

ADMINISTRATIVE RULE REVIEW

	Rule No. 150-317-1100	
Adopt New Rule	Page Page 1 of 3	Last Revised Date June 12, 2020
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated May 2020	Hearing Scheduled May 26, 2020

PURPOSE: Provides guidance to assist taxpayers in determining whether they are acting as an agent for purposes of the exclusion provided by ORS 317A.100(1)(b)(M) of the Corporate Activity Tax (CAT). A temporary rule has been in effect since January 1, 2020. The permanent rule adopts the language of the temporary rule, but deletes one of the examples, amends two of the examples regarding payroll service agencies and employment staffing agencies, and adds two examples related to construction projects.

1 **150-317-1100**

2 **Agent Exclusion**

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

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

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

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

13 (5) *Examples.*

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

20 **Example 2:** Human Resource Services, Inc. (HRS) provides payroll, human resources, and benefits
21 services to XYZ Corporation for a fee. As part of its services provided to XYZ, HRS processes employee
22 payroll; assists XYZ with hiring and firing, FMLA and OFLA regulations; and manages employee
23 insurance benefits. XYZ pays fees to HRS for its services in a lump sum that includes the compensation

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1 amounts owed to XYZ’s employees and other payroll amounts. Based on the totality of facts and
 2 circumstances, HRS acts as the agent of XYZ when paying wages and payroll amounts to XYZ’s
 3 employees. Therefore, HRS does not include in its commercial activity the amount it receives from XYZ
 4 that corresponds to the compensation of XYZ’s employees’ wages and related payroll amounts, but it
 5 must include in its commercial activity the fees that it receives from XYZ for its services.

6 **Example 3:** Staffing Solutions, Inc. provides workers to Office Works. Office Works has the right to
 7 control the workers as to the details and means of the work performed for Office Works. Staffing
 8 Solutions is responsible for paying the employees’ wages and related payroll amounts, serves as the
 9 employer of record for taxes, and provides the workers with health insurance and other benefits. Office
 10 Works reimburses Staffing Solutions, according to its payroll schedule frequency, for wages paid to the
 11 workers and payroll taxes, plus a fee. Based on the totality of facts and circumstances, Staffing Solutions
 12 acts as the agent of Office Works in making payments of wages and payroll taxes to the workers
 13 performing services under the direction and control of Office Works. The reimbursement amounts paid
 14 for wages to the workers while on assignment at Office Works and related payroll taxes are not included
 15 in Staffing Solutions’ commercial activity. Staffing Solutions must include in its commercial activity all
 16 other fees and amounts it receives from Office Works.

17 **Example 4:** Jones Corporation owns a plot of land in Oregon and enters into a fixed-price \$10 million
 18 contract with a general contractor, Strong-R Construction, to construct a mixed-use building on the land.
 19 Strong-R Construction agrees to provide specified services for the \$10 million contract and bears all risks
 20 involved in completing the project in a cost-effective manner. Strong-R Construction may perform the
 21 necessary services itself, or it may bid out some or all the work to subcontractors. According to the terms
 22 of the contract, Strong-R Construction is solely responsible and liable for completing the project as
 23 agreed and does not need to inform or disclose to Jones Corporation any details as to the costs or the

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- 1 manner in which the work is conducted or completed. Based on the totality of the facts and
 2 circumstances, Strong-R Construction does not qualify as an agent for purposes of the agency exclusion
 3 and includes the entire \$10 million in Oregon commercial activity.
- 4 **Example 5:** ABC Corporation (ABC) enters into a cost-reimbursable contract with DEF Construction
 5 (DEF) to construct or equip an office building in Oregon. ABC agrees to pay DEF for all costs incurred
 6 for completed work by subcontractors, plus a fee equal to five percent of the total project costs. Under
 7 the terms of the contract, DEF must act on behalf of and under the direction and control of ABC related
 8 to the use of subcontractors. Such direction and control includes, but is not limited to, the bidding and
 9 awarding of subcontracts, the setting of a schedule of activities and deliverables, and the management of
 10 project costs. DEF acts as a conduit regarding any payments made to the subcontractors, by remitting
 11 monies received from ABC to the subcontractors, provided that project deliverables are completed
 12 according to the terms of the subcontracts. ABC pays \$10 million of project costs to DEF. If DEF turns
 13 around and remits the entire \$10 million to the subcontractors for the total costs of the project work
 14 completed by the subcontractors, that amount may be excluded from commercial activity. However, any
 15 portion of the \$10 million not remitted directly to the subcontractors that is used instead for other
 16 expenses such as materials or other labor must be included in commercial activity. Assume that DEF
 17 remits the entire \$10 million directly to the subcontractors and collects a \$500,000 fee (\$10,000,000 *
 18 5%) from ABC as compensation for the services provided to ABC. Based on the totality of facts and
 19 circumstances, DEF includes only the \$500,000 fee in its commercial activity.
- 20 **Stat. Auth.:** ORS 305.100, ORS 317A.143
- 21 **Stats. Implemented:** ORS 317A.100