



Oregon

Kate Brown, Governor

Department of Revenue
955 Center St NE
Salem, OR 97301-2555
www.oregon.gov/dor

We distribute notices of rulemaking by mailing a paper copy and by email. If you now receive a paper copy and would prefer to receive future Department of Revenue notices of rulemaking via email instead, please subscribe to our email list, Revenue Rules. The website below includes a link to subscribe.

DATE: October 31, 2019

TO: Interested Parties

SUBJECT: Notice of Temporary Administrative Order and
Notices of Proposed Rulemaking

Attached please find a copy of one Notice of Temporary Administrative Order for a recently adopted temporary rule pertaining to: **Property Tax Deferral programs**

Additionally, please find copies of several Notices of Proposed Rulemaking, explaining that the Department of Revenue intends to adopt, amend, or repeal several administrative rules relating to several tax programs, including:

- **Amusement Device Tax**
- **Corporation Tax**
- **Marijuana Tax**
- **Oil Tank Railroad Car Fee**
- **Other Agency Accounts**
- **Personal Income Tax (2)**
- **Property Tax (including Timber Tax)**
- **State Lodging Tax**
- **Statewide Transit Tax**
- **Withholding Tax**

The newly adopted temporary rule and the proposed permanent rule changes are posted on the department's website at <http://www.oregon.gov/DOR/about/Pages/rules.aspx>.

A public hearing for the proposed changes is scheduled from 9:00 am to 11:00 am on Tuesday, November 26, 2019 in Salem at:

Room 467, Revenue Building
955 Center St NE
Salem, OR 97301

We will accept public comment at that time; however, you may also send comments to the rules coordinator by e-mail, fax, or telephone until November 26, 2019 at 5:00 pm.

If you wish to testify at the hearing you will need to register prior to the hearing. Registration begins at 8:45 am on November 26, 2019 in the Room 467 conference room. Please contact the rules coordinator in advance to make alternative arrangements for registration if you are not able to do so at 8:45 am on the day of the hearing. The hearing will close at 9:15 am if no person registers to testify.



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In compliance with the Americans with Disabilities Act, this information is available in alternative formats upon request. Please contact me if you have questions.

Lois Williams

Administrative Rules Coordinator

Director's Office

Direct telephone: 503-945-8029

E-mail: Rulescoordinator.dor@oregon.gov

FAX: 503-945-8290

Enclosures: Notice of Temporary Administrative Order
Notices of Proposed Rulemaking

OFFICE OF THE SECRETARY OF STATE
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SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

REV 3-2019
CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/21/2019 3:45 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Clarification of home equity determination for property tax deferral under Oregon Laws 2019, chapter 591.

EFFECTIVE DATE: 12/01/2019 THROUGH 05/28/2020

AGENCY APPROVED DATE: 10/21/2019

CONTACT: Lois Williams	955 Center St NE	Filed By:
503-945-8029	Salem, OR 97301	Lois Williams
RulesCoordinator.dor@oregon.gov		Rules Coordinator

NEED FOR THE RULE(S):

This rule is necessary to clarify terms and processes for determining eligibility for the senior and disabled deferral program under new law. This rule clarifies what information will be considered and required for the senior and disabled deferral program home equity test that is required under Oregon Laws 2019, chapter 591 (Enrolled HB 2587). It will also clarify how the equity percentage will be calculated. This temporary rule will be applicable for the 2020 deferral application filing season, and is relevant to applications where the homeowner holds a reverse mortgage obtained on or after July 1, 2011 and before January 1, 2017.

JUSTIFICATION OF TEMPORARY FILING:

- (1) Failure to adopt this rule is likely to cause deferral application forms for the 2020 application season to be issued later than normal. This may cause some confusion for taxpayers and result in a shorter period of time for taxpayers to file their applications by the statutory deadline. Another concern is that a delay may require shifting resources from other program development work.
- (2) Applicants for property tax deferral would be impacted by late availability of forms. The Department of Revenue would bear the burden of reprioritizing or shifting workload to deal with potential taxpayer confusion and delayed system and form development.
- (3) Without temporary rule adoption, the department would proceed with a permanent rule adoption process that requires additional time for public notice and a hearing. These delays would push out the development of the application form and system changes beyond the timeframe for timely development, printing, and distribution of the forms.

(4) A temporary rule will be adopted earlier than a permanent rule and provide guidance for the form and system changes with enough time to enact the form and system changes and print and distribute the forms timely.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Chapter 591, Oregon Laws 2019 (Enrolled HB 2587), available from the Office of Legislative Counsel or online at <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2587>

Federal Housing Finance Agency House Price Index, available from the Federal Housing Finance Agency online at <https://www.fhfa.gov/DataTools/Downloads/Pages/House-Price-Index.aspx>

ADOPT: 150-311-0655

RULE TITLE: Deferral Criteria for Homesteads with a Reverse Mortgage

RULE SUMMARY: Clarifies the process for determining home equity at the time of the deferral application for homes with reverse mortgages from 2011 through 2016.

RULE TEXT:

(1) For purposes of this rule:

(a) "Debt" means the current balances due on all liens, judgments or other outstanding obligations against the property, regardless of priority.

(b) "Home value" means the real market value shown on the last certified tax roll for the homestead, adjusted by multiplying by the year-over-year percentage change in the Federal Housing Finance Agency House Price Index for Oregon, fourth quarter. Information provided by the deferral applicant for use in determining their home value may also be considered.

(2) For homesteads that were in the property tax deferral program before July 1, 2011, and are subject to a reverse mortgage entered into before 2011, no equity test is required and sections (3) to (6) of this rule are not applicable.

(3) For homesteads subject to reverse mortgages that were entered into on or after July 1, 2011, and before January 1, 2017, the homestead must meet an equity test in which the applicant's equity in the property equals or exceeds 40 percent of the home value at the time of application for deferral. The equity percentage of the property shall be determined as described in section (4) of this rule.

(4) Equity equals the home value minus the debt. The equity percentage is calculated by dividing the equity by the home value.

(5) To assist the department with calculating the equity percentage in the property, deferral program applicants must provide the department with all of the following along with the application:

(a) A mortgage statement(s) issued no more than a month prior to application showing current balance due.

(b) The most recent statement(s) of all other debts against the property showing current balance due.

(6) The department may require a title encumbrance report issued by a title company be provided by the applicant.

(7) This rule is effective December 1, 2019 and is applicable to deferral applications filed for the 2020-2021 tax year.

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

STATUTORY/OTHER AUTHORITY: ORS 305.100

STATUTES/OTHER IMPLEMENTED: ORS 311.700

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/17/2019 9:55 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amusement Device Tax: repeal tax not refundable rule and amend penalty waiver rule.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
503-945-8029
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955 Center St NE
Salem, OR 97301

Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
Building
955 Center St NE
Salem, OR 97301

NEED FOR THE RULE(S):

150-320-0020: Repealing rule because it is duplicative of statute and does not provide additional guidance.

150-320-0030: The amended rule ties to the discretionary penalty waiver administrative rule for determination of amusement device tax penalty waiver requests.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

OAR 150-305-0060, OAR 150-305-0068, ORS 320.075, and ORS 320.080

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact resulting from the repeal or amendment of these rules. The repealed rule simply restates current statute which is not changing. The amended rule does not change the agency policy of determining penalty waivers when requested by the taxpayer.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the

rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies, local governments, and the public. These changes are clarifying in nature and do not affect the cost.

2. a. Oregon has approximately 2,200 business locations with video lottery terminals that are subject to the amusement device tax. These businesses are primarily restaurants and bars.

b. There are no new recordkeeping requirements included in the amended rule. There are no costs to comply with the amended rule.

c. None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We communicated with and are working with small business liaison groups such as the Oregon State Bar Laws Committee and the Oregon Society of Certified Public Accountants to obtain their input into how these rules will impact their clients; some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for these rules; however, we did seek and receive input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rules; therefore a committee is unlikely to provide further benefit.

RULES PROPOSED:

150-320-0020, 150-320-0030

REPEAL: 150-320-0020

RULE SUMMARY: Repealing rule because it is duplicative of statute and does not provide additional guidance.

CHANGES TO RULE:

~~150-320-0020~~

~~Tax Not Refundable~~

~~A refund of amusement device tax will not be allowed if the taxpayer was responsible for the tax when it was paid.¶~~

~~Example 1: Bill operated a restaurant for several years until he sold the business on August 1 of the current year. The amusement device tax for a lottery machine was paid on June 30 of the current year. The new owner of the restaurant decided not to keep the lottery machine, so Bill had the lottery commission pick it up on July 31. Since Bill was responsible for paying the tax on June 30, the department may not refund any of the tax paid.¶~~

~~Example 2: Beth had a lottery machine in the tavern she operated for several years. She closed the tavern on October 31 of the current year, after the yearly amusement device tax was paid on June 30. The department may not refund any of the tax paid because Beth was responsible for paying the tax on June 30.¶~~

Example 3: Joe has a lottery machine in his bowling alley. The amusement device tax was paid on June 30 of the current year and Joe declared bankruptcy two months later. Since Joe was responsible for paying the tax on June 30, the department may not refund any of the tax paid.¶¶

Example 4: The amusement device tax for the lottery machine at Don's gas station was paid on June 30 of the current year. In July, a fire destroyed the gas station, the store and the machine. Don was responsible for paying the tax on June 30, so the department may not refund any of the tax paid.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 320.016

AMEND: 150-320-0030

RULE SUMMARY: The amended rule ties to the discretionary penalty waiver administrative rule for determination of amusement device tax penalty waiver requests.

CHANGES TO RULE:

150-320-0030

Waiver of Penalty ¶

The provisions of OAR 150-305-00608 shall be followed to determine when ~~good and sufficient cause exists to consider at the department may~~ waiver of a penalty charged for ~~violations of the Privilege Tax law~~ failure to file or pay tax by the due date.

Statutory/Other Authority: ORS 305.100, 320.110

Statutes/Other Implemented: ORS 320.075, 320.080

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

10/17/2019 9:20 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Clarifies term "different apportionment factors" and start date of Long Term Enterprise Zone tax credit.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
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RulesCoordinator.dor@oregon.gov

955 Center St NE
Salem, OR 97301

Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue

Building

955 Center St NE

Salem, OR 97301

NEED FOR THE RULE(S):

150-317-0245 – Adopt a rule which clarifies the start date for the Long Term Enterprise Zone tax credit.

150-317-0570 – This rule amendment clarifies the rule's original intent as to what are considered "different apportionment factors," as that term is used in ORS 317.710(5)(b).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes and Oregon Administrative Rules, both of which are available online or from the Agency.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact due to these rule changes.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the

expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies or the counties, and a de minimus impact on the public. These changes tend to be clarifying in nature and do not affect the cost.

2. a. Oregon has approximately 123,000 small businesses with fewer than 250 employees that employ 81% of the state's workforce*. Oregon has approximately 105,646 small businesses with fewer than 100 employees**. Based on this information and information from tax returns reporting the number of employees, we estimate Oregon has approximately 91,848 small businesses with fewer than 50 employees*** who are subject to these rules.

b. There should be a de minimis impact on those small businesses subject to these rules, as they are intended to be clarifying or interpretive in nature and do not significantly affect projected reporting, record-keeping or other administrative activities or costs.

c. None known.

* Oregon Small Business Development Center Network (<https://bizcenter.org/about/oregon-sbdc-impact/>)

** Business Oregon (www.oregon4biz.com/assets/docs/DataPacket09.pdf)

*** Oregon Department of Revenue Research Section, 10/14/13, Wage file extract – 2012 tax year

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department of Revenue communicated with representatives from the Oregon State Bar Laws Committee and the Oregon Society of Certified Public Accountants to obtain their input into how these rules will impact their clients, some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for these rules; however, we did seek and receive input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rules; therefore a committee is unlikely to provide further benefit.

RULES PROPOSED:

150-317-0245, 150-317-0570

ADOPT: 150-317-0245

RULE SUMMARY: Adopt a rule which clarifies the start date for the Long Term Enterprise Zone tax credit.

CHANGES TO RULE:

150-317-0245

Commencement of Long Term Enterprise Zone Tax Credit

For purposes of determining the commencement of the tax credit under ORS 317.124, a facility is "placed in service" when a certified business has received a permit to occupy and use the building for its intended purpose.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 317.124

AMEND: 150-317-0570

RULE SUMMARY: This rule amendment clarifies the rule's original intent as to what are considered "different apportionment factors," as that term is used in ORS 317.710(5)(b).

