 13 Oregon, or are expected to be in Oregon. For purposes of assigning these receipts, it is not relevant  
 14 where, in the case of an individual customer, the customer primarily resides or is billed for the services,  
 15 and it is not relevant where, in the case of a business customer, the customer principally manages the  
 16 contract, placed the order for the services, or is billed for the services. Further, these receipts are assigned  
 17 to Oregon even if Architecture Corp’s designs are either physically delivered to its customer in paper  
 18 form in a state other than Oregon or are electronically delivered to its customer in a state other than  
 19 Oregon. See sections (4)(d)(B)(ii) and (C)(ii) of this rule.

20 **Example 27:** Law Corp provides legal services to individual clients who are resident in Oregon and in  
 21 other states. In some cases, Law Corp may prepare one or more legal documents for its client as a result  
 22 of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a  
 23 state other than where the client is resident. Assume that Law Corp knows the state of primary residence  
 24 for many of its clients, and where it does not know the state of primary residence, it knows the client’s  
 25 billing address. Also assume that Law Corp does not derive more than five percent of its receipts from  
 26 sales of all services from any one individual client. If Law Corp knows its client’s state of primary

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1 residence, it must assign the receipts to that state. If Law Corp does not know its client’s state of primary  
2 residence, but rather knows the client’s billing address, it must assign the receipts to that state. For  
3 purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or  
4 otherwise delivered to a location in another state, or the litigation or other legal matter that is the  
5 underlying predicate for the services is in another state. See sections (4)(d)(B)(ii) and (C)(i) of this rule.  
6 **Example 28:** Law Corp provides legal services to several multistate business clients. In each case, Law  
7 Corp knows the state in which the agreement for legal services that governs the client relationship is  
8 principally managed by the client. In one case, the agreement is principally managed in Oregon; in the  
9 other cases, the agreement is principally managed in a state other than Oregon. If the agreement for legal  
10 services is principally managed by the client in Oregon, the receipts from sale of the services are  
11 assigned to Oregon; in the other cases, the receipts are not assigned to Oregon. In the case of receipts that  
12 are assigned to Oregon, the receipts are so assigned even if (1) the legal documents relating to the service  
13 are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter  
14 that is the underlying predicate for the services is in another state. See sections (4)(d)(B)(ii) and (C)(i) of  
15 this rule.  
16 **Example 29:** Consulting Corp, a company that provides consulting services to law firms and other  
17 customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client  
18 Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law  
19 Corp on behalf of Client Co. Client Co pays for Consulting Corp’s services directly. Assuming that  
20 Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in  
21 Oregon, the receipts from the sale of Consulting Corp’s services are assigned to Oregon. It is not relevant  
22 for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp’s services, or  
23 that Client Co pays for Consulting Corp’s services directly. See section (4)(d)(C)(i)(II) of this rule.  
24 **Example 30:** Advisor Corp, a corporation that provides investment advisory services and is not a  
25 financial institution described in ORS 317A.100(5), provides investment advisory services to Investment  
26 Co. Investment Co. is a multistate business client of Advisor Corp that uses Advisor Corp’s services in

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1 connection with investment accounts that it manages for individual clients, who are the ultimate  
 2 beneficiaries of Advisor Corp’s services. Assume that Investment Co’s individual clients are persons that  
 3 are resident in numerous states, which may or may not include Oregon. Assuming that Advisor Corp  
 4 knows that its agreement with Investment Co is principally managed by Investment Co in Oregon,  
 5 receipts from the sale of Advisor Corp’s services are assigned to Oregon. It is not relevant for purposes  
 6 of the analysis that the ultimate beneficiaries of Advisor Corp’s services may be Investment Co’s clients,  
 7 who are residents of numerous states. See section (4)(d)(C)(i)(II) of this rule.

