

ADMINISTRATIVE RULE REVIEW

|                |                                 |                                         |
|----------------|---------------------------------|-----------------------------------------|
| New Rule       | Rule No.<br>150-317.010         |                                         |
|                | Page<br>Page 1 of 2             | Last Revised Date<br>September 11, 2007 |
| Permanent Rule | NOTICE OF INTENDED ACTION       |                                         |
|                | Bulletin Dated<br>November 2007 | Hearing Scheduled<br>November 27, 2007  |

PURPOSE: Provide that a corporation may have substantial nexus in Oregon, even if it doesn't have physical presence in the State. The provisions are based on various court decisions on the issue of economic nexus.

1 **150-317.010**

2 **Substantial Nexus Guidelines**

3 (1) "Substantial nexus" for corporate excise and income tax jurisdiction purposes, under the Commerce  
4 Clause of the U.S. Constitution, does not require a taxpayer to have a physical presence in Oregon.

5 Substantial nexus exists where a taxpayer regularly takes advantage of Oregon's economy to produce  
6 income for the taxpayer and may be established through the significant economic presence of a taxpayer  
7 in the state.

8 (2) In determining whether a taxpayer has a significant economic presence in Oregon the department may  
9 consider whether the taxpayer:

10 (a) Maintains continuous and systematic contacts with Oregon's economy or market;

11 (b) Conducts deliberate marketing to or solicitation of Oregon customers;

12 (c) Files or is required to file reports or returns with Oregon regulatory bodies;

13 (d) Receives significant gross receipts attributable to customers in Oregon;

14 (e) Receives significant gross receipts attributable to the use of taxpayer's intangible property in Oregon;

15 or

16 (f) Receives benefits provided by the state, such as:

17 (A) Laws providing protection of business interests or regulating consumer credit;

18 (B) Access to courts and judicial process to enforce business rights, including debt collection and  
19 intellectual property rights;

20 (C) Highway or transportation system access for transport of taxpayer's goods or services;

21 (D) Access to educated workforce in Oregon; or



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- 1 (E) Police and fire protection for property in Oregon that displays taxpayer's intellectual or intangible
- 2 property.
- 3 (3) The list of possible facts in section (2) that the department may consider in determining whether a
- 4 taxpayer has a substantial economic presence is meant to be nonexclusive, and those facts should be
- 5 considered only to the extent they are relevant. The department may consider any other relevant facts and
- 6 circumstances.
- 7 (4) Notwithstanding the existence of a substantial nexus with Oregon, a taxpayer that qualifies for the
- 8 income tax exemption provided under Public Law 86-272 (15 USC §381(a)) is not taxable by Oregon.
- 9 **[Publications:** The publication(s) referred to or incorporated by reference in this rule is available from
- 10 the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]
- 11 **Stat. Auth.:** ORS 305.100
- 12 **Stats. Implemented:** ORS 317.010
- 13 **Hist:** Filed \_\_\_\_\_ and Eff. \_\_\_\_\_.