CHANGES TO RULE:

150-317-0570

Different Apportionment Factors for Purposes of ORS 317.710(5)(b)

(1) An Oregon taxpayer that is permitted or required to use different apportionment factors under Oregon law cannot be included in an Oregon consolidated return with another Oregon taxpayer using the standard apportionment factor provided in ORS 314.650. This restriction only applies when both corporations using different apportionment factors are subject to Oregon tax under ORS Chapters 317 or 318. The only corporations that are permitted or required to use different apportionment factors are:

(a) Insurers required to apportion income as provided in ORS 317.660; and

(b) Taxpayers primarily engaged in utilities or telecommunications that elect to have income from business activity apportioned by applying the weightings used in ORS 314.650 (1999 Edition) for tax years beginning on or after May 1, 2003.

(2) Corporations other than those listed in subsections 1(a) and 1(b) of this rule use specific applications of the standard apportionment factor provided in ORS 314.650. ~~The factors for each corporation in the unitary group of a consolidated Oregon return are computed as provided in:~~

~~(a) ORS 314.650 to 314.665 and the rule thereunder for corporations not described in subsections (b) through (l) of this section;~~

~~(b) ORS 314.682 through 314.686 and the rules thereunder for interstate broadcasters;~~

~~(c) OAR 150-314-0074 for carriers of freight or passengers in general;~~

~~(d) OAR 150-314-0076 for railroads;~~

~~(e) OAR 150-314-0078 for airlines;~~

~~(f) OAR 150-314-0080 for trucking companies;~~

~~(g) OAR 150-314-0082 for companies engaged in sea transportation service;~~

~~(h) OAR 150-314-0084 for companies involved in interstate river transportation service;~~

~~(i) OAR 150-314-0088 for financial organizations;~~

~~(j) OAR 150-314-0353 for long-term construction contractors;~~

~~(k) OAR 150-314-0455 for publishers; or~~

~~(l) OAR 150-314-0357 for movie and television production companies.~~

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 317.710

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/17/2019 9:24 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Marijuana Tax: Categorization of Product Types

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
503-945-8029
RulesCoordinator.dor@oregon.gov

955 Center St NE
Salem, OR 97301

Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
Building
955 Center St NE
Salem, OR 97301

NEED FOR THE RULE(S):

Amends rule to update statutory citations for tax categorization for various products sold by marijuana retailers.
Provides general guidance for retailers in classifying certain product categories.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 2098 (2019): <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2098/EnrolledORS475B.705>

OLCC categorization guide:

<https://www.oregon.gov/olcc/marijuana/Documents/CTS/ProductCategorizationGuide.pdf>

FISCAL AND ECONOMIC IMPACT:

There is no fiscal impact resulting from the amendment of these rules which are proposed due to the statutory amendment to ORS 475B.759.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the

expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies and a de minimis impact to units of local government and the public as a result of the changes to the rule. The changes are intended to be clarifying or interpretive in nature due to changes in HB 2098 (2019) and OLCC's seed-to-sale tracking requirements and do not affect the cost to comply.

2. a. Approximately 516 small businesses that run 635 OLCC licensed marijuana retail stores will be subject to the proposed amendments.

b. There is a de minimis effect on those small businesses subject to the rules as these changes are intended to be clarifying or interpretive in nature due to changes in HB 2098 (2019) and seed-to-sale tracking requirements and do not affect projected reporting, recordkeeping, or other administrative costs beyond what was required by HB 2098 (2019).

c. None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The department contacted industry representatives through its marijuana tax list serve; which includes small marijuana businesses, to obtain their input into how these rules will impact them. The department also updated its website to provide interested parties the ability to email the program directly. No comments were received.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for these rules; however, we did seek input from industry representatives as well as from other taxpayer groups on these rule changes. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rules; therefore, a committee is unlikely to provide further benefit.

AMEND: 150-475-2100

RULE SUMMARY: Amends rule to update statutory citations for tax categorization for various products sold by marijuana retailers. Provides general guidance for retailers in classifying certain product categories.

CHANGES TO RULE:

150-475-2100

Marijuana Tax: Categorization of Product Types

(1) Definitions:¶¶

(a) Except as otherwise specifically defined in this rule, the definitions in ORS 475B.015 apply to the same terms as used in this rule.¶¶

(b) "~~Marijuana retailer~~" means a marijuana retailer licensed by the Oregon Liquor Control Commission, or any employe~~Blended pre-roll~~" means a combination of buds and shake/trim in some ~~or representative of a marijuana retailer, who sells marijuana items on or after January 4, 2016.~~¶¶

(~~c~~) "~~Medical marijuana card~~" means a registry identification card held by either a patient or at of plain, non-infused wrapping, and which is designated primary caregiver, as described in ORS 475B.415for smoking.¶¶

(~~d~~) "Buds" are included within the definition of "marijuana flowers" in ORS 475B.015(168).¶¶

(~~e~~) "~~Shake~~" and "~~trim~~" are included within the definition of "marijuana leaves" in ORS 475B.015(18).¶¶

(~~f~~) "Capsule" means a small soluble container, usually made of gelatin that encloses a dose of a cannabinoid product, concentrate, or extract intended for human ingestion.¶¶

(~~g~~) "Combined product" means any product that combines buds and shake/trim with concentrate and/or extract,

or combines concentrate with extract.¶

(hf) "Infused pre-roll" means usable marijuana combined with one or more other marijuana items other than plain, non-infused wrapping or filter/tips, and which is designed for smoking.¶

(g) "Marijuana retailer" means a marijuana retailer licensed by the Oregon Liquor Control Commission, or any employee or representative of a marijuana retailer, who sells marijuana items on or after January 4, 2016.¶

(h) "Medical marijuana card" means a registry identification card held by either a patient or a designated primary caregiver, as described in ORS 475B.415.¶

(i) "Shake" and "trim" are included within the definition of "marijuana leaves" in ORS 475B.015(20).¶

(j) "Suppository" means a small soluble container designed to melt at body temperature within a body cavity other than the mouth, especially the rectum or vagina containing a cannabinoid product, concentrate, or extract.¶

(k) "Tincture" means a solution exempt from the Liquor Control Act under ORS 471.035 that combines alcohol and cannabinoid concentrate or extract. A tincture may or may not include other ingredients intended for human consumption or ingestion.¶

(l) "Topical" means a cannabinoid product intended to be applied to skin or hair.¶

(m) "Transdermal patch" means an adhesive substance applied to human skin that contains a cannabinoid product, concentrate, or extract for absorption into the bloodstream.¶

(2) "Blended pre-roll" means a combination of buds and shake/trim in some sort of wrapping, designed for smoking.¶

(2) The following classifications apply to sales in tax periods beginning on or after January 1, 2020. A marijuana retailer must charge tax on products purchased by an individual that does not present a valid medical marijuana card at the following rates:¶

(a) Shake/trim, buds, and blended pre-rolls are taxed at the rate in ORS 475B.705(2)(a).¶

(b) Buds are taxed at the rate in ORS 475B.705(2)(b).¶

(c) Seeds and immature marijuana plants are taxed at the rate in ORS 475B.705(2)(c).¶

(d) Edibles and tinctures are taxed at the rate in ORS 475B.705(2)(d).¶

(e) Concentrates are taxed at the rate in ORS 475B.705(2)(e).¶

(f) Extracts are taxed at the rate in ORS 475B.705(2)(f).¶

(g) Topicals and transdermal patches are taxed at the rate in ORS 475B.705(2)(g).¶

(h) Capsules, suppositories, and combined products, including infused pre-rolls, are taxed at the rate in ORS 475B.705(2)(h).¶

(3) If a marijuana retailer sells a marijuana item that is not listed in Section 2 of this rule, then the business must make a determination about which tax category applies to the item. In making the determination, a marijuana retailer should take into account how items with a similar method of consumption are taxed, and may request guidance from the Department of Revenue under those circumstances.¶

Example 1: John, a marijuana retailer, sells pre-rolls containing shake/trim wrapped in a plain paper wrapping designed for smoking. These pre-rolls will be taxed as usable marijuana under ORS 475B.705(2)(a) and reported on Schedule 1 by weight of usable marijuana included in the pre-roll.¶

Example 2: Joil, a marijuana retailer, sells pre-rolls containing buds wrapped in a paper wrapping, infused with a marijuana concentrate, and designed for smoking. These infused pre-rolls will be taxed as a combined marijuana item under ORS 475B.705(2)(g) and reported by units sold on Schedule 1.

Statutory/Other Authority: ORS 305.100, 475B.750

Statutes/Other Implemented: ORS 475B.705

OFFICE OF THE SECRETARY OF STATE
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

10/25/2019 9:46 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Provides reporting requirement and payment due dates for fee imposed on owners of oil.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
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955 Center St NE
Salem, OR 97301

Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
Building
955 Center St NE
Salem, OR 97301

NEED FOR THE RULE(S):

OAR 150-468-2001 provides report filing requirements and payment due dates for the new fee, established by the 2019 Legislature, imposed on owners of oil transported by loaded railroad car in Oregon.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 2209 (2019): <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB2209/Enrolled>

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact resulting from the adoption of this rule. The rule provides fee-payers with reporting requirement for fees required to be remitted quarterly and the due dates for those reports and payments.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies, local governments, and the public. These changes are clarifying in nature and do

not affect the cost.

- 2.a. There are about 9,000 independent producers of oil, with an average of 12 employees, producing 83 percent of America's oil in the U.S. It is unknown at this time how many of those independent producers ship oil via rail in Oregon and will be subject to this administrative rule.
- b. There are no new recordkeeping requirements included in the rule. Taxpayers needing to modify accounting systems to accurately report the fee, may experience costs to comply with the rule.
- c. None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We worked with the Western States Petroleum Association and Independent Petroleum Association of America which represent businesses, small and large, in the oil industry that are impacted by this rule. We also communicated with small business liaison groups such as the Oregon State Bar Laws Committee and the Oregon Society of Certified Public Accountants to obtain their input into how these rules may impact their clients.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for this rule; however, we did seek input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rule; therefore a committee is unlikely to provide further benefit.

ADOPT: 150-468-2001

RULE SUMMARY: To provide report filing and payment due dates for the new fee, established by the 2019 Legislature, imposed on owners of oil transported by loaded tank railroad car in Oregon.

CHANGES TO RULE:

150-468-2001

Oil Tank Railroad Car Fee Reporting and Payment Due Date

(1) The definitions contained in OR Laws 2019, ch 581, § 13b are incorporated herein and made a part of this rule.¶

(2) Every owner of oil transported by loaded tank railroad car in Oregon must file a report with the Department of Revenue. The report will be on a form provided by the department and include the number of tank railroad cars loaded with oil that are transported in Oregon each month of the calendar quarter. The report will calculate the amount of fees imposed on the owner of oil transported by loaded tank railroad car in Oregon. A report is required regardless of whether any fees are owed.¶

(3) Every owner of oil transported by loaded tank railroad car in Oregon that is required to submit a report, must file the report and remit the fees to the department on or before the last day of the month following the end of each calendar quarter. The due dates will be January 31, April 30, July 31 and October 31. When the due date for filing a report or payment of fees falls on a Saturday, Sunday, or a state legal holiday, the report and payment are due on the next business day. ¶

Example: The fee for the third calendar quarter of 2020 (July 1 - September 30) would be due on October 31, 2020, a Saturday. The report and payment are due on the next business day, Monday, November 2, 2020. ¶

(4) This administrative rule becomes operative on the effective date of the administrative rule adopted by office of the State Fire Marshal or Department of Environmental Quality to establish the amount of the fee imposed on owners of oil transported by loaded tank railroad car in Oregon.

Statutory/Other Authority: ORS 305.100, OR Laws 2019, ch 581, § 13c

Statutes/Other Implemented: OR Laws 2019, ch 581, § 13c

OFFICE OF THE SECRETARY OF STATE

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SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

10/17/2019 11:12 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Other Agency Accounts: Repeal assigning delinquent accounts rule and update garnishment minimum wage exemption amounts.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
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Filed By:
Lois Williams
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue

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NEED FOR THE RULE(S):

150-293-0010 – repeal because Oregon Laws 2019, chapter 359 results in clearly listing the entities for which the Department of Revenue may render assistance to collect delinquent debts, rendering the rule unnecessary.

150-018-0020 – amend examples to incorporate revised minimum wage exemption amounts for purposes of garnishment resulting from Oregon Laws 2019, chapter 263. Also, amend the rule to incorporate changes resulting from Oregon Laws 2019, chapter 359 which updates the list of entities for which the Department of Revenue may render full collection assistance.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Laws 2019, chapter 359 found at

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB79/Enrolled>

Oregon Laws 2019, chapter 263 found at

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB519/Enrolled>

FISCAL AND ECONOMIC IMPACT:

None

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. None. Neither the repeal of OAR 150-293-0010 nor the amendments in OAR 150-018-0020 result in additional costs for state agencies, units of local government or the public.