8 **Example 31:** Advisor Corp, a corporation that provides investment advisory services and is not a  
 9 financial institution described in ORS 317A.100(5), provides investment advisory services to Investment  
 10 Fund LP, a partnership that invests in securities and other assets. Assuming that Advisor Corp knows that  
 11 its agreement with Investment Fund LP is principally managed by Investment Fund LP in Oregon,  
 12 receipts from the sale of Advisor Corp’s services are assigned to Oregon. See section (4)(d)(C)(i)(II) of  
 13 this rule. Note that it is not relevant for purposes of the analysis that the partners in Investment Fund LP  
 14 are residents of numerous states.

15 **Example 32:** Design Corp is a corporation based outside Oregon that provides graphic design and similar  
 16 services in Oregon and in neighboring states. Design Corp enters into a contract at a location outside  
 17 Oregon with an individual customer to design fliers for the customer. Assume that Design Corp does not  
 18 know the individual customer’s state of primary residence and does not derive more than five percent of  
 19 its receipts from sales of services from the individual customer. All of the design work is performed  
 20 outside Oregon. Receipts from the sale are in Oregon if the customer’s billing address is in Oregon.

21 (5) *License or Lease of Intangible Property.*

22 (a) *General Rules.*

23 (A) Receipts from the license of intangible property are in Oregon if and to the extent the intangible is  
 24 used in Oregon. In general, the term “use” is construed to refer to the location of the taxpayer’s market  
 25 for the use of the intangible property that is being licensed and is not to be construed to refer to the  
 26 location of the property or payroll of the taxpayer. The rules that apply to determine the location of the



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1 use of intangible property in the context of several specific types of licensing transactions are set forth at  
2 sections (5)(b)-(e) of this rule. For purposes of the rules set forth in section (5) of this rule, a lease of  
3 intangible property is to be treated the same as a license of intangible property.

4 (B) In general, a license of intangible property that conveys all substantial rights in that property is  
5 treated as a sale of intangible property for purposes of this rule. See section (6) of this rule. Note,  
6 however, that for purposes of sections (5) and (6) of this rule, a sale or exchange of intangible property is  
7 treated as a license of that property where the receipts from the sale or exchange derive from payments  
8 that are contingent on the productivity, use, or disposition of the property.

9 (C) Intangible property licensed as part of the sale or lease of tangible property is treated under this rule  
10 as the sale or lease of tangible property.

11 (b) *License of a Marketing Intangible.* Where a license is granted for the right to use intangible property  
12 in connection with the sale, lease, license, or other marketing of goods, services, or other items (i.e., a  
13 marketing intangible) to a consumer, the royalties or other licensing fees paid by the licensee for that  
14 marketing intangible are assigned to Oregon to the extent that those fees are attributable to the sale or  
15 other provision of goods, services, or other items purchased or otherwise acquired by consumers or other  
16 ultimate customers in Oregon. Examples of a license of a marketing intangible include, without  
17 limitation, the license of a service mark, trademark, or trade name; certain copyrights; the license of a  
18 film, television, or multimedia production or event for commercial distribution; and a franchise  
19 agreement. In each of these instances the license of the marketing intangible is intended to promote  
20 consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence  
21 of the amount or proportion of its receipts that is attributable to Oregon, it must assign that amount or  
22 proportion to Oregon. In the absence of actual evidence of the amount or proportion of the licensee's  
23 receipts that are derived from Oregon consumers, the portion of the licensing fee to be assigned to  
24 Oregon must be reasonably approximated by multiplying the total fee by a percentage that reflects the  
25 ratio of the Oregon population in the specific geographic area in which the licensee makes material use of  
26 the intangible property to regularly market its goods, services, or other items relative to the total





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1 population in that area. If the license of a marketing intangible is for the right to use the intangible  
2 property in connection with sales or other transfers at wholesale rather than directly to retail customers,  
3 the portion of the licensing fee to be assigned to Oregon must be reasonably approximated by  
4 multiplying the total fee by a percentage that reflects the ratio of the Oregon population in the specific  
5 geographic area in which the licensee's goods, services, or other items are ultimately and materially  
6 marketed using the intangible property relative to the total population of that area. Unless the taxpayer  
7 demonstrates that the marketing intangible is materially used in the marketing of items outside the United  
8 States, the fees from licensing that marketing intangible will be presumed to be derived from within the  
9 United States.

