Questions about wholesaling:

Q: If an automotive dealership wholesales a vehicle to another business that is going to sell it to an end consumer, would the dealership's sale to the wholesaler be exempt, like in a dealer trade? Or would the dealership's sale be taxable? If the sale is taxable, then this sale would end up being double-taxed, as the dealership would collect CAT tax on the wholesale, then the wholesaler would collect tax again when they sell it to the end consumer.

A: If a dealership sells a vehicle to another dealer at wholesale, the amount from that sale is included in the dealership's total annual commercial activity, unless the wholesale sale is also a dealer trade that meets both of the following two requirements:

- The sale or transfer is made for the purpose of resale by the transferee motor vehicle dealer; and
- The sale or transfer is made based on the transferee motor vehicle dealer's need to meet a specific customer's preference.

To the second question, the CAT is an annual privilege tax. The CAT not a transactional tax, such as a sales tax that applies to each transaction. Instead, the CAT is measured on a business' annual commercial activity—the total amount a business realizes from transactions and activity in Oregon over the course of a year, less a 35 percent subtraction for certain business expenses. Further, the CAT only applies to taxable commercial activity in excess of $1 million. The laws establishing the CAT (Oregon Revised Statutes, Chapter 317A) do not prohibit any business from recovering a business expense when setting the total price for the sale, lease, or license of an item or the sale of a service. The CAT is imposed on the entity doing business in Oregon and is considered part of the business's expenses. A business may include the CAT with other business expenses when setting the total price charged to customers. However, the total price charged (including any amount estimated to be attributable to the CAT) is included in the business' commercial activity.

Q: If an auto dealer is in the trade or business of selling new and used car vehicles, and the wholesale sale is to change inventory mix, would the sale be excluded from CAT?
A: Based on the information provided, no. Receipts from the sale or transfer of a motor vehicle between two vehicle dealers (often referred to as a "dealer trade") can only be excluded from a dealer's commercial activity if both of the following two requirements are met:

- The sale or transfer is made for the purpose of resale by the transferee motor vehicle dealer; and
- The sale or transfer is made based on the transferee motor vehicle dealer's need to meet a specific customer's preference.

A sale made simply to change the dealer's inventory mix would not meet the second requirement, and therefore would not qualify for the exclusion. Further information regarding the exclusion for dealer trades is available on the CAT Beyond the FAQ webpage and in OAR 150-317-1410 (Motor Vehicle Resale Certificate).

~~**Q: We have over 1000 shipments a year through one broker. Can we have the broker provide us with one certificate for the entire year or do we have to have a separate certificate for each shipment? Or a separate certificate per day?**~~

~~**A:** Based on the information described, the seller in this situation appears to be a farming operation selling agricultural commodities to a broker. A farming operation selling agricultural commodities to a broker must obtain a separate certificate per each sale of an agricultural commodity to a broker or wholesaler.~~

~~Alternatively, the farming operation may, in lieu of obtaining a certificate from the broker, use an industry average percentage for sales of the commodity made the previous tax year, based on the most recent information from the United States Department of Agriculture National Agricultural Statistics Service and other sources of sales information.~~

~~OAR 150-317-1170 (Farming Operations: Clarifying Definitions) provides further information regarding other acceptable sources of sales information and information required in a certificate. Information is also available on the CAT Beyond the FAQ webpage.~~

Q: Can you please clarify if parts sold by a wholesaler, used in manufacturing goods that are sold outside Oregon are exempt? Is there an OAR that addresses this?

A: The laws governing the CAT provide an exclusion for a business's sales to Oregon wholesalers, if the wholesaler provides the seller with an out-of-state resale certificate showing that the purchased items will be resold outside of the state. If a wholesaler is selling parts to a manufacturer who will use the parts to manufacture goods that will eventually be sold out of state, then the exclusion would not apply. In order to qualify for the exclusion, the sale must be *to* a wholesaler. In the situation described, the manufacturer would not need to claim the receipts for CAT because they are directly selling out of state. However, because the wholesaler is selling to the manufacturer the exclusion would not apply to that sale. The wholesaler would need to be selling to a wholesaler in order for the exclusion to apply. Further information on this exclusion is available in the Excludable Sales to Wholesalers Fact Sheet and OAR 150-317-1400 (Determining Property Resold Out-of-State and Methods of Determining).

Q: Would a food item that is heated up by a customer after purchase be excluded as a food for home consumption? For example, a frozen burrito is sold to a customer and then customer then heats up the products in a microwave provided by the store.

A: Possibly. A business may exclude receipts from the retail sale of groceries, provided that the sale meets two requirements:

1. The sale is of a grocery item that would be eligible for purchase with SNAP benefits.
2. The seller typically intends or expects that the sale of food to the purchaser is for home consumption.

A frozen burrito would be considered a grocery item, eligible for purchase under SNAP benefits, so the sale has met the first requirement. The second requirement is based on the specific circumstances of the seller. In other words, does the store typically sell groceries for home consumption? Based on the information provided, it is not clear whether the store would meet the second requirement. However, factors that would be considered when determining if the store typically sells groceries for home consumption may include:

- Whether the store's average gross receipts from the sale of hot food is greater than the average gross receipts from the sale of food for home consumption.
- Whether the store offers on-site dining facilities, and if so, whether the percentage of floor space dedicated to dining is greater than the percentage of floor space dedicated to grocery shelving.