2. a. Approximately 67k businesses with 19 employees or less may be subject to guidance provided in OAR 150-018-0020 on calculating the correct minimum wage exemption amount*. However, because the amendment is limited to updating the amounts in the examples, no change in cost is anticipated.

b. None

c. None

* Statistics of U.S. Businesses, 2013-2014 SUSB Employment Change Data Tables, February 2017

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

N/A

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The rule changes are resulting from Oregon Laws 2019, chapter 359 (SB 79) and Oregon Laws 2019, chapter 263 (SB 519) and do not constitute a policy change initiated by the department.

RULES PROPOSED:

150-018-0020, 150-293-0010

AMEND: 150-018-0020

RULE SUMMARY: Amend examples to incorporate revised minimum wage exemption amounts for purposes of garnishment resulting from Oregon Laws 2019, chapter 263. Also, amend the rule to incorporate changes resulting from Oregon Laws 2019, chapter 359 which updates the list of entities for which the Department of Revenue may render full collection assistance.

CHANGES TO RULE:

150-018-0020

Oregon Department of Revenue Other Agency Account Garnishments ¶

(1) Under ORS 293.250, the Department of Revenue may render assistance to recover delinquent debts owed to any ~~state officer, board, commission, corporation, institution, department or other state organization~~ entity listed

under ORS 293.250(2) that is assigned by the agency to the Department of Revenue for collection, including actions to continuously garnish up to 25 percent of an employee's disposable earnings.¶

(2) Under ORS 18.385(4), nonexempt disposable earnings are reduced by an order to withhold child or spousal support under ORS 25.378, 419B.408 or 419C.600 or ORS Chapter 110. The maximum disposable earnings subject to garnishment for the period is determined by under ORS 18.385(2)(a) through 18.385(2)(e), minus any amount required to be withheld from an individual's disposable earnings for the period pursuant to an order to withhold child or spousal support issued under 25.378 and others. The order to withhold child or spousal support may reduce the amount available for garnishment to zero.¶

(3) Under ORS 18.385(2)(a) through 18.385(2)(e), the nonexempt disposable earnings subject to garnishment for the period is calculated by reducing the individual's disposable earnings for that period by the amount of disposable earnings exempt from garnishment. The amount of disposable earnings exempt from garnishment is the greater of 75 percent of the disposable earnings for the period under ORS 18.385(1) or the minimum exemption amount under ORS 18.385(2)(a) through 18.385(2)(e).¶

Example 1: Dick Paul has \$1,000 per week of disposable earnings. Dick Paul owes child support totaling \$15,000. An order to withhold for child or spousal support under ORS 25.378 has been issued to Dick Paul's employer directing the employer to withhold a specified amount of \$225 from Dick Paul's disposable earnings. Dick Paul also owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished Dick Paul's employer for 25 percent of disposable earnings. The employer would calculate and pay the order to withhold for child or spousal support and the garnishment as follows:¶

- (A) Disposable earnings - A - \$1,000¶
- (B) Minimum weekly exemption - B - ~~\$218~~54¶
- (C) 75 percent of disposable earnings - C - \$750¶
- (D) Earnings exempt from garnishment (greater of B or C) - D - \$750¶
- (E) Nonexempt earnings subject to garnishment (A minus D) - E - \$250¶
- (F) Order to withhold specified amount of \$225 for child or spousal support - F - \$225¶
- (G) Disposable earnings subject to garnishment (E minus F) - G - \$25¶

Although the Department of Revenue has issued a 25 percent garnishment that would normally return \$250, because of the order to withhold for child or spousal support, the amount available on the state non-tax debt garnishment is limited to \$25.¶

Example 2: Assume the same facts as in Example 1, except that the order to withhold child or spousal support is \$350. The employer would calculate the order to withhold child or spousal support and garnishment as follows:¶

- (A) Disposable earnings - A - \$1,000¶
- (B) Minimum weekly exemption - B - ~~\$218~~54¶
- (C) 75 percent of disposable earnings - C - \$750¶
- (D) Earnings exempt from garnishment (greater of B or C) - D - \$750¶
- (E) Nonexempt earnings subject to garnishment (A minus D) - E - \$250¶
- (F) Order to withhold specified amount of \$350 for child or spousal support - F - \$350¶
- (G) Disposable earnings subject to garnishment (E minus F) - G - (\$100)¶

Since line (F) is greater than line (E), resulting in a negative number for line (G), the amount available for the non-tax debt garnishment is zero.¶

Example 3: John has \$2590 per week disposable earnings. John owes a state agency for a delinquent student loan totaling \$5,000 (a state non-tax debt). The Department of Revenue has garnished John's employer for 25 percent of disposable earnings. John is not under an order to withhold for child or spousal support. The employer would calculate and pay the garnishment as follows:¶

- (A) Disposable earnings - A - \$2590¶
- (B) Minimum weekly exemption - B - ~~\$218~~54¶
- (C) 75 percent of disposable earnings - C - ~~\$218~~7.50¶
- (D) Earnings exempt from garnishment (greater of B or C) - D - ~~218~~\$254¶
- (E) Nonexempt earnings subject to garnishment (A minus D) - E - \$326¶

(F) Order to withhold for child or spousal support - F - \$0

(G) Disposable earnings subject to garnishment (E minus F) - G - \$326

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 18.385, 293.250

REPEAL: 150-293-0010

RULE SUMMARY: Repeal the rule because Oregon Laws 2019, chapter 359 results in clearly listing the entities for which the Department of Revenue may render assistance to collect delinquent debts, rendering the rule unnecessary.

CHANGES TO RULE:

~~150-293-0010~~

~~Assigning Delinquent Accounts~~

~~(1) Assigning an account to the Collections Unit's restricted program for refund offset only while an account is also assigned to a private collection firm is permitted. However, assigning an account to both the Collection Unit's unrestricted program for full collection activity and a private collection firm is prohibited.¶¶~~

~~(2) The general purpose of the Collections Unit is to render assistance to state agencies as defined in ORS 293.235 in collecting delinquent debt owed, or by law considered owed, to the assigning state agency. The Collections Unit may also accept certain debts owed the county parole boards under contracts with the Department of Corrections; debts owed the State Accident Insurance Fund; Oregon Health and Science University; and Oregon community colleges. With three exceptions shown in section (3) below, the department will not accept delinquent debt owed to any other person or entity.¶¶~~

~~(3) The department may accept, from another state agency, or the state court system, delinquent debt owed for:¶¶~~

~~(a) Child or spousal support;¶¶~~

~~(b) Criminal judgments that impose monetary obligations; or¶¶~~

~~(c) Judgment debts obtained under ORS 169.151 owed counties for expenses for keeping prisoners.~~

~~Statutory/Other Authority: ORS 305.100~~

~~Statutes/Other Implemented: ORS 293.250~~

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/25/2019 9:44 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Composite Tax Returns and Pass-through Entity Withholding

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
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Filed By:
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
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955 Center St NE
Salem, OR 97301

NEED FOR THE RULE(S):

150-314-0510 Amend the rule to align with statutory changes of ORS 314.778 in HB 2101 (2019).

150-314-0515 Amend the rule to conform to the statutory changes of ORS 314.778 in HB 2101 (2019) and to provide additional guidance on the new provisions.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 314.778, OAR 150-314-0510, and OAR 150-314-0515. Available online or from the agency.
Oregon Laws 2019, chapter 132 (HB 2101). Available on Oregon Legislature's website.
Internal Revenue Manual Section 20.1.3.2.4 (Internal Revenue Manual Section 20.1.3.2.4).

FISCAL AND ECONOMIC IMPACT:

Although the amendments to the composite returns rules will have some fiscal and economic impact, the impact is due to the statutory change. The rule does not create any additional fiscal or economic impacts.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. Any impact to nonresident owners of pass-through entities or the pass-through entities themselves, is due to changes to ORS 314.778, rather than the proposed changes to OAR 150-314-0510 and OAR 150-314-0515. Costs to state agencies, units of local government or the public are minimal in nature.

2.a. These rules affect business entities such as partnerships and S corporations and are commonly referred to collectively as pass-through entities (PTE). The rules will affect all types of industries. For a PTE to be subject to the composite rules, it must have at least one owner who is a nonresident.

To determine the number of small businesses as defined by ORS 183.310(10) subject to the rules, the department needs to know the number of W-2s and 1099s issued by the businesses. Information on W-2s and 1099s is not readily available for PTE employment outside of Oregon. Accordingly, the department cannot accurately estimate the number of small businesses that are subject to the rules. For this statement's purposes, the number of small businesses will be estimated using a proxy which is the number from Form OR-WRs that report more than 1 and fewer than 100 of W-2s and 1099s issued by the PTE. The number of small businesses is based on 2017 data. Out of 105,552 PTEs with Oregon addresses (Oregon PTEs), 219 filed composite returns and 26 of those filed OR-WRs with between 1 and 100 W-2s and 1099s as issued. Assuming a similar proportion of non-Oregon PTEs are small businesses, the department estimates the number of small businesses with nonresident owners electing to have composite returns filed that will be subject to the rules is less than 50.

b. These rule changes should place no new burdens for compliance. The administrative burden on businesses is largely dictated by the decisions made by the businesses' owners. If an owner elects to be included in a composite return, the business is required to file a return and pay the tax due regardless of the total number of owners electing to be included in the composite return or the amount of tax the business will pay on behalf of the owners.

c. No known or foreseen need for increase in equipment, supplies, labor and administration.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We communicated with business liaison groups such as the Oregon State Bar Tax Section's Laws Committee (Oregon Bar) and the Oregon Society of Certified Public Accountants (OSCPA) to obtain their input into how these rules will impact their clients, which include small businesses. These two organizations responded to the department's request for comments on the proposed rules. Both organizations expressed support of the department's recommended amendments. The department will continue to communicate and consult with these organizations, as well as with other organizations such as the AICPA and Council on State Taxation (COST).

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The department did not use a formal Advisory Committee for these rules. The department did communicate and consult with the Oregon Bar and OSCPAs and receive input from these groups as industry representatives. No Administrative Rule Advisory Committee was convened because the above mentioned groups have the interest and expertise

necessary to provide adequate feedback on the proposed rules. Therefore a committee is unlikely to provide further benefit.

RULES PROPOSED:

150-314-0510, 150-314-0515

AMEND: 150-314-0510

RULE SUMMARY: Amend the rule to align with statutory changes of ORS 314.778 in HB 2101 (2019).

CHANGES TO RULE:

150-314-0510

Definitions for Composite Tax Returns and Pass-through Entity Withholding ¶¶

The following definitions apply for purposes of ORS 314.775 to 314.784, this rule, and OAR 150-314-0515 to 150-314-0525:¶¶

(1) "Apportionable income" means apportionable income as defined in ORS 314.610(1).¶¶

(2) "Corporate owner" is an owner that is a corporation taxed under ORS chapter 317 or 318.¶¶

(3) "Disregarded entity" is an entity that is not recognized as a separate entity for income tax purposes ~~and such that~~ all items related to the entity are reported on the owner's income tax return. Examples of disregarded entities are:¶¶

(a) Single member limited liability company (LLC) that does not elect to be classified as an association under Treasury Regulation section 301.7701-2, and¶¶

(b) Grantor trusts.¶¶

(24) "Distributive income" means the net amount of income, gain, deduction, or loss of a pass-through entity (PTE) for the tax year of the ~~entity~~ PTE and includes those items directly related to the ~~entity~~ PTE that are considered in determining the federal taxable income of the owner or, in the case of an owner that is a corporation, would be included in its federal taxable income if the corporation were an individual.¶¶

(35) "Electing owner" means a nonresident owner that elects to participate in an Oregon composite tax return filed by a pass-through entity. ~~An electing owner also includes the nonresident~~ When a disregarded entity owns an interest in the PTE, the "owner" refers to the owner of a the disregarded entity.¶¶

(46) "Modified distributive income" means the PTE's distributive income as defined in section (24) of this rule, ~~of a pass-through entity~~, with the modifications provided in ORS ~~chapter 316~~ and other Oregon law that directly relate to those items taken into consideration by the ~~pass-through entity~~ PTE in arriving at its distributive income. Such modifications include, but are not limited to, any Oregon modification necessary for depreciation, depletion, or gain, or loss ~~difference~~ on the sale of depreciable property, and any modification for federal tax credits, and do not include the federal tax subtraction, itemized deductions, and the Oregon standard deduction. Guaranteed payments are treated as an apportionable income component of the ~~entity~~ PTE's distributive income and attributed directly to the owner receiving the payment.¶¶

(5) "Nonelecting owner" means a nonresident owner of a pass-through entity that is eligible, but does not elect to participate in a composite return and who is required to file an Oregon tax return.¶¶

(67) "Oregon-source distributive income" means the portion of the ~~entity~~ PTE's modified distributive income that is derived from or connected with Oregon sources. For ~~entity~~ PTEs operating in Oregon and one or more other states, Oregon-source distributive income is determined by attributing to Oregon sources that portion of the modified distributive income of the ~~entity~~ PTE, as defined in section (46) of this rule, determined in accordance with the allocation and apportionment provisions of ORS 314.280 or ORS 314.610 to 314.675.¶¶

(78) "Pass-through entity" means any entity that is recognized as a separate entity for federal income tax purposes, for which the owners are required to report income, gains, losses, deductions, or credits from the entity for federal income tax purposes. Examples include:¶¶

(a) A partnership;¶¶

(b) An S corporation;¶

(c) A limited liability company that is treated as one of the above for tax purposes; and¶

(d) A trust that has been established or maintained primarily for tax avoidance purposes, including: an abusive tax shelter as defined in ORS 314.402, an entity subject to a penalty for promoting an abusive tax shelter under IRC section 6700, and a tax shelter as defined under IRC section 6662 and related Treasury regulations.¶

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 314.775, 314.778

AMEND: 150-314-0515

RULE SUMMARY: Amend the rule to conform to the statutory changes of ORS 314.778 in HB 2101 (2019) and to provide additional guidance on the new provisions.