10 (c) *License of a Production Intangible.* If a license is granted for the right to use intangible property other  
11 than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and  
12 the license is to be used in a production capacity (a “production intangible”), the licensing fees paid by  
13 the licensee for that right are assigned to Oregon to the extent that the use for which the fees are paid  
14 takes place in Oregon. Examples of a license of a production intangible include, without limitation, the  
15 license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of  
16 the intangible lies predominately in its use in that process. In the case of a license of a production  
17 intangible to a party other than a related party where the location of actual use is unknown, it is presumed  
18 that the use of the intangible property takes place in the state of the licensee's commercial domicile  
19 (where the licensee is a business) or the licensee’s state of primary residence (where the licensee is an  
20 individual). If the department can reasonably establish that the actual use of intangible property pursuant  
21 to a license of a production intangible takes place in part in Oregon, it is presumed that the entire use is in  
22 this state except to the extent that the taxpayer can demonstrate that the actual location of a portion of the  
23 use takes place outside Oregon. In the case of a license of a production intangible to a related party, the  
24 taxpayer must assign the receipts to where the intangible property is actually used.

25 (d) *License of a Mixed Intangible.* If a license of intangible property includes both a license of a  
26 marketing intangible and a license of a production intangible (a “mixed intangible”) and the fees to be



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1 paid in each instance are separately and reasonably stated in the licensing contract, the department will  
 2 accept that separate statement for purposes of this rule. If a license of intangible property includes both a  
 3 license of a marketing intangible and a license of a production intangible and the fees to be paid in each  
 4 instance are not separately and reasonably stated in the contract, it is presumed that the licensing fees are  
 5 paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the  
 6 department can reasonably establish otherwise.

7 *(e) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or*  
 8 *Services.*

9 *(A) In general.* In some cases, the license of intangible property will resemble the sale of an  
 10 electronically-delivered good or service rather than the license of a marketing intangible or a production  
 11 intangible. In these cases, the receipts from the licensing transaction are assigned by applying the rules  
 12 set forth in sections (4)(c)(B)(ii) and (iii) of this rule, as if the transaction were a service delivered to an  
 13 individual or business customer or delivered electronically through an individual or business customer, as  
 14 applicable. Examples of transactions to be assigned under section (5)(e) of this rule include, without  
 15 limitation, the license of database access, the license of access to information, the license of digital goods  
 16 (see section (7)(b) of this rule), and the license of certain software (e.g., where the transaction is not the  
 17 license of pre-written software that is treated as the sale of tangible personal property, see section (7)(a)  
 18 of this rule).

19 *(B) Sublicenses.* Pursuant to section (5)(e)(A) of this rule, the rules of section (4)(c)(B)(iii) of this rule  
 20 may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the  
 21 intangible property to end users as if the transaction were a service delivered electronically through a  
 22 customer to end users. In particular, the rules set forth at section (4)(c)(B)(iii) of this rule that apply to  
 23 services delivered electronically to a customer for purposes of resale and subsequent electronic delivery  
 24 in substantially identical form to end users or other recipients may also apply with respect to licenses of  
 25 intangible property for purposes of sublicense to end users. For this purpose, the intangible property  
 26 sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to

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1 the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to that  
 2 property (e.g., because the sublicensee’s rights are limited to its own use of the property and do not  
 3 include the ability to grant a further sublicense), or because that property is bundled with additional  
 4 services or items of property.

5 (C) *Examples:* In these examples, unless otherwise stated, assume that the customer is not a related party.

