

ADMINISTRATIVE RULE REVIEW

	Rule No. 150-317-1140	
New Rule	Page Page 1 of 5	Last Revised Date May 08, 2020
	NOTICE OF INTENDED ACTION	
Permanent Rule	Bulletin Dated June 2020	Hearing Scheduled June 23, 2020

PURPOSE: Provides guidance to assist taxpayers in determining whether receipts from wholesale sales of food items are excludable under ORS 317A.100(1)(b)(EE).

1 **150-317-1140**

2 **Wholesale Sale of Groceries Exclusion**

3 (1) *Definitions*

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

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

17 (c) “Wholesale sale” is the sale of goods to a purchaser for the purpose of resale without further
 18 processing in the regular course of the purchaser’s trade or business. A wholesale sale of groceries, for
 19 purposes of the exclusion in ORS 317A.100(1)(b)(EE), may be determined by using factors such as (but
 20 not limited to):

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

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

24 (C) The sale is made to another business entity.

25 (2) The list of factors in sections (1)(c)(A) through (1)(c)(C) are nonexclusive. The factors will be

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- 1 considered based on facts and circumstances and only to the extent that they are relevant. The department
 2 may consider any other relevant factors and circumstances.
- 3 (3) *Excludable Receipts from Wholesale Sales.* A person may exclude receipts realized from the
 4 wholesale sale of groceries, as that term is defined in ORS 317A.100(8), provided that the sales
 5 transaction meets the following requirements:
- 6 (a) The transaction is a wholesale sale;
- 7 (b) The items sold in the transaction are food or food products that meet the definition of groceries, in a
 8 form that may be resold to the final consumer for home consumption without processing;
- 9 (c) The sale is made for the purpose of reselling the groceries to the final consumer for home
 10 consumption; and
- 11 (d) The wholesale seller obtains written verification from the purchaser that the purchased groceries will
 12 be resold without processing, by a store that typically sells groceries to the final consumer for home
 13 consumption.
- 14 (4) *Documentation Required for Verification.* A wholesale seller must retain sufficient documentation to
 15 demonstrate the requirements in section (3) have been met. Any document may serve as verification,
 16 provided that it contains the following information:
- 17 (a) The purchaser's name and address;
- 18 (b) The date of the purchase, the item(s) purchased, and the amount purchased; and
- 19 (c) Verification from the purchaser of the amount of the purchase that will be resold, without processing,
 20 to the final consumer for home consumption.
- 21 (5) *Safe Harbor for Wholesale Sales to Stores Authorized as Retail Food Stores, or Qualifying as Retail*
 22 *Food Stores for purposes of the Supplemental Nutrition Assistance Program (SNAP).* A wholesale seller
 23 is not required to obtain separate verification from the purchaser if the purchaser is a qualified SNAP
 24 retailer with a current permit to accept SNAP benefits issued by the U.S. Department of Agriculture, and
 25 the purchase was made for the purpose of resale of groceries at a store authorized as a retail food store

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1 under 7 U.S.C. 2012(o). The wholesale seller must retain sufficient documentation to demonstrate that
2 the sale was made to an authorized retail food store under 7 U.S.C. 2012(o).

3 (6) *Examples.*

4 **Example 1:** Braddock Wholesale LLC purchases prepackaged frozen vegetables and meals and sells the
5 items, without processing the purchased items in any way, to their customers. One of Braddock’s
6 customers, Harris Grocery, has six stores located throughout the state. All six Harris stores are authorized
7 as retail food stores under 7 U.S.C. 2012(o). Braddock sells prepackaged frozen vegetables and frozen
8 meals to Harris Grocery. Under the terms of the sales agreement, Braddock delivers 1,000 frozen meals
9 and 5,000 10-ounce packages of frozen broccoli directly to each Harris store. Braddock retains records of
10 the sales contracts documenting that the items sold were groceries in a form that may be resold to
11 consumers for home consumption without further processing, and that Braddock delivered the purchased
12 groceries directly to a store that is authorized as a retail food store under 7 U.S.C. 2012(o). The sales
13 contract, with the information specified above, is sufficient to verify that the receipts from the wholesale
14 sales transaction are excludable under ORS 317A.100(1)(b)(EE).