CHANGES TO RULE:

150-314-0515

Oregon Composite Tax Return ¶¶

~~(1) General provisions.~~ A pass-through entity (PTE) doing business in or deriving income from sources within this state is required to file an Oregon composite tax return if requested by one or more ~~electing owners.~~ ~~Estimated tax payments are required for the composite return if the total Oregon tax due for any electing owner is expected to be \$1,000 or more for an individual; or \$500 or more for a corporation; nonresident owners.~~ ¶¶

(a) Computation of tax. Each PTE filing a composite return on behalf of electing ~~nonresident~~ owners must calculate the tax for each ~~electing owner.~~ The tax liability for each ~~electing owner~~ nonresident owner included on the composite return, determined without regard to the tax credits allowed under subsection (1)(b) of this rule, is calculated by applying the Oregon tax rates based on the owner's filing status to the difference between the owner's share of the entity's Oregon-source distributive income for the taxable year and, ~~if applicable,~~ the owner's self-employment tax deduction, as provided for in subsection (1)(b) of this rule. If distributive income is apportioned, the deduction must also be apportioned by multiplying the owner's federal deduction for one-half self-employment tax (attributable to the owner's share of the entity's net earnings from self-employment), ~~if applicable,~~ by the apportionment percentage provided in ORS 314.650 through 314.675. The PTE will report on the Oregon composite return the tax computed for each electing owner and total amounts for all electing owners. ¶¶

(b) Credits and deductions. Below is a list of items that may or may not be allowed for the electing owners. ~~[Table not included. See ED. NOTE.]~~ ¶¶

~~(c) Losses.~~ ¶¶

~~(A~~See PDF link below)¶¶

(c) Net operating losses for Oregon nonresidents ~~subject to tax under ORS chapter 316~~ are computed under ORS 316.028. A PTE that has filed an Oregon composite tax return on behalf of nonresident individual owners may file amended returns to carry back the Oregon net operating losses incurred by the PTE. A schedule must be ~~attached to any return filed under these provisions~~ retained by the PTE indicating the taxpayers affected and calculations of the loss amounts ~~and made available to the department upon request.~~ These losses may also be carried forward. The allowed carryback and carryforward periods (including elections to forego the carryback period) are the same as provided under Internal Revenue Code section 172. The election to forego the carryback period must be made by attaching a statement to the Oregon composite return filed on or before the due date (including extensions) of the return for the loss year. Corporations are not allowed to carry back a net operating loss (ORS 317.476). ¶¶

~~(B2) Any refund of tax made pursuant to an original or amended composite return filed under these provisions will be paid to the PTE, regardless of changes in ownership or changes in the identity of nonresidents participating in an Oregon~~ Election to participate in an Oregon composite tax return. The following provisions apply: ¶¶

(a) The owner must make a separate election for each tax year; ¶¶

(b) The owner must have been a nonresident of Oregon during the owner's entire tax year; ¶¶

(c) The owner is considered to have made the election on the date the PTE files the composite return that includes the owner; ¶¶

(d) By making the election, the owner elects to have the owner's Oregon tax liability on the owner's share of distributive income from Oregon sources paid and reported by the PTE; ¶¶

(e) The owner is ultimately liable for tax, penalty and interest if the PTE fails to file a composite tax return or pay the tax on behalf of the owner; and ¶¶

(f) The election to participate in an Oregon composite tax return is irrevocable after the due date of the composite return, including extensions. ¶¶

Example 1: Rene, an Oregon resident, is included as an owner in a composite filing.

(2) Rene's election to participate in an Oregon composite tax return. The following provisions apply:

(a) The owner must make a separate election for each tax year;

(b) The owner must not have been a resident of Oregon at any time during the tax year because as an Oregon resident he may not join in the composite filing. Rene didn't include the income reported on the composite return on his return. Rene must notify the PTE of the invalid election and amend his Oregon return to include the income reported on the composite return. The PTE must amend the composite return to remove Rene's share of income. The PTE may submit a transfer request to move tax paid by the PTE on Rene's behalf to Rene's account. In the absence of the request from the PTE, the PTE will receive a refund for tax paid by the PTE on Rene's behalf.

Example 2: Edie, a full-year resident of Idaho, is a shareholder in D-Cat, Inc., which does business in Oregon. Edie is eligible to join in a composite return filed by D-Cat, Inc. On February 1, 2020, Edie informed D-Cat, Inc. that she wished to join in the owner's tax year;

(c) The owner is considered to have made the election to participate in a composite return for the 2020 tax year. Edie filed her Oregon return on April 14, 2021, forgetting she had elected to join in the composite return, and included her share of D-Cat, Inc.'s income on the date the PTE files the composite return that includes her return. D-Cat, Inc. is a calendar year S corporation filer and filed a timely extension for its S corporation's composite return. D-Cat, Inc. also filed a composite return on May 15, 2021, including Edie's share of D-Cat, Inc.'s income. Edie is allowed to revoke her election;

(d) By making an election to participate in a composite filing up to the due date for the composite return, including extensions. To revoke her election, the owner elects to have the owner's Oregon tax liability. Edie must inform D-Cat, Inc. of her revocation, and D-Cat, Inc. must file an amended composite return no later than October 15, 2021, to remove Edie's share of D-Cat, Inc.'s income from their return. D-Cat, Inc. may include a payment transfer request with the amended return under section 5 of this rule. In the absence of a payment transfer request, any refund of tax paid and interest reported by the PTE; and

(e) An electing owner is ultimately liable for tax, penalty and interest if the PTE fails to file an amended composite return will be made to D-Cat, Inc. Alternatively, instead of revoking her election, Edie may amend her tax return to remove her share of D-Cat, Inc.'s income which was reported twice.

Example 3: Using the same facts as in 2, except both Edie and D-Cat, Inc. filed original returns on October 15, 2021. Edie and D-Cat, Inc. had filed valid extensions. On October 31, 2021, Edie learns she is included in the composite return filed by D-Cat, Inc. Edie's participation in the composite return filed by D-Cat, Inc. became irrevocable on October 16, 2021. Edie's share of D-Cat, Inc.'s income is being reported twice, once on the return filed by Edie and again on the composite tax return or pay the tax on behalf of the owner.

(f) An electing owner may be added to the composite return by D-Cat, Inc. Although Edie's share of D-Cat, Inc.'s income may not be removed from the composite return filed by D-Cat, Inc., she may amend her tax return to remove her share of D-Cat, Inc.'s income which was reported twice.

(3)(a) Disregarded entities. The PTE must look to the owner of the disregarded entity to determine whether the owner of the disregarded entity may choose to join in the composite filing.

Example 4: Hermiston Partners is owned by four individuals, one grantor trust, and one single-member LLC. Both of these owners are disregarded entities. Therefore, The trust and LLC are disregarded entities, and the owner of each disregarded entity is a nonresident. Hermiston Partners will look to the nonresident owner of each disregarded entity to determine if that nonresident owner may elect to join in the filing of a composite return.

The grantor trust is owned by a nonresident individual. Hermiston Partners looks to the individual who owns the grantor trust. Hermiston Partners must allow the individual to join in the filing of the composite return. Hermiston Partners will use the individual's name and Social Security number on the composite return, not the name or tax identification number of the disregarded trust. If the individual doesn't join in the composite filing or file an affidavit, Hermiston Partners must send in estimated payments on the individual's behalf as required in OAR 150-314-0520.

The single-member LLC is solely owned by another partnership, Ontario LP. A partnership can't join in the filing of a composite return. Thus, Hermiston Partners cannot include Ontario LP in the composite return and is not

required to send in estimated payments on behalf of the LP. Ontario LP is the entity responsible for filing a composite return or sending estimated payments for its owners.¶

(3) Filing and payment requirements.¶

(a) Due date. The Oregon composite tax return is due the 15th day of the fourth month after the close of the tax year of the majority of the electing owners, in accordance with ORS 314.385b) Corporate owners.¶

(i) A corporate owner's distributive income may be included in a composite return only when its distributive share is not required to be included in the corporate owner's apportionable income. A PTE filing a composite return should assume a corporate owner's distributive share is required to be included in the corporate owner's apportionable income unless the corporate owner notifies the PTE in writing that it is not.¶

(ii) If it is determined by the department that the corporate owner's distributive share should be included in the corporation's apportionable income, the corporate owner's election to be included in the composite return is invalid. The corporate owner must notify the PTE, and the PTE may file an amended composite return for a refund of tax that was paid on the corporate owner's distributive share included in the composite return subject to the limitations provided in ORS 314.415. The PTE may file a transfer request to move the tax paid for the corporate owner to the owner's account instead of having the tax refunded to the PTE. In the absence of the amended return, the department may adjust the composite return subject to the limitations provided in ORS 314.415.¶

(iii) The PTE must include an indirect corporate owner's share of distributive income in the composite return unless the PTE can reasonably determine that the indirect corporate owner's share of income is required to be included in the indirect corporate owner's apportionable income.¶

(iv) Income includable in an indirect corporate owner's apportionable income may be considered as reasonably determined if the PTE has received written notice from the indirect corporate owner that the indirect corporate owner's distributive share of income is required to be included in the indirect corporate owner's apportionable income.¶

(4) Filing and payment requirements.¶

(a) Due date. The Oregon composite tax return is due the 15th day of the fourth month after the close of the tax year of the majority of the number of electing owners.¶

Example 25: Around-the-Bend LLC (ATB) has a tax year ending June 30. The ~~electing owners~~nonresident owners that want to join in the composite filing consist of four individuals and three corporations. Because the individuals are all calendar year taxpayers, the majority of ~~the electing owners~~ have a calendar tax year which ends December 31. Therefore the composite return and any estimated payments are due using a calendar tax year. For ~~tax year~~the calendar tax year ending December 31, 20120, the composite return will include the income reported by ATB for its ~~2009~~tax year ending June 30, 20120. The 20120 composite return that ATB will file on behalf of its owners is due April 15, 20121.¶

Example 36: Coast Around Oregon Incorporated (CAO) is an S ~~C~~corporation with a tax year ending October 31. The ~~electing owners~~nonresident owners that want to join in the composite filing consist of 15 individuals, ~~so they are~~ all calendar year taxpayers. For tax year 20120, the composite return will include the income reported by CAO for its ~~2009~~tax year ending October 31, 20120. The 20120 composite return that CAO will file on behalf of its owners is due April 15, 20121.¶

(b) Payment of amounts due. Payment of the amount due is made by the PTE on the owner's behalf and must accompany the filing of the Oregon composite tax return in accordance with ORS 314.395. The payment must include the tax due plus any penalty or interest provided by Oregon law.¶

(c) Refund of tax made pursuant to a composite return filed after the due date, including extensions and filed under these provisions will be paid to the PTE, except as provided in Section 5, regardless of changes in ownership or changes in the identity of nonresidents participating in an Oregon composite filing.¶

(d) Extensions of time to file. If the entity is granted a federal or Oregon extension of time to file the entity's return (partnership return or S corporation return), an extension for filing the Oregon composite return is allowed. This is true even if the composite return reports the income in a different tax year than the entity's partnership or S corporation return. The entity must keep a copy of the federal extension with its tax records. The extension to file the composite return is 6 months from the composite return due date ~~regardless of the length of extension~~ the

entity received for its partnership or S corporation tax return.¶¶

Example 47: Pendleton LLC filed for extension for its 2012 fiscal tax year ending June 30, 2013 (201221 (Form Year 2020 partnership return). The partnership return had an original due date of October 15, 2013. Partnerships receive a 5-month extension so the due date with extension is March 15, 2014 for the partnership return. The owners of Pendleton LLC are calendar year filers. Therefore, they report the income in tax year 2013. ¶for the calendar tax year that ends December 31, 2021. There is an extension of time to file a composite return on behalf of the nonresident owners that elect to participate in the 20213 composite return filed by Pendleton have an extension to file because the partnership has an extension to file for the partnership return. The 20213 composite return reporting this income is due April 15, 201422; however, with the extension, it is due October 15, 201422. The 6-month extension applies, even though the income is reported in a different tax year for the owners and Pendleton LLC received a 5-month extension for filing its partnership return.¶¶