6 **Example 33:** Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee  
 7 is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of  
 8 certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a  
 9 licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of  
 10 products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the  
 11 products at multiple store locations, including store locations that are both within and without Oregon.  
 12 Further, the licensing fees that are paid by Dealer Co are broken out on a per store basis. The licensing  
 13 fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The  
 14 portion of the fees to be assigned to Oregon are determined by multiplying the fees by a percentage that  
 15 reflects the ratio of Dealer Co’s receipts that are derived from its Oregon stores relative to Dealer Co’s  
 16 total receipts. See section (5)(b) of this rule.

17 **Example 34:** Program Corp, a corporation that is based outside Oregon, licenses programming that it  
 18 owns to licensees, such as cable networks, that in turn will offer the programming to their customers on  
 19 television or other media outlets in Oregon and in all other U.S. states. Each of these licensing contracts  
 20 constitutes the license of a marketing intangible. For each licensee, assuming that Program Corp lacks  
 21 evidence of the actual number of viewers of the programming in Oregon, the component of the licensing  
 22 fee paid to Program Corp by the licensee that constitutes Program Corp’s Oregon receipts is determined  
 23 by multiplying the amount of the licensing fee by a percentage that reflects the ratio of the Oregon  
 24 audience of the licensee for the programming relative to the licensee’s total U.S. audience for the  
 25 programming. See section (5)(e) of this rule. Note that the analysis and result as to the state or states to  
 26 which receipts are properly assigned would be the same to the extent that the substance of Program

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1 Corp’s licensing transactions may be determined to resemble a sale of goods or services, instead of the  
 2 license of a marketing intangible. See section (5)(e) of this rule.

3 **Example 35:** Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract,  
 4 Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment  
 5 that is to be manufactured by Wholesale Co. or an unrelated entity, and to sell the manufactured  
 6 equipment to unrelated companies that will ultimately market the equipment to consumers in a specific  
 7 geographic region, including a foreign country. The license agreement confers a license of a marketing  
 8 intangible, even though the trademarks in question will be affixed to property to be manufactured. In  
 9 addition, the license of the marketing intangible is for the right to use the intangible property in  
 10 connection with sales to be made at wholesale rather than directly to retail customers. The component of  
 11 the licensing fee that constitutes the Oregon receipts of Moniker Corp is determined by multiplying the  
 12 amount of the fee by a percentage that reflects the ratio of the Oregon population in the specific  
 13 geographic region relative to the total population in that region. See section (5)(b) of this rule. If Moniker  
 14 Corp is able to reasonably establish that the marketing intangible was materially used throughout a  
 15 foreign country, then the population of that country will be included in the population ratio calculation.  
 16 However, if Moniker Corp is unable to reasonably establish that the marketing intangible was materially  
 17 used in the foreign country in areas outside a particular major city, then none of the foreign country’s  
 18 population beyond the population of the major city is include in the population ratio calculation.

19 **Example 36:** Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is  
 20 permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract  
 21 specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross  
 22 receipts from the products that are later sold. The contract does not specify any other fees. The appliances  
 23 are both manufactured and sold in Oregon and several other states. Assume the licensing fees are paid for  
 24 the license of a production intangible, even though the royalty is to be paid based upon the sales of a  
 25 manufactured product (i.e., the license is not one that includes a marketing intangible). Because the  
 26 department can reasonably establish that the actual use of the intangible property takes place in part in