OAR 150-317-1150 (Retail Sales of Groceries Exclusion) provides detailed guidance, including multiple examples, to assist taxpayers in determining whether receipts are excludable. Information is also available in the CAT Grocery Exclusion Fact Sheet.

Please keep in mind that food that is hot at the point of sale is not considered a grocery item. If the store heated the frozen burrito and sold it in its deli as a hot food item, the sale would not be excludable. It is hot and ready food, which is ready for immediate consumption and not necessarily for home consumption.

Q: We are a wholesale food supplier. Would the products we sell to government agencies, schools be exempt?

A: The wholesale sale of food to government agencies and schools would likely be subject to CAT. Sales of grocery items can be excluded as long as there is no further processing to the food, and it is sold for the purpose of reselling the groceries to the final consumer for home consumption. However, if the sales are out of state, the wholesale seller would be able to exclude those receipts.

Additional information regarding excludable wholesale sales of groceries is available in the CAT Grocery Exclusion Fact Sheet. OAR 150-317-1140 (Wholesale Sale of Groceries) also provides detailed guidance to assist taxpayers in determining whether receipts qualify for the wholesale grocery exclusion.

Q: If you are a wholesaler that is excluded from CAT, do you still need to register?

A: Wholesalers are not excluded from CAT, if the wholesaler realizes over $750,000 of commercial activity in the year. Please note that over 40 different items and receipts are excluded from commercial activity. For example, a seller's receipts from certain sales to a wholesaler are excluded, as are wholesale sales of groceries for home consumption. If a wholesaler (or any other entity) does not have commercial activity in excess of $750,000 in the tax year, then they will not need to register.

For further information on items excluded from commercial activity generally, please refer to our CAT FAQ "What is commercial activity?"

Specific guidance regarding the exclusion for wholesale sales of groceries is available in our CAT Grocery Exclusion Fact Sheet and OAR 150-317-1140 (Wholesale Sale of Groceries).

Guidance regarding the exclusion for a seller's receipts to a wholesaler is available in our Excludable Sales to Wholesalers Fact Sheet and OAR 150-317-1400 (Determining Property Resold Out-of-State and Methods of Determining).

Q: How do I determine if our customer is a qualified SNAP retailer? What forms must I maintain? Is there a list from the state of all qualified SNAP retailers?

A: The USDA maintains a list of SNAP retailers on its website. You may search USDA SNAP eligible retailers online here. Retailers (such as grocery stores) that sell for the purpose of home consumption are often SNAP retailers. The wholesale seller must retain sufficient documentation to demonstrate that the sale was made to a store that meets the requirements of a SNAP retailer. The CAT Grocery Exclusion Fact Sheet and OAR 150-317-1140 (Wholesale Sale of Groceries) provide further information.

Q: Can a manufacturer also get an exemption certificate from their OR customers that the product they are receiving from us will be resold or is this certificate just for wholesalers?

A: The laws governing the CAT provide an exclusion for a business's sales to Oregon wholesalers, if the wholesaler provides the seller with an out-of-state resale certificate showing that the purchased items will be resold outside of the state. By law, the sale must be to a wholesaler which is specifically defined as "a person primarily doing business by merchant distribution of tangible personal property to retailers or to other wholesalers."

A manufacturer selling items to a wholesaler in Oregon may exclude receipts from those sales, if the wholesaler provides an Out-of-State Resale Certificate for those transactions. Further information is also available in the Excludable Sales to Wholesalers Fact Sheet and OAR 150-317-1400 (Determining Property Resold Out of State and Methods of Determining).

Q: How do we certify that we are a wholesale grocery provider? We sell bagels, pizza dough, and bread for resale to grocery stores. What documentation do we need to take the grocery deduction?

A: In order to document that the receipts from a wholesale sale of groceries are excluded, the wholesale seller should obtain written verification from the purchaser that the purchased groceries will be resold without processing, by a store that typically sells groceries to the final consumer for home consumption. A wholesale seller must retain sufficient documentation to demonstrate these requirements have been met. Any document may serve as verification, provided that it contains the following information: (a) the purchaser's name and address; (b) the date of the purchase, the item(s) purchased, and the amount purchased; and (c) verification from the purchaser of the amount of the purchase that will be resold, without processing, to the final consumer for home consumption. The CAT Grocery Exclusion Fact Sheet and OAR 150-317-1140 (Wholesale Sale of Groceries) provide detailed guidance that may be helpful.

Q: Regarding wholesale certificates, are digital/electronic signatures acceptable?

A: In regard to Out-of-State Resale Certificates, yes. As long as the signatures can be read and the certificates has all of the required documentation, then an electronic or digital signature is acceptable. Further information on this exclusion is available in the Excludable Sales to Wholesalers Fact Sheet and OAR 150-317-1400 (Determining Property Resold Out of State and Methods of Determining).

Q: One of the requirements excluding wholesale sales of groceries/food items is that the sale must be for the purpose of reselling, without processing, to the final consumer. What is the definition of processing? Is increasing the value of the product considered processing? For example, bulk grain sales that further get repackaged or cleaned by the reseller before reaching the final consumer. Is this considered processing?

A: "Processing" means transforming or changing the physical characteristics of an item, including incorporation or consumption of an item as an ingredient or component in the production or manufacture of another item. OAR 150-317-1140 (Wholesale Sale of Groceries) provides additional guidance, including a detailed definition of the term "processing."