(de) An electing nonresident owner may file a separate tax return without revoking the and election to join in the filing of a composite return. The income reported on the composite return is subtracted on the electing owner's separate return and tax is paid only on the Oregon-source income not reported on the composite return.¶¶

(45) Ineligibility or revoking an election to participate in a composite return.¶¶

(a) One or more owners may revoke the election to join in the Oregon composite tax return after the Oregon composite tax return has been filed. The revocation of the election must be made within three years from the and before the due date of the Oregon composite tax return was filed, including extensions. To revoke a previous election:¶¶

(A) Tax and transfer tax paid:¶¶

(A) Upon notification of the revocation, the PTE must file an amended Oregon composite return removing the owner and request a transfer of any payment made on the owner's behalf to the non electing owner's account, and¶¶

(B) The revoking owner must file a separate return with the department showing all items of income and deduction from the PTE. ¶If the owner did not previously file a return for the year, this separate return will be treated as an original return and, if filed after the due date, any tax liability shown on the return is subject to interest and penalties in the same manner as any other delinquent filed original return. The decision to revoke a previous election by one or more owners has no effect on the¶¶

(b) If an owner becomes ineligible, revokes an election of the remaining owners.¶¶

(b) If any of the owners becomes ineligible, revokes an election before the due date of the return, including extensions, or declines to participate in filing an Oregon composite tax return, and the PTE made tax payments on the owner's behalf with a composite return, the PTE must submit a written transfer request using forms and instructions provided by the department. The department will transfer the tax payment to the account of the nonresident owner only if the entity PTE submits such a written request to the department. The request must contain:¶¶

(A) The name and federal employer identification number of the entity that made the tax payment(s);¶¶

(B) The name and social security number of the nonresident owner; and¶¶

(C) The specific dollar amount to transfer to the account of the owner.¶¶

Example 8: Tariq, a nonresident owner in an S corporation, filed his individual tax return on April 2. On his return he reported his share of the S corporation's income and paid the tax due. On May 2 Tariq learned he was included in the composite return filed by the S corporation. Tariq's share of the S corporation's income is being reported and taxed twice, once on his return and again on the composite return. Tariq decides to revoke his election to participate in a composite return and have his share of tax paid transferred to his own account. Tariq must notify the S corporation that he is revoking his election to participate in the composite return. The S corporation is a calendar year S corporation filer and filed a valid extension for the S corporation's composite return. The S corporation must file an amended composite return with the department by October 15, the extended due date of the composite return and request a payment transfer. The department will process the amended composite return and, as directed by the S corporation, transfer the amount paid on Tariq's behalf by the S corporation to his personal account.¶¶

Example 9: The facts are the same as in example 8, except that the S corporation didn't file an extension for the S

corporation's composite return. Tariq's election to participate in the composite return is irrevocable once the due date, April 15, for the composite return has passed. Tariq may amend his individual tax return to remove his share of the S corporation's income reported on the composite return. Tariq may not claim the composite tax paid on his behalf as a payment. That tax was paid on income reported on the composite return. ¶

(c) An owner who does not or cannot elect to participate, ~~or who revokes a prior election,~~ in an Oregon composite tax return is subject to withholding on the owner's share of the Oregon source distributive income under ORS 314.781 and OAR 150-314-0520. ¶

~~(56) Payment of tax on behalf of electing owners. An entity may be required to make quarterly tax payments to the department on behalf of all electing owners, nonresident owners. Estimated tax payments are required for the composite return if the total Oregon tax due for any owner is expected to be \$1,000 or more for an individual; or \$500 or more for a corporation. The tax liability required to be paid is the sum of each electing owner's estimated tax liability for that quarter that is attributable to each owner's interest in the entity. In determining the electing owner's tax liability, the provisions of ORS 314.505 to 314.525 or 316.579 to 316.589 regarding calculation of estimated tax apply. The entity PTE must remit the tax payments to the department using forms and instructions provided by the department.~~ ¶

[Publications: Publications referenced are available from the agency.] ¶

[ED. NOTE: Tables referenced are available from the agency.]

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 314.778

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

OAR 150-314-0515

Items that may or may not be allowed for the electing owners.

Item	Allowed	Not Allowed
Credits otherwise permitted nonresidents under ORS Chapter 315 or Chapter 316.		X
Self-employment tax deduction.	X	
State surplus refund provided under ORS 291.349, if applicable.	X	
Keogh contribution deductions.		X
Health insurance paid in connection with the partner's participation in the partnership.		X
Tax years 2010 and later: Credit for taxes paid to another state as allowed to individuals under ORS 316.131, unless allowed to Oregon residents filing a composite return in that state.		X

Note: If the credit for taxes paid to another state is not allowed on the Oregon composite return, the taxpayer may claim a credit for taxes paid to Oregon on their resident state return if the taxpayer is included in the entity's composite return for the other state and the entity paid the tax due for the taxpayer's share of tax liability. Alternatively, the taxpayer may revoke their election to participate in an Oregon composite return subject to the requirements detailed in paragraph (5) of this rule. The taxpayer may then file their Oregon nonresident return and claim the credit for taxes paid to another state pursuant to ORS 316.131.

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/25/2019 9:52 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Substantial Underpayment Penalty, Gross Income of Nonresidents, Oregon Investment Advantage

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
503-945-8029
RulesCoordinator.dor@oregon.gov

955 Center St NE
Salem, OR 97301

Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
Building
955 Center St NE
Salem, OR 97301

NEED FOR THE RULE(S):

150-314-0205 - Amend the rule text to reflect a cost-of-living adjustment to the net threshold amounts, include a reference table for prior year amounts, and update examples to be year specific.

150-316-0169 - Due to the enrollment of House Bill 2275 during the 2017 Legislative Session, the rule's title needs to be amended to reflect the amendments to ORS chapters 314.605 to 314.675, which changed the definition of "business income" to "apportionable income."

150-316-0600 - Due to the enrollment of House Bill 2275 during the 2017 Legislative Session, the rule's title and text need to be amended to reflect the amendments to ORS chapters 314.605 to 314.675, which changed the definition of "business income" to "apportionable income."

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes, available online through Legislative Counsel.

FISCAL AND ECONOMIC IMPACT:

These rule modifications will not create any fiscal or economic impacts as they are clarifying and clerical in nature.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies or any effect on the counties and the public. These changes tend to be clarifying in nature and do not affect the cost.

2. a. Oregon has approximately 123,000 small businesses with fewer than 250 employees that employ 81% of the state's workforce*. Oregon has approximately 105,646 small businesses with fewer than 100 employees**. Based on this information and information from tax returns reporting the number of employees, we estimate Oregon has approximately 91,848 small businesses with fewer than 50 employees*** who are subject to this rule.

b. It is anticipated that the costs for compliance with the substantial underpayment, gross income of nonresidents, and the Oregon investment advantage rules will not change for small employers subject to these rules. The modifications to the rules do not change the process or resources required to comply with the rules.

c. None known.

*Oregon Small Business Development Center Network (<https://bizcenter.org/about/oregon-sbdc-impact/>)

**Business Oregon (www.oregon4biz.com/assets/docs/DataPacket09.pdf)

***Oregon Department of Revenue Research Section, 10/14/13, Wage file extract – 2012 tax year

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We communicated with and are working with small business liaison groups such as the Oregon State Bar Laws Committee and the Oregon Society of Certified Public Accountants to obtain their input into how these rules will impact their clients; some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for these rules; however, we did seek and receive input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rules; therefore a committee is unlikely to provide further benefit.

RULES PROPOSED:

150-314-0205, 150-316-0169, 150-316-0600

AMEND: 150-314-0205

RULE SUMMARY: Amend the rule text to reflect a cost-of-living adjustment to the net threshold amounts, include a reference table for prior year amounts, and update examples to be year specific.

CHANGES TO RULE:

150-314-0205

Substantial Understatement Penalty (SUP) ¶

(1) The department will assess a penalty if a substantial understatement of net tax exists for any taxable year. The penalty is equal to 20 percent of the amount of any underpayment of net tax attributable to the understatement. A substantial understatement exists only if incurred on the return of the individual, corporation, or reporting entity required to file a return and pay tax.¶

(2) Net Tax. In determining if a substantial understatement of net tax exists, net tax equals the total tax as calculated in accordance with the applicable provisions of ORS Chapters 314, 315, 316, 317, and 318, reduced by nonrefundable and refundable credits.¶

(3) Substantial Understatement of Net Tax. An understatement of net tax is substantial if the understatement exceeds \$3,650 for corporations (other than S corporations, as defined in section 1361 of the Internal Revenue Code, or a personal holding company, as defined in section 542 of the Internal Revenue Code), or exceeds \$2,450 for individuals and all other taxable entities.¶

(4) Penalty. The substantial understatement penalty is equal to 20 percent of the amount of the understatement of net tax.¶

(a) The total understatement of net tax is the amount of net tax due as determined by the department, minus:¶

(1) Net tax as reported on the return by the taxpayer for the taxable year,¶

(2) The tax attributable to any item for which there is or was substantial authority, and¶

(3) The tax attributable to any item for which the relevant facts affecting the item's tax treatment are adequately disclosed on the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of the item by the taxpayer.¶

(b) Net tax as reported on the return is the amount of net tax reported by the taxpayer and determined before the taxpayer was first notified by the department concerning their tax liability. If the return shows no net income tax, the amount of net tax shown on the return is considered to be zero. In all cases, net tax as reported is computed without regard to:¶

(A) Withholdings;¶

(B) Estimated tax paid by the taxpayer; or¶

(C) The state surplus refund pursuant to ORS 291.349.¶

(5) The department will not impose a penalty under ORS 314.402 unless a return has been filed.¶

(6) The following table shows threshold amounts used by the department to compute the substantial understatement penalty.¶

Effective year - Corporation- Individuals¶

2017 - \$3,500 - \$2,400¶

2018 - \$3,550 - \$2,400¶

2019 - \$3,650 - \$2,500¶

Example 1: A 2017 partnership return is adjusted for a \$50,000 increase in unreported income. The partnership is owned by Renton, Mark, and Paul. The partnership adjustment results in an increase in net tax of \$2,700 on Renton's individual return, \$1,350 on Mark's individual return, and \$900 on Paul's individual return. The SUP penalty is only assessed on Renton's tax due because only his return had an understatement of net tax exceeding \$2,400 (the understatement threshold for the tax year). The adjustment to Mark and Paul's individual returns will not include the SUP penalty, although all three may be subject to other penalties as provided by law.¶

Example 2: Bobbie is a full-year resident who reported a federal adjusted gross income of \$25,000 on his 2017 return, and claimed a \$3,200 credit for taxes paid to California. Bobbie reported a net tax of zero on his personal income tax return because the \$3,200 credit was larger than the \$1,394 tax calculated on his taxable income. Upon audit, it was determined Bobbie did not qualify for the credit for taxes paid to California, and his return was adjusted to reflect a reduction of nonrefundable credits of \$3,200. Bobby's net tax was understated by \$1,394, the amount of net tax that would have been reported, had he not claimed the credit. Bobbie is not assessed an SUP

penalty because his understatement was not more than \$2,400 (the understatement threshold for the tax year).¶
Example 3: Tyler and Leah are full-year residents who filed a joint return reporting a federal adjusted gross income of \$38,000 on their 2015 return. Tyler and Leah claimed a \$200 child and dependent care credit, a \$4,800 working family childcare credit, and a \$1,200 earned income credit. Tyler and Leah reported tax before credits of \$1,514 and a zero net tax, because their refundable credits were more than the tax calculated on their taxable income. Upon audit it was determined Tyler and Leah had \$25,000 unreported Schedule C income and they no longer qualified for the child and dependent care credit, the working family child care credit, or the earned income credit. After the audit adjustment, Tyler and Leah's tax before credits is \$3,773 and their net tax is \$2,818. Tyler and Leah's net tax understatement is \$2,818 because the net tax reported on their return was zero. Tyler and Leah will be assessed an understatement of net tax penalty of \$564 ($\$2,818 \times 20\%$) because their understatement exceeded the understatement threshold for the tax year.¶

Example 4: Meghan moved from Idaho to Oregon on May 1st, 2017. Meghan filed a 2017 Oregon Form 40P on April 15th of the following year. Meghan reported \$86,000 in wages and \$55,000 of Schedule E rental income in the federal column of her return, and \$45,000 of wages and no Schedule E rental income in the Oregon column. Meghan also claimed \$16,500 in moving expenses in both the federal and Oregon columns. Meghan's income after subtractions is \$124,500 in the federal column and \$28,500 in the Oregon column. Meghan's Oregon percentage is 23% ($28,500/124,500$). After deductions, Meghan reported \$94,150 in taxable income and \$1,950 tax before credits. Meghan claimed \$3,500 in withholding payments, a \$191 exemption credit, and an \$800 credit for taxes paid to Idaho on mutually taxed income. Meghan's net tax as reported is \$959 ($\$1,950 - \$191 - \800). Upon audit, the department determined \$32,000 of Meghan's Schedule E income should have been reported in the Oregon column. Meghan's return was adjusted to report a total of \$60,500 in the Oregon column, and her Oregon percentage was revised to 49%. Meghan's taxable income did not change because the adjustment only affected the Oregon column. However, her tax before credits was increased to \$4,152 because of the increase to the Oregon percentage. Meghan's net tax as determined by the department is \$3,161 ($\$4,152 - \$191 - \800). Meghan's withholding payment is not regarded in calculating net tax for the purpose of the substantial understatement penalty. Meghan did not have substantial authority for excluding the Schedule E income from the Oregon column and there was not adequate disclosure and a reasonable basis for the position. Meghan's understatement of net tax is \$2,202. Meghan is not assessed an SUP as her understatement of net tax is less than the understatement threshold for the tax year.¶

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 314.402

AMEND: 150-316-0169

RULE SUMMARY: Due to the enrollment of House Bill 2275 during the 2017 Legislative Session, the rule's title needs to be amended to reflect the amendments to ORS 314.605 to 314.675, which changed the definition of "business income" to "apportionable income."