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- 1 Oregon, the royalty is assigned based to the location of that use rather than to the location of the  
 2 licensee’s commercial domicile, in accordance with section (5)(a) of this rule. It is presumed that the  
 3 entire use is in Oregon except to the extent that the taxpayer can demonstrate that the actual location of  
 4 some or all of the use takes place outside Oregon. Assuming that Formula, Inc can demonstrate the  
 5 percentage of manufacturing that takes place in Oregon using the patent relative to the manufacturing in  
 6 other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will  
 7 constitute Formula, Inc's Oregon receipts. See section (5)(e) of this rule.
- 8 **Example 37:** Axel Corp enters into a license agreement with Biker Co. in which Biker Co. is granted the  
 9 right to produce motor scooters using patented technology owned by Axel Corp, and also to sell the  
 10 scooters by marketing the fact that the scooters were manufactured using the special technology. The  
 11 contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters  
 12 are manufactured outside Oregon. Assume that Axel Corp lacks actual information regarding the  
 13 proportion of Biker Co.’s receipts that are derived from Oregon customers. Also assume that Biker Co. is  
 14 granted the right to sell the scooters in a U.S. geographic region in which the Oregon population  
 15 constitutes 25 percent of the total population during the period in question. The licensing contract  
 16 requires an upfront licensing fee to be paid by Biker Co. to Axel Corp and does not specify what  
 17 percentage of the fee derives from Biker Co.'s right to use Axel Corp's patented technology. Because the  
 18 fees for the license of the marketing and production intangible are not separately and reasonably stated in  
 19 the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing  
 20 intangible, unless either the taxpayer or the department reasonably establishes otherwise. Assuming that  
 21 neither party establishes otherwise, 25 percent of the licensing fee constitutes Oregon receipts. See  
 22 sections (5)(b) and (d) of this rule.
- 23 **Example 38:** Same facts as Example 37, except that the license contract specifies separate fees to be paid  
 24 for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that  
 25 the scooters were manufactured using the special technology. The licensing contract constitutes both the  
 26 license of a marketing intangible and the license of a production intangible. Assuming that the separately

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1 stated fees are reasonable, the department will: (1) assign no part of the licensing fee paid for the  
 2 production intangible to Oregon, and (2) assign 25 percent of the licensing fee paid for the marketing  
 3 intangible to Oregon. See section (5)(d) of this rule.

4 **Example 39:** Better Burger Corp, which is based outside Oregon, enters into franchise contracts with  
 5 franchisees that agree to operate Better Burger restaurants as franchisees in various states. Several of the  
 6 Better Burger Corp franchises are in Oregon. In each case, the franchise contract between the individual  
 7 and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt  
 8 of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better  
 9 Burger name and service marks, food processes, and cooking know-how, as well as fees for management  
 10 services. The upfront fees for the receipt of the Oregon franchises constitute fees paid for the licensing of  
 11 a marketing intangible. These fees constitute Oregon receipts because the franchises are for the right to  
 12 make Oregon sales. The monthly franchise fees paid by Oregon franchisees constitute fees paid for (1)  
 13 the license of marketing intangibles (the Better Burger name and service marks), (2) the license of  
 14 production intangibles (food processes and know-how), and (3) personal services (management fees).  
 15 The fees paid for the license of the marketing intangibles and the production intangibles constitute  
 16 Oregon receipts because in each case the use of the intangibles is to take place in Oregon. See sections  
 17 (5)(b) and (c) of this rule. The fees paid for the personal services are to be assigned pursuant to section  
 18 (4) of this rule.

19 **Example 40:** Online Corp, a corporation based outside Oregon, licenses an information database through  
 20 the means of the Internet to individual customers that are resident in Oregon and in other states. These  
 21 customers access Online Corp’s information database primarily in their states of residence and  
 22 sometimes while traveling in other states. The license is a license of intangible property that resembles a  
 23 sale of goods or services, and receipts are assigned in accordance with section (5)(e) of this rule. If  
 24 Online Corp can determine or reasonably approximate the state or states where its database is accessed, it  
 25 must do so. Assuming that Online Corp cannot determine or reasonably approximate the location where  
 26 its database is accessed, Online Corp must assign the receipts made to the individual customers using the

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1 customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp  
 2 knows the billing address for each of its customers. In this case, Online Corp's receipts from sales made  
 3 to its individual customers are in Oregon in any case in which the customer's billing address is in  
 4 Oregon. See section (4)(c)(B)(ii)(I) of this rule.