15 **Example 2:** Assume the same facts in Example 1, except that Braddock’s customer is Columbia
16 Cupboards LLC (Columbia). Columbia has three stores located across the state. None of Columbia’s
17 stores are authorized as retail food stores under 7 U.S.C. 2012(o). As such, Braddock must obtain
18 verification from Columbia that the frozen meals are purchased for the purpose of resale, without
19 processing, and that the meals are typically sold to the ultimate final consumer for consumption at home.
20 Under the terms of the sales agreement between Braddock Wholesale and Columbia Cupboards LLC,
21 Braddock delivers 100 frozen meals to each of Columbia’s three stores. The sales agreement specifically
22 states that the purchaser (Columbia) is purchasing the frozen meals for resale without any further
23 processing, and the meals will be sold by three Columbia Cupboard stores, all of which typically sell
24 groceries to the final consumer for home consumption. The sales agreement, with the information
25 specified above, verifies that the receipts from the wholesale sales transaction are excludable under ORS

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1 317A.100(1)(b)(EE).

2 **Example 3:** Assume the same facts as Example 1, except that Braddock’s customer is Foxtrot Airlines.
 3 Foxtrot Airlines purchases 5,000 frozen meals from Braddock. The meals will be heated and served to
 4 the airline’s customers during flights. Because Foxtrot Airlines will process (heat) the frozen meals
 5 before the meals are served to its passengers, and because Foxtrot Airlines does not typically sell directly
 6 to the final consumer for home consumption, Braddock cannot exclude the receipts from the transaction
 7 as a wholesale sale of groceries. Braddock will include the receipts from the sale to Foxtrot Airlines as
 8 commercial activity.

9 **Example 4:** Assume the same facts as Example 1, except that Braddock’s customer is Farragut
 10 Corporation. Farragut Corporation operates 144 grocery stores across the state, under the name Good
 11 Grocery. All Good Grocery stores are authorized as retail food stores under 7 U.S.C. 2012(o). In
 12 addition, Farragut Corporation has fifty separately located restaurants operating under the name
 13 Greenbelt Diner. Farragut Corporation purchases 400,000 10-ounce packages of frozen broccoli and
 14 100,000 5.5 pound packages of frozen broccoli from Braddock. Under the terms of the sales agreement,
 15 all of the items are delivered to a centralized warehouse owned by Farragut Corporation. Farragut will
 16 then distribute the prepackaged broccoli as needed to their grocery stores and restaurants. The
 17 prepackaged frozen broccoli is in a form that may be resold to the final consumer for home consumption
 18 without further processing. However, Braddock cannot reasonably determine whether the prepackaged
 19 frozen broccoli, after being delivered, will be sold at Farragut’s Good Grocery stores which typically sell
 20 groceries to consumers for home consumption, or used by Farragut’s Greenbelt Diners, where the
 21 broccoli will be cooked and incorporated as an ingredient in hot meals served to patrons. Braddock
 22 obtains written verification from Farragut Corporation, who certifies that of the 500,000 packages of
 23 frozen broccoli purchased, the 400,000 10-ounce packages will be sold in Farragut’s Good Grocery
 24 stores, which are authorized as retail food stores under 7 U.S.C. 2012(o), and the 100,000 5.5 pound
 25 packages will be used by Farragut’s Greenbelt Diners. Braddock may exclude from commercial activity

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- 1 the receipts from the sale of 400,000 packages of frozen broccoli as receipts from the wholesale sale of
 2 groceries excluded under ORS 317A.100(1)(b)(EE). Braddock must include in commercial activity its
 3 receipts from the sale of 100,000 5.5 pound packages of frozen broccoli that will be used by Farragut’s
 4 Greenbelt Diners.
- 5 **Example 5:** Largo Cereals LLC manufactures cold, ready-to-eat breakfast cereal. Largo markets their
 6 cereals directly to the home consumer through targeted advertising campaigns, and packages their cereal
 7 in branded, 30-ounce boxes. Largo sells the ready-to-eat packaged cereal to retailers, distributors, and
 8 wholesalers, including Braddock Wholesale. Under the terms of the sales agreement, Largo sells 10,000
 9 branded 30-ounce boxes of breakfast cereal to Braddock Wholesale. The sales agreement specifically
 10 states that the purchaser (Braddock) will resell the 30-ounce boxes of cereal, without further processing.
 11 Based on the circumstances of the sale and the condition of the item, Largo and Braddock reasonably
 12 expect that the cereal will ultimately be sold to the final consumer for home consumption. The sales
 13 agreement, with the information specified above, verifies that the receipts from the wholesale sales
 14 transaction are excludable under ORS 317A.100(1)(b)(EE).
- 15 **Stat. Auth.:** ORS 305.100, ORS 317A.143
- 16 **Stats. Implemented:** ORS 317A.100(1)(b)(EE) and (8)