

ADMINISTRATIVE RULE REVIEW

<p>New Rule Amend Rule</p> <p>Permanent Rule</p>	Rule No. 150-317-1400	
	Page Page 1 of 4	Last Revised Date June 21, 2020 September 17, 2020
NOTICE OF INTENDED ACTION		
	Bulletin Dated June 2020 October 2020	Hearing Scheduled June 23 October 27 , 2020

PURPOSE: [Amends rule to add a new section \(6\) to direct farming operation taxpayers to alternative methods for out-of-state-sales permitted under Oregon Laws 2020 \(first special session\), chapter 2, section 6 \(HB 4202\). Rule P](#) provides guidance to sellers and wholesalers regarding the exclusion from commercial activity for property purchased for resale out of state, as provided by ORS 317A.100(1)(b)(DD).

1 **150-317-1400**

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

3 (1) *Out-of-State Resale Certificate*. A wholesaler purchasing property for the purpose of resale may, at
4 the time the purchase is made, provide the seller of the property with an out-of-state resale certificate
5 declaring the amount of purchased property that the wholesaler will resell out of Oregon. The out-of-state
6 resale certificate qualifies as the certification required under ORS 317A.100(1)(b)(DD). Any document
7 provided by the wholesaler to the seller at the time of the sale may serve as an out-of-state resale
8 certificate provided that the document contains:

- 9 (a) The wholesaler's legal name and Oregon address;
- 10 (b) The wholesaler's federal tax identification number;
- 11 (c) The date of the purchase;
- 12 (d) The total amount of purchased property;
- 13 (e) The purchase price paid by the wholesaler;
- 14 (f) The dollar amount of purchased property that the wholesaler will resell outside of Oregon; and
- 15 (g) The signature of the wholesaler, their authorized representative, or employee, certifying that the
16 person is a wholesaler as that term is defined in ORS 317A.100(20).

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

23 (3) *Approximation Ratio to Estimate Out-of-State Sales*. The approximation ratio is a fraction. The

ADMINISTRATIVE RULE REVIEW

	Rule No. 150-317-1400	
	Page Page 2 of 4	Last Revised Date June 21, 2020 September 17, 2020
New Rule Amend Rule Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated June 2020 October 2020	Hearing Scheduled June 23 October 27 , 2020

PURPOSE: [Amends rule to add a new section \(6\) to direct farming operation taxpayers to alternative methods for out-of-state-sales permitted under Oregon Laws 2020 \(first special session\), chapter 2, section 6 \(HB 4202\). Rule P](#) provides guidance to sellers and wholesalers regarding the exclusion from commercial activity for property purchased for resale out of state, as provided by ORS 317A.100(1)(b)(DD).

1 numerator is the amount of commercial activity the wholesaler realized from sales to Oregon customers
 2 in the prior year. The denominator is the amount of commercial activity the wholesaler realized from all
 3 sales during the prior year. Wholesalers located in multiple states may only include in the numerator and
 4 denominator their commercial activity realized from property delivered from their Oregon locations.
 5 Sales of property delivered from the wholesaler’s locations outside of Oregon are not included in the
 6 ratio.

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

22 (4) *Alternative Methods of Determining Out-of-State Sales.* If the wholesaler knows or reasonably should
 23 have known at the time of the wholesaler’s purchase that the approximation ratio in section (3) does not

ADMINISTRATIVE RULE REVIEW

	Rule No. 150-317-1400	
	Page Page 3 of 4	Last Revised Date June 21, 2020 September 17, 2020
New Rule Amend Rule Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated June 2020 October 2020	Hearing Scheduled June 23 October 27, 2020

PURPOSE: [Amends rule to add a new section \(6\) to direct farming operation taxpayers to alternative methods for out-of-state-sales permitted under Oregon Laws 2020 \(first special session\), chapter 2, section 6 \(HB 4202\). Rule P](#) provides guidance to sellers and wholesalers regarding the exclusion from commercial activity for property purchased for resale out of state, as provided by ORS 317A.100(1)(b)(DD).

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

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

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

20 [\(6\) Taxpayers engaged in farming operations that sell agricultural commodities to wholesalers and](#)
 21 [brokers may also refer to OAR 150-317-1170 for additional methods of demonstrating the amount of the](#)
 22 [taxpayer’s goods subsequently sold in this state compared to outside this state.](#)

23 **Stat. Auth.:** ORS 305.100, ORS 317A.143



ADMINISTRATIVE RULE REVIEW

<p>New Rule Amend Rule</p> <p>Permanent Rule</p>	Rule No. 150-317-1400	
	Page Page 4 of 4	Last Revised Date June 21, 2020 September 17, 2020
	NOTICE OF INTENDED ACTION	
	Bulletin Dated June 2020 October 2020	Hearing Scheduled June 23 October 27 , 2020

PURPOSE: [Amends rule to add a new section \(6\) to direct farming operation taxpayers to alternative methods for out-of-state-sales permitted under Oregon Laws 2020 \(first special session\), chapter 2, section 6 \(HB 4202\). Rule P](#) provides guidance to sellers and wholesalers regarding the exclusion from commercial activity for property purchased for resale out of state, as provided by ORS 317A.100(1)(b)(DD).

- Stats. Implemented:** ORS 317A.100(1)(b)(DD)