CHANGES TO RULE:

150-316-0169

Gross Income of Nonresidents; ~~Business~~Apportionable Income ¶¶

(1)(a) General. The gross income of a nonresident (other than one who is employed by another, as distinguished from doing business on the nonresident's own account) from a business, trade, profession or occupation (including independent contractor) is determined in the same manner as is the gross income of a resident from a similar activity, but includes only income from the business, trade, profession or occupation carried on in this state. Net income from Oregon sources shall be determined by apportionment in a manner consistent with ORS 314.605 through 314.667 and the rules adopted thereunder.¶¶

(b) Exception: Various federal laws affect the application of Oregon tax laws to income received by nonresidents from rail, motor, air and water carriers. See OAR 150-316-0173.¶¶

(2) Rents. The gross income of a nonresident from rents includes all rents received from property, whether real or personal, located within this state.¶¶

(3) S Corporations. The taxable income of an S corporation that elects to be taxed under the provisions of IRC Section 1362 which is derived from or connected with sources from this state is taxable income to nonresident shareholders for tax years beginning after December 31, 1972. Net operating losses of an S corporation derived from or connected with sources from this state are deductible by nonresident shareholders. Net operating losses shall be determined under IRC Section 1366. If an S corporation of Oregon commercial domicile is liquidated any gain or loss from liquidation is Oregon source income. Nonresident shareholders shall report their proportionate share of the gain or loss on their individual Oregon income tax returns as income from Oregon sources.¶¶

(4) Fiduciary fees. Oregon source income of a nonresident includes compensation received for services performed as a fiduciary of an Oregon estate or trust.¶¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.127

AMEND: 150-316-0600

RULE SUMMARY: Due to the enrollment of House Bill 2275 during the 2017 Legislative Session, the rule's title and text need to be amended to reflect the amendments to ORS 314.605 to 314.675, which changed the definition of "business income" to "apportionable income."

CHANGES TO RULE:

150-316-0600

Oregon Investment Advantage ~~Business~~Apportionable Income Exemption ¶

(1) Definitions. For purposes of ORS 316.778 and this rule, "business firm's income" has the meaning given the term "~~business~~apportionable income" in ORS 314.610(1) and OAR 150-314-0335.¶

(2) Computing exempt income. Any ratio contained in the formulas outlined in ORS 316.778 may not be greater than 100 percent or less than zero.¶

(3) Method of determining the business firm's income derived from the activities at the certified facility. A business firm's income derived from the firm's activities at a certified facility is determined by multiplying the total ~~business~~apportionable income of the business firm by a fraction, the numerator of which is the total sales from the certified facility during the tax period, and the denominator of which is the total sales of the business firm everywhere during the tax period.¶

Example 1: Wee Company had sales of \$2,250,000 from its certified facility. Total sales of Wee Company were \$3,450,000. ~~Business~~Apportionable income of Wee Company for the same fiscal year equaled \$500,000. Wee Company computes its income derived from the certified facility as follows: $\$2,250,000$ (Sales from certified facility) \div $\$3,450,000$ (Total firm sales) = 65.2 percent. $\$500,000$ (~~Business~~Apportionable income) \times 0.652 = $\$326,000$ (Business firm's income derived from certified facility).¶

(4) Intra-firm transfers. If a business firm transfers product from a certified facility to a non-certified facility without a sale actually occurring (intra-firm transfer), the business firm must impute sales to the product transferred from the certified facility to use the method prescribed in section 3 of this rule.¶

(a) Imputing sales value for transferred production when part of total production is transferred. If a business firm transfers some of its production at the certified facility to a non-certified facility without a sale actually occurring (intra-firm transfer), the business firm needs to impute the sales value of the transferred production. This is necessary in order to determine sales from the certified facility. To impute the sales value, the taxpayer must first compute a ratio, the numerator of which is the total sales for all other items sold from the certified facility and the denominator of which is the cost of goods sold (COGS) for all other items sold from the certified facility. This ratio is then multiplied by the COGS of the transferred product to determine its imputed sales value.¶

Example 2: Zee Company has two facilities in Oregon. One is a tackle box manufacturing facility in the Willamette Valley. The other is a new part-making facility that qualifies as a "certified facility" under ORS 316.778(6)(b). The part-making facility builds parts R, S, T, and U. Zee Company makes the R-Parts for internal use in building the tackle boxes. The part-making facility sold S, T, and U Parts for \$675,000 to companies other than Zee Company. Zee Company's total sales for the fiscal year were \$2,175,000 (\$1,500,000 from tackle box sales and \$675,000 from S, T, and U Parts sales). Zee Company's ~~business~~apportionable income for the same fiscal year was \$1,250,000. To determine sales value derived from R-Parts produced at the certified facility, Zee Company computed the ratio of total sales from parts S, T, and U over the cost of goods sold (COGS) for parts S, T, and U and multiplied the result by the COGS for R-Parts to determine the value of tackle box sales attributable to R-Parts. Zee Company calculated that COGS for R-Parts was \$200,000. COGS for S-Parts was \$100,000 and sales were \$200,000; COGS for T-Parts was \$50,000 and sales were \$75,000; and COGS for U-Parts was \$300,000 and sales were \$400,000. Sales value computed as follows: $\$675,000$ (Total sales for parts S, T, and U) \div $\$450,000$ (COGS for parts S, T, and U) = 1.5; $\$200,000$ (COGS for part R) \times 1.5 = $\$300,000$ (Sales value attributed to R-Parts). Zee Company uses \$300,000 of the total sales of the tackle boxes as sales value attributable to the certified facility for R-Parts. Zee Company uses \$975,000 (\$675,000 + \$300,000) as the sales attributed to the certified facility to determine the amount of income that is exempt from tax.¶

(b) Imputing sales for transferred production when all product is transferred. If a business firm transfers all of its production at the certified facility to a non-certified facility without a sale actually occurring (intra-firm transfer), the business firm must impute the sales value attributed to the production transferred in order to determine sales from the certified facility. To impute the sales value for product transferred, the taxpayer uses a ratio of COGS of the transferred production over COGS of all production. This ratio is then multiplied by total sales for the non-certified facility.¶¶

Example 3: Tee Company operates a wholesale facility in Southern Oregon. It has a processing plant in Eastern Oregon that is a certified facility. The processing plant transfers all of its output to the wholesale facility. Tee Company's total sales from all activities were \$20,000,000. Cost of production at the processing plant was \$4,000,000. The total cost of all goods sold (COGS) was \$18,000,000. Tee will use \$4,440,000 of total sales from the wholesale facility to determine the business firm's income that is attributable to the certified facility computed as follows: $\frac{\$4,000,000 \text{ (Cost of processing plant output)}}{\$18,000,000 \text{ (Total COGS)}} = 22.2 \text{ percent}$ $\$20,000,000 \text{ (Total sales)} \times 0.222 = \$4,440,000 \text{ (Sales attributed to certified facility)}$.¶¶

(c) Alternate approach for imputing sales value. If a taxpayer's circumstances do not substantially meet the standards for imputing sales value in this rule, the taxpayer must consult with the department on an appropriate allocation approach based on that taxpayer's facts and circumstances.

Statutory/Other Authority: ORS 305.100, 316.778

Statutes/Other Implemented: ORS 316.778

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/21/2019 3:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Timber return notifications

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
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RulesCoordinator.dor@oregon.gov

955 Center St NE
Salem, OR 97301

Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019
TIME: 9:00 AM - 11:00 AM
OFFICER: Assigned Staff
ADDRESS: Room 467; Revenue
Building
955 Center St NE
Salem, OR 97301

NEED FOR THE RULE(S):

150-321-0500: Changes to delivery of notices to taxpayers of requirement to file timber tax returns, due to 2019 legislation (SB 80 and 81).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Laws 2019, chapters 360 and 361 (SB 80 and 81) (available on Oregon Legislature's website); and Oregon Revised Statutes and Oregon Administrative Rules, both of which are available online or from the Agency.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal or economic impact due to these rule changes. The statutes implemented are what cause the impact, if any.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies and a de minimis effect on the counties and the public. These changes tend to be clarifying or interpretive in nature and do not affect the cost to comply.

2. a. Oregon has approximately 120,500 small businesses with fewer than 250 employees that employ 64% of the state's workforce. Oregon has approximately 99,300 small businesses with fewer than 100 employees. Based on this information, we estimate Oregon has approximately 97,000 small businesses with fewer than 50 employees who are subject to this rule.

b. There is a de minimis effect on those subject to the rules, as these changes tend to be clarifying or interpretive in nature and does not affect projected reporting, record-keeping or other administrative activities, or costs.

c. None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We communicated and worked with small business liaison groups such as the Oregon State Bar Tax Section, Oregon Department of Forestry, Oregon State Association of County Assessors, and representatives of Oregon timber owners to obtain their input into how this rule will affect their clients, some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for these rules; however, we did seek and receive input from industry representatives as well as from the counties and other taxpayer groups on these rule changes. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rule; therefore a committee is unlikely to provide further benefit.

AMEND: 150-321-0500

RULE SUMMARY: Changes due to 2019 SB 80 & 81 concerning notification of timber returns.

CHANGES TO RULE:

150-321-0500

Procedure to Ensure Timber Tax Return Filing ¶

(1) As used in this rule, "owner" ~~shall have the meaning given or~~ "taxpayer" means the "owner of timber" as defined in ORS 321.005.¶

(2) The Department of Revenue shall ~~mail timber tax returns to timber~~ notify the owners, as identified on a Notification of Operations received from the Department of Forestry. ~~It is the responsibility of the timber owner to assure that the corr,~~ of the owner's requirement to file a timber tax return. It is the responsibility of the owner to ensure that the correct owner name is listed on the Notification of Operation.¶

(3) Notices required under section (2) of this rule shall be mailed unless the owner elects timber owner is listed on the notification. o be notified by an alternative method allowed by the department. The owner may elect alternative methods:¶

(a) Indicating through the owner's online filing account the owner's preference to have all notifications to file a return be delivered by email and to access and file a return online:¶

~~(3b) The Department of Revenue~~ Requesting verbally or in writing that the department email or fax a return form to the owner or an authorized representative on a one-time basis; or ¶

~~(c) Picking up a return form in person from a department office. ¶~~

~~(4) Return forms that are mailed or otherwise delivered by an alternative method shall serve as a notice to the owner of the owner's requirement to file a return. ¶~~

~~(5) The department shall document by tax program and reporting period: ¶~~

~~(a) Which taxpayers were sent timber tax returns; and ¶~~

~~(b) Receipt of tax returns filed. ¶~~

~~(46) Taxpayers who fail to file a timber tax return will be mailed a Notice of Failure to File which will include: ¶~~

~~(a) The timber tax program(s) for which taxpayer has failed to file; ¶~~

~~(b) SA statement that the tax return is due even if no harvest occurred; and ¶~~

~~(c) An explanation of delinquent return penalties.~~

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 321.550

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/17/2019 11:21 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: State Lodging Tax: amend rules to incorporate legislative changes and update with current terms.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
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955 Center St NE
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Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
Building
955 Center St NE
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NEED FOR THE RULE(S):

OAR 150-320-0040 – amending the rule to add definition of “managing agent” used in the rule, include change to tax due date as adopted by HB 3137 (2019), and update language and examples to align with current terms.