5 **Example 41:** Net Corp, a corporation based outside Oregon, licenses an information database through the  
 6 means of the Internet to a business customer, Business Corp, a company with offices in Oregon and two  
 7 neighboring states. The license is a license of intangible property that resembles a sale of goods or  
 8 services, and receipts are assigned in accordance with section (5)(e) of this rule. Assume that Net Corp  
 9 cannot determine where its database is accessed but reasonably approximates that 75 percent of Business  
 10 Corp's database access took place in Oregon, and 25 percent of Business Corp's database access took  
 11 place in other states. In that case, 75 percent of the receipts from database access is in Oregon. Assume  
 12 alternatively that Net Corp lacks sufficient information regarding the location where its database is  
 13 accessed to reasonably approximate the location. Under these circumstances, if Net Corp derives five  
 14 percent or less of its receipts from database access from Business Corp, Net Corp must assign the  
 15 receipts under section (4)(c)(B)(ii)(II) of this rule to the state where Business Corp principally managed  
 16 the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the  
 17 order for the services, or if that state is not reasonably determinable, to the state of Business Corp's  
 18 billing address. If Net Corp derives more than five percent of its receipts from database access from  
 19 Business Corp, Net Corp is required to identify the state in which its contract of sale is principally  
 20 managed by Business Corp and must assign the receipts to that state. See section (4)(c)(B)(ii)(II) of this  
 21 rule.

22 **Example 42:** Net Corp, a corporation based outside Oregon, licenses an information database through the  
 23 means of the Internet to more than 250 individual and business customers in Oregon and in other states.  
 24 The license is a license of intangible property that resembles a sale of goods or services, and receipts  
 25 from that license are assigned in accordance with section (5)(e) of this rule. Assume that Net Corp cannot  
 26 determine or reasonably approximate the location where its information database is accessed. Also



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1 assume that Net Corp does not derive more than five percent of its receipts from sales of database access  
2 from any single customer. Net Corp may apply the safe harbor stated in section (4)(c)(B)(ii)(II)(II-d) of  
3 this rule and may assign its receipts to a state or states using each customer’s billing address.

4 **Example 43:** Web Corp, a corporation based outside of Oregon, licenses an Internet-based information  
5 database to business customers who then sublicense the database to individual end users that are resident  
6 in Oregon and in other states. These end users access Web Corp’s information database primarily in their  
7 states of residence and sometimes while traveling in other states. Web Corp’s license of the database to  
8 its customers includes the right to sublicense the database to end users, while the sublicenses provide that  
9 the rights to access and use the database are limited to the end users’ own use and prohibit the individual  
10 end users from further sublicensing the database. Web Corp receives a fee from each customer based  
11 upon the number of sublicenses issued to end users. The license is a license of intangible property that  
12 resembles a sale of goods or services, and receipts are assigned by applying the rules set forth in section  
13 (4)(c)(B)(iii) of this rule. If Web Corp can determine or reasonably approximate the state or states where  
14 its database is accessed by end users, it must do so. Assuming that Web Corp lacks sufficient information  
15 from which it can determine or reasonably approximate the location where its database is accessed by  
16 end users, Web Corp must approximate the extent to which its database is accessed in Oregon using a  
17 percentage that represents the ratio of the Oregon population in the specific geographic area in which  
18 Web Corp’s customer sublicenses the database access relative to the total population in that area. See  
19 section (4)(c)(B)(iii)(III) of this rule.

20 (6) *Sale of Intangible Property: Assignment of Receipts.* The assignment of receipts to a state or states in  
21 the instance of a sale or exchange of intangible property depends upon the nature of the intangible  
22 property sold. For purposes of this section (6), a sale or exchange of intangible property includes a  
23 license of that property where the transaction is treated for tax purposes as a sale of all substantial rights  
24 in the property and the receipts from the transaction are not contingent on the productivity, use, or  
25 disposition of the property. For the rules that apply where the consideration for the transfer of rights is  
26 contingent on the productivity, use, or disposition of the property, see section (5)(a) of this rule.