OAR 150-320-0050 – amending the rule to clarify exemption for dwelling unit rented fewer than 30 days in calendar year does not apply to dwelling unit rented using a transient lodging intermediary platform on or after September 29, 2019, as adopted by HB 3138 (2019).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 3137 (2019) <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3137/Enrolled>
House Bill 3138 (2019) <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/HB3138/Enrolled>
ORS 320.305

FISCAL AND ECONOMIC IMPACT:

There is no fiscal impact resulting from the amendment of these rules. The economic impact is limited to timing of state lodging tax receipts; tax due is delayed to quarter in which last day of the occupancy occurred compared to previous

policy of tax due in quarter payment for occupancy was made. There may be a perceived economic impact due to the statutory elimination of the exemption for dwelling units rented fewer than 30 days in calendar year when rented through a transient lodging intermediary; however, the change in policy is due to the statutory amendment, rather than the rule change. Also, intermediaries have stated they have already been collecting and remitting tax on transactions that may have been eligible for the exemption.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. The statute and rule require state lodging tax to be collected from persons occupying transient or short-term lodging, at the end of the period of occupancy.

2. a. Small businesses account for 98% of the for-profit and nonprofit entities in Oregon. Based on this information and information from tax returns reporting state lodging tax, we estimate approximately 2,700 small businesses with transient or short-term lodging facilities are subject to these rules.

b. There are no new recordkeeping requirements included in the amended rule. Taxpayers needing to modify accounting systems to accurately report state lodging tax, may experience costs to comply with the statutory change and amended rule.

c. None known.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We communicated with and are working with small business liaison groups such as the Oregon State Bar Laws Committee and the Oregon Society of Certified Public Accountants to obtain their input into how these rules will impact their clients; some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for these rules; however, we did seek and receive input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rules; therefore a committee is unlikely to provide further benefit.

RULES PROPOSED:

150-320-0040, 150-320-0050

AMEND: 150-320-0040

RULE SUMMARY: Amend rule to include legislative change by HB 3137 to tax reporting and remittance due date.

CHANGES TO RULE:

150-320-0040

State Lodging Tax ¶

(1) Definitions. For purposes of ORS 320.305 and 320.308 and the rules thereunder:¶

(a) The definitions contained in ORS 320.300 are incorporated herein and made a part of this rule.¶

(b) "Managing agent" means a person that:¶

(A) facilitates the rental or sale of transient lodging; ¶

(B) collects the consideration charged for occupancy; and ¶

(C) is responsible for one or more of the following related to transient lodging: ¶

(i) marketing; ¶

(ii) cleaning; ¶

(iii) on-site troubleshooting; ¶

(iv) day-to-day maintenance, or¶

(v) servicing as the point of contact during a guest's stay. ¶

(c) "Nonprofit facility" means a lodging facility that is owned by an IRC 501(c) exempt organization or an organization described in ORS 65.001(31) and that is not operated for profit.¶

(d) "Transient lodging provider" includes a person who operates a facility, whether in the capacity of owner, managing agent, lessee, sub-lessee, mortgagee in possession, licensee, concessionaire, or any other capacity.¶

(2) ~~Public and Private Providers Must Collect~~ Providers and Intermediaries Must Collect the Tax. Transient lodging providers and transient lodging intermediaries that collect consideration charged for temporary human occupancy are required to collect state lodging tax and report and remit the tax to the Department of Revenue. The state lodging tax applies to ~~rents~~ consideration charged for dwelling units, ~~and recreational vehicle spaces, and tent spaces used for temporary human occupancy that are provided by public and/or private persons.~~ It applies to dwelling units and recreational vehicle and tent spaces offered ~~to the general public by state and local parks departments. It also applies~~ governments and to dwelling units and spaces offered for rent to the general public temporary human occupancy on federal lands operated by a concessionaire on a contract basis with a federal agency, such as the U.S. Forest Service, Bureau of Land Management, and the National Parks Service.¶

(3) ~~Services Included in the Fee for Lodging. If a separate fee is charged f~~ Providers and Intermediaries Report a service and the service is optional, that fee is not subject to the state lodging tax. Examples of optional services include, but are not limited to: pay-per-view movies, room service, use of an honor bar or restaurant meals charged to the room. If a sepnd Remit Tax Quarterly. State lodging tax is due from the transient lodging customer when occupancy ends and must be reported by the provider or intermediary for the quarate-fee is charged for a service and the service is not optional, or if the value of a service is included in the standard lodging rate, the amount allocated to the service is subject to the state lodging tax. Examples of fees for non-optional services include, but are not limited to: cleaning service fees, pet charges, fee for providing an extra bed, service fees and processing fees. Examples of services that are included inr in which the last day of occupancy occurs. ¶

Example 1: On June 1st, Joe Smith books a beach house for his family's vacation from December 27th through January 3rd. He pays 50 percent of the amount charged for the occupancy on June 1st. The remaining 50 percent is due 30 days prior to the stay. All of the standardte lodging rate include, but are not limited to: free breakfast and free transportation to the airport. If the provider offers a lodging package that includes something that is not associated with the actual lodging or is provided by a third party, only the regulatax paid for the family vacation is due from Joe on January 3rd and must be reported and remitted on the lodging taxpayer's 1st quarter lodging tax return filed in April. ¶

(4) ~~Services Included in the Fee for~~ Lodging-rate that would hav. ¶

(a) ~~If a separate bfeen is charged absent the package item isfor a service and the service is optional, that fee is not subject to the state lodging tax. Examples of lodging-packagoptional services include, but are not limited to: a package consisting of a night of lodging and a round of golf for two, or a romance package that includes a night of lodging, a bottle of wine and dinner at a local restaurant.~~ pay-per-view movies, room service, use of an honor bar or restaurant meals charged to the room. ¶

Example 12: The ABC Bed and Breakfast charges \$100 per night for a room. Guests are provided a breakfast that

is included in the per-night fee. ~~Guests may~~ Lunch and/or dinner are also have lunch or dinner at ABC available at an additional cost and may be charge the cost of these meals to their room. ABC ~~will~~ must collect tax on \$100 per night ~~because the breakfast is included in the room fee. The tax does not apply to any~~ for the room fee. Charges for the optional lunch and/or dinner are not included in the calculation of state lodging tax. ¶

(b) If a separate fee is charged ~~for optional meals purchased by ABC's guests.~~ ¶

Example 2: The High Mountain Resort offers a service and the service is not optional, or if the value of a service is w inter lodging packages for customers. Customers can purchase a weekend package that includes cluded in the standard lodging rate, the amount allocated to the service is subject two nights lodging and two ski lift tickets for a nearby ski resort for \$250. Their regular charge for weekend lodging during the winter for a two night stay is \$200. T the state lodging tax. Examples of fees for non-optional services include, but are not limited to: cleaning service fees, pet charges, fee for providing an extra bed, service fees and processing fees. Examples of services that are included in the standard lodging tax will be collected on \$200 because that represents the charge for providing lodging. rate include, but are not limited to: free breakfast and free transportation to the airport. ¶

Example 3: The High Rise Hotel charges a standard room rate based on single adult occupancy. The Young family has two children and a dog. They rent a room for one night. The basic room rate is \$80 per night. There is a \$10 charge for a second adult. There is no charge for the children. The Young's request a crib that costs an additional \$10. There is also a \$10 charge for the family dog. The state lodging tax applies to all of the additional fees as well as the standard room rate. The total amount subject to tax is \$110. (\$80 room rate plus \$10 additional adult plus \$10 crib fee plus \$10 pet fee). ¶

Example 4: The Hedgehog Inn works with INEZ.com, a transient lodging intermediary. The Stubblefield family used INEZ.com to book a room at the Hedgehog Inn for their annual family reunion. The standard room rate is \$100. Additionally, INEZ.com charges a 5 percent processing fee. The state lodging tax applies to the 5 percent processing fee as well as the standard room rate. The total amount subject to the tax is \$105 (\$100 room rate plus 5 percent processing fee). ¶

(4c) Use of a Managing Agent. If a transient lodging provider if the provider offers a lodging package that includes something that is not associated with the actual lodging or is provided by a third party, only the regular lodging rate that would have been charged absent the package item is subject to the state lodging tax. Examples of lodging packages include, but are not limited to: a golf package consisting of one night of lodging and a round of golf for two, or a romance package that includes one night of lodging, a bottle of wine and dinner at a local restaurant. ¶

Example 5: The High Mountain Resort offers winter lodging packages for customers. Customers can purchase a weekend package for \$250 that includes two nights lodging and two ski lift tickets for a nearby ski resort. The regular charge for two nights lodging during the winter is \$200. The state lodging tax will be collected on \$200 because that represents the charge for the lodging. ¶

(5) Use of a Managing Agent. If the owner of transient lodging uses a managing agent that is not an employee, the managing agent is considered the transient lodging provider for the purposes of the state lodging tax and has the same duties and liabilities as the operator. Compliance with the provisions of the state lodging tax by either the lodging provider or the managing agent is considered compliance by both. ¶

(56) Penalty Imposed. The person submitting the return required by ORS 320.315 must sign the return and is subject to the penalty for false swearing under ORS 162.075, which is a Class A misdemeanor.

Statutory/Other Authority: ORS 305.100, 320.315

Statutes/Other Implemented: ORS 320.305

AMEND: 150-320-0050

RULE SUMMARY: Amended rule incorporates 2019 legislative change (HB 3138) modifying state lodging tax exemption.

CHANGES TO RULE:

150-320-0050

State Lodging Tax Exemptions ¶

(1) The following are exempt from the state lodging tax:¶

(a) Health care facilities certified, licensed or registered by the Department of Human Services.¶

(b) Drug and alcohol abuse and mental health treatment facilities.¶

(c) All dwelling units during the time a federal instrumentality pays for use of the units.¶

Example 1: The American Red Cross (~~RC~~) contracts with several area motels to provide temporary emergency housing for victims of disasters. Because ~~RC~~American Red Cross is a federal instrumentality, these units are not subject to the state lodging tax.¶

(d) Dwelling units at a nonprofit facility.¶

Example 2: A nonprofit church camp is organized to serve the congregations of the Southern Willamette Valley. This camp is solely for the use of these congregations and is not rented to the general public for profit. The church camp is not subject to the state lodging tax.¶

(e) Dwelling units occupied by:¶

(A) The same person for a consecutive period of 30 days or more during the year. "Person" means either the occupant of the dwelling unit or the one who pays for the transient lodging. After 30 consecutive days, the person is considered a tenant and is no longer considered an occupant of transient lodging. In this case, the 30 days must be consecutive.¶

Example 3: A major airline has an annual contract with a hotel near the airport. These dwelling units are used by out of town airline employees. Because the airline contracts and pays for the units for a consecutive period of more than 30 days per year, these units are not subject to the state lodging tax.¶

(B) A person who pays for lodging on a monthly basis, regardless of the number of days in ~~such~~the month.¶

(C) Federal employees and employees of federal instrumentalities, (i.e.: American Red Cross), on official business. ¶

(D) Persons with diplomatic immunity.¶

(f) Dwelling units used by the general public for less than 30 days ~~per year. This refers to a total of 30 days over the course of the calendar year; the 30 days need not be consecutive in a calendar year.~~ Even if a dwelling unit becomes temporarily exempt under subsection (5)1(e) of this rule, that period of usage applies toward the 30 day ~~requirement of this subsection~~calendar days of use under this subsection. However, this exemption does not apply when the dwelling unit is rented using a transient lodging intermediary platform on or after September 29, 2019.¶

Example 4: Ralph owns a hunting lodge in the mountains. He rents the lodge out to the general public for three weeks a year during the hunting season. Because Ralph rents the lodge out for fewer than 30 days per year, he is not required to collect the state lodging tax.¶

Example 5: Dave rents his vacation home to the Wright family for 45 consecutive days in May and June. This rental period is not subject to the state lodging tax as it is rented to the same person for more than 30 days. In July of that year Dave rents the same vacation home for 10 days to the Jacobson family. Because Dave rented his vacation home for more than 30 days over the course of the calendar year, a total of 55 days (45 plus 10), he is subject to the state lodging tax and must collect and pay the tax on the 10 day stay of the Jacobson family.¶

Example 6: Jane owns a vacation home that she has listed through a vacation rental transient lodging intermediary platform. The former owners of the home rent it directly from Jane for two weeks each year. Jane does not rent the home directly to any other guests during the calendar year, but it is rented to other guests for one week during the year through the transient lodging intermediary. Because Jane rents the home for fewer than 30 days in the

year, she is not required to collect the state lodging tax. However, because the less than 30 day rental exemption does not apply to rentals using a transient lodging intermediary platform, the transient lodging intermediary must collect, report, and remit state lodging tax for the one week rented through the transient lodging intermediary's platform. ¶

(2) If a member or employee of a non-profit organization stays at a facility that is subject to the state lodging tax, they are not exempt from the state lodging tax and are required to pay the tax.¶

(3) Employees of state and local governments of Oregon or any other state are subject to the Oregon ~~not exempt from the~~ state lodging tax.

Statutory/Other Authority: ORS 305.100, 320.308

Statutes/Other Implemented: ORS 320.308

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/17/2019 11:14 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Remitting annual Statewide Transit Tax returns/payments if annual tax liability doesn't exceed \$50.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
Building
955 Center St NE
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NEED FOR THE RULE(S):

150-320-0520 – Amends rule to allow employers to request, in writing, to file annual returns and schedules and make annual payment of statewide transit tax instead of being required to file returns and pay statewide transit tax quarterly, if the employer's tax liability is not expected to exceed \$50.00 in a tax year.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes, available online through Legislative Counsel.

FISCAL AND ECONOMIC IMPACT:

There is only a de minimus fiscal impact due to the timing change under this rule. If requested, small employers who meet the criteria for the filing and payment frequency change will pay the Statewide Transit Tax liability once per year (due date of January 31). The amounts owed will be paid into the Statewide Transportation Improvement Fund less often. However, the amount of annual Statewide Transit Tax funds to be paid within this group is estimated at less than one percent of the total annual funds expected to be paid by all employers (if all eligible small employers requested the frequency change). The change shouldn't affect the amount of Statewide Transit Tax funds collected for a tax year going forward.

The Oregon Department of Transportation, who manages the Statewide Transportation Improvement Fund, stated that they believe this approach is reasonable given the minimal impact to the fund and didn't anticipate any cash flow issues resulting from this policy.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies and a de minimus effect on the counties and the public. These changes tend to be clarifying in nature and do not affect the cost.

2. a. Oregon has approximately 123,000 small businesses with fewer than 250 employees that employ 81% of the state's workforce*. Oregon has approximately 105,646 small businesses with fewer than 100 employees**. Based on this information and information from tax returns reporting the number of employees, we estimate approximately 51,000 small businesses will be eligible to request the annual filing and payment of Statewide Transit Tax.

b. It is anticipated that the costs for compliance with Statewide Transit Tax filing and payment requirements will decrease for small employers who are eligible to request the filing/payment frequency change.

c. None known.

* Oregon Small Business Development Center Network (<https://bizcenter.org/about/oregon-sbdc-impact/>)

** Business Oregon (www.oregon4biz.com/assets/docs/DataPacket09.pdf)

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We communicated with and are working with small business liaison groups such as the Oregon State Bar Laws Committee and the Oregon Society of Certified Public Accountants to obtain their input into how these rules will impact their clients; some of whom are small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Department of Revenue did not use a formal Advisory Committee for these rules; however, we did seek and receive input from groups of industry representatives. No Administrative Rule Advisory Committee was consulted because the above groups were contacted and they have the interest and expertise necessary to provide adequate feedback on the proposed rules; therefore a committee is unlikely to provide further benefit.

AMEND: 150-320-0520

RULE SUMMARY: Amends rule to allow employers to request, in writing, to file annual returns and schedules and make annual payment of statewide transit tax if the employer is required to file returns and pay statewide transit tax quarterly and the employer's tax liability is not expected to exceed \$50.00 in a tax year.

CHANGES TO RULE:

150-320-0520

Statewide Transit Tax: Reporting and Payment Due Dates

(1) An employer required to withhold and remit statewide transit taxes to the department under ORS 320.550 must submit a statewide transit tax return and any schedules required to be filed with the return by the due date in section (4) of this rule.¶

(2) The statewide transit tax return and any schedules required to be filed with the return may be filed using electronic or paper options.¶

(3) When the due date for filing a statewide transit tax return and associated schedules falls on a Saturday, Sunday, or a state legal holiday, the filing of a return and associated schedules is due on the next business day following the Saturday, Sunday, or state legal holiday.¶

(4) Statewide transit tax payments are due on or before the last day of the month following the end of each calendar quarter.¶

Example: The statewide transit tax return for the third calendar quarter of 2018 (July 1 - September 30) is due on October 31, 2018.¶

(5) Notwithstanding sections (1) and (4) of this rule, returns with schedules and payments of statewide transit tax for agricultural employers are due on or before the filing due dates in OAR 150-316-0361.¶

(6) Notwithstanding sections (1) and (4) of this rule, an employer may request in writing authorization from the department to file annual returns with schedules and make annual payments of statewide transit tax in lieu of quarterly filing and payment under section (4) of this rule if:¶

(a) The employer would otherwise be required to file returns with schedules and pay statewide transit tax under section (4) of this rule; and¶

(b) The employer's annual statewide transit tax liability is not expected to exceed \$50.00.¶

(7) OAR 150-316-0359 establishes reporting due dates for statewide transit tax annual reconciliation reports required to be filed under ORS 320.550(8).¶

(8) Oregon residents subject to the tax imposed under ORS 320.550 who have wages earned outside of Oregon from an employer not doing business within Oregon, and whose tax was not withheld by the employer, must file a return and pay statewide transit tax due on or before the due date of the personal income tax return under ORS 314.385(1) for the tax year that includes the calendar quarters for which transit tax is due.¶

(a) The transit tax is calculated by adding all wages, as defined in ORS 316.162(2), from Box 16 for all Forms W-2 issued to the taxpayer for the tax year and multiplying by one-tenth of one percent (.001).¶

(b) The return required under this section must be submitted on a form and in the manner as instructed by the department in forms and instructions.

Statutory/Other Authority: ORS 320.550

Statutes/Other Implemented: ORS 320.550

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

A. RICHARD VIAL
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
10/25/2019 4:57 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Codifying W-4 filing requirements related to HB 2119 (2019) in rule amendments

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/26/2019 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Lois Williams
503-945-8029
RulesCoordinator.dor@oregon.gov

955 Center St NE
Salem, OR 97301

Filed By:
Lois Williams
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/26/2019

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Room 467; Revenue
Building
955 Center St NE
Salem, OR 97301

NEED FOR THE RULE(S):

150-316-0237 – Amends rule to include explanation of when an individual may claim exemption from withholding of state income taxes and adds test for claim of exemption due to no tax liability. Clarifies that withholding exemption claim expires February 15 of the year following the exemption election and the individual must provide a new exemption certificate to claim an exemption from withholding for any subsequent tax year.

150-316-0257 – Eliminates employer's ability to alter withholding formulas furnished by the department. Clarifies that supplemental wage payments made on or after January 1, 2020 are subject to withholding at a rate determined by using the formulas or tables furnished by the department or at a flat rate of 8%.

150-316-0280 – Repeals rule made unnecessary by proposed amendments to OAR 150-316-0237.

150-316-0359 – Amends rule to replace "withholding statement" references with references to "W-2." The term "withholding statement" is defined in other rules as a form other than the federal Form W-2. Allows hardship exceptions if an employer can show a hardship with the requirement to file W-2s electronically with the department and combines

other hardship exceptions in this rule into one section.

150-316-0234 – Provides definitions for new terms “withholding statement” and “exemption certificate” established in HB 2119 (2019). Clarifies that employees may provide a withholding statement (to determine how much state income tax to withhold from their wages or other income) or an exemption certificate (if wages or other income is exempt from withholding) to their employer. Requires employees fill out an Oregon form OR-W-4 for changes to Oregon withholding after 1/1/2020. Clarifies when a default withholding rate of 8 percent will be required in certain situations when a taxpayer provides their employer a federal Form W-4 after 1/1/2020.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2019 Oregon legislation (HB 2119): <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2119>

ORS available online: <https://www.oregonlegislature.gov/>

FISCAL AND ECONOMIC IMPACT:

There is no fiscal impact due to rule changes, adoption of a new rule and repealing one rule. These changes are necessary to conform to statutory amendments in HB 2119 (2019) and policy changes to provide guidance to employers and tax practitioners for using the 2020 version of the Oregon Form OR-W-4.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1. There is no impact to state agencies and a de minimis effect on the counties and the public. These changes tend to be clarifying or interpretive in nature and do not affect the cost to comply.

2. a. Oregon has approximately 123,000 small businesses with fewer than 250 employees that employ 81% of the state's workforce.* Oregon has approximately 105,646 small businesses with fewer than 100 employees**. Based on this information and information from tax returns reporting the number of employees, we estimate Oregon has approximately 91,848 small businesses with fewer than 50 employees*** who are subject to this rule.

b. There is a de minimis effect on those subject to the rules as these changes tend to be clarifying or interpretive in nature. Configuration to payroll software may be necessary to account for the reduction in the withholding rate on supplemental wage payments. Additionally, due to the changes to the federal form, employees seeking to modify their Oregon income tax withholding after January 1, 2020 will need to fill out the Oregon Form OR-W-4 in addition to the federal Form W-4, since the federal form is no longer usable for the purposes of determining the correct amount of Oregon income tax withholding. Lastly Oregon employers may have additional recordkeeping required to maintain records of different withholding for Federal and Oregon purposes due to the changes to the federal Form W-4 if more employees withhold differently for Oregon and federal purposes.

c. None anticipated.

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**Business Oregon (www.oregon4biz.com/assets/docs/DataPacket09.pdf)

***Oregon Department of Revenue Research Section, 10/14/13, Wage file extract – 2012 tax year

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RULES PROPOSED:

150-316-0234, 150-316-0237, 150-316-0257, 150-316-0280, 150-316-0359

ADOPT: 150-316-0234

RULE SUMMARY: Provides definitions for new terms "withholding statement" and "exemption certificate" established in HB 2119 (2019). Clarifies that employees may provide a withholding statement (to determine how much state income tax to withhold from their wages or other income) or an exemption certificate (if wages or other income is exempt from withholding) to their employer. Requires employees fill out an Oregon Form OR-W-4 for changes to Oregon withholding after 1/1/2020. Clarifies when a default withholding rate of 8 percent will be required in certain situations when a taxpayer provides their employer a federal Form W-4 after 1/1/2020.

CHANGES TO RULE:

150-316-0234

Withholding Statement and Exemption Certificate

(1) For purposes of ORS 316.177 and ORS 316.182:¶

(a) "Exemption certificate" means a form prescribed by the department containing an employee's instruction to an employer certifying that the employee has no Oregon withholding requirement.¶

(b) "Withholding statement" means a form prescribed by the department containing an employee's instruction to an employer of the requested amount of income tax to withhold from an employee's wages or other income. A withholding statement includes:¶

(A) The Oregon Form OR-W-4;¶

(B) An Oregon-only version of the 2019 or prior federal Form W-4; or¶

(C) A 2019 or prior federal Form W-4.¶

(2) Beginning January 1, 2020, changes made to an employee's withholding statement or exemption certificate must be made using Form OR-W-4.¶

(3) If an employee's Oregon withholding is determined based upon the withholding statement described in (1)(b)(C), and the employee submits a 2020 or later version of the federal Form W-4 to the employer without also providing Form OR-W-4, the employer must withhold for Oregon at a rate of eight percent.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.177, 316.182

AMEND: 150-316-0237

RULE SUMMARY: Amends rule to include explanation of when an individual may claim exemption from withholding of state income taxes and adds test for claim of exemption due to no tax liability. Clarifies that withholding exemption claim expires February 15 of the year following the exemption election and the individual must provide a new exemption certificate to claim an exemption from withholding for any subsequent tax year.

CHANGES TO RULE:

150-316-0237

Employees Exempt from Withholding ¶

(1) Active service in Armed Forces. See OAR 150-316-0605 Expiration for election. An election for exemption from withholding expires on February 15 of the calendar year following the year of the election. An individual must provide a new exemption certificate to the employer to claim an exemption from withholding for any subsequent tax year. ¶

(2) Exemption requirements. An individual claiming exemption from withholding must meet one of the following requirements: ¶

(a) The individual's wages must be exempt from Oregon taxation; or ¶

(b) The individual must meet the qualification for having no tax liability. ¶

(3) Qualifications for no tax liability. An individual claiming exemption from withholding due to no tax liability must meet the following conditions: ¶

(a) For the previous tax year, the individual had the right to a refund of all Oregon tax withheld because the individual had no tax liability; and ¶

(b) For the current tax year, the individual expects a refund of all Oregon income tax withheld because the individual expects to have no tax liability. ¶

(4