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- 1 (a) *Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area.*  
2 In the case of a sale or exchange of intangible property where the property sold or exchanged is a  
3 contract right, government license, or similar intangible property that authorizes the holder to conduct a  
4 business activity in a specific geographic area, the receipts from the sale are assigned to a state if and to  
5 the extent that the intangible property is used or is authorized to be used within the state. If the intangible  
6 property is used or may be used only in this state, the taxpayer must assign the receipts from the sale to  
7 Oregon. If the intangible property is used or is authorized to be used in Oregon and one or more other  
8 states, the taxpayer must assign the receipts from the sale to Oregon to the extent that the intangible  
9 property is used in or authorized for use in Oregon, through the means of a reasonable approximation.
- 10 (b) *Sale that Resembles a License (Receipts are Contingent on Productivity, Use, or Disposition of the*  
11 *Intangible Property).* In the case of a sale or exchange of intangible property where the receipts from the  
12 sale or exchange are contingent on the productivity, use, or disposition of the property, the receipts from  
13 the sale are assigned by applying the rules set forth in section (5) of this rule (pertaining to the license or  
14 lease of intangible property).
- 15 (c) *Sale that Resembles a Sale of Goods and Services.* In the case of a sale or exchange of intangible  
16 property where the substance of the transaction resembles a sale of goods or services and where the  
17 receipts from the sale or exchange do not derive from payments contingent on the productivity, use, or  
18 disposition of the property, the receipts from the sale are assigned by applying the rules set forth in  
19 section (5)(e) of this rule (relating to licenses of intangible property that resemble sales of goods and  
20 services). Examples of these transactions include those that are analogous to the license transactions cited  
21 as examples in section (5)(e) of this rule.
- 22 (d) If receipts from the sale of intangible property used in Oregon are not sourced as provided elsewhere  
23 in this section and the sale was a transaction or activity in the regular course of the taxpayer's business,  
24 the receipts are sourced to Oregon if and to the extent the property is used in Oregon.
- 25 (7) *Special Rules.*
- 26 (a) *Software Transactions.* A license or sale of pre-written software for purposes other than commercial

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1 reproduction (or other exploitation of the intellectual property rights) transferred on a tangible medium is  
 2 treated as the sale of tangible personal property, rather than as either the license or sale of intangible  
 3 property or the performance of a service. In these cases, the receipts are in Oregon as determined under  
 4 ORS 317A.128 and related rules for the sale of tangible personal property. In all other cases, the receipts  
 5 from a license or sale of software are to be assigned to Oregon as determined otherwise under this rule  
 6 (e.g., depending on the facts, as the development and sale of custom software, see section (4)(c) of this  
 7 rule; as a license of a marketing intangible, see section (5)(b) of this rule; as a license of a production  
 8 intangible, see section (5)(c) of this rule; as a license of intangible property where the substance of the  
 9 transaction resembles a sale of goods or services, see section (5)(e) of this rule; or as a sale of intangible  
 10 property, see section (6) of this rule).

11 (b) *Sales or Licenses of Digital Goods or Services.* In general. In the case of a sale or license of digital  
 12 goods or services, including, among other things, the sale of various video, audio, and software products,  
 13 or similar transactions, the receipts from the sale or license are assigned by applying the same rules as are  
 14 set forth in sections (4)(c)(B)(ii) or (iii) of this rule, as if the transaction were a service delivered to an  
 15 individual or business customer or delivered through or on behalf of an individual or business customer.  
 16 For purposes of the analysis, it is not relevant what the terms of the contractual relationship are or  
 17 whether the sale or license might be characterized, depending upon the particular facts, as, for example,  
 18 the sale or license of intangible property or the performance of a service. See sections (5)(e) and (6)(c) of  
 19 this rule.

20 **[Publications:** Contact the Oregon Department of Revenue for information about how to obtain a copy  
 21 of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and  
 22 ORS 183.355(1)(b).]

23 **Stat. Auth.:** ORS 305.100; ORS 317A.128; ORS 317A.143

24 **Stats. Implemented:** ORS 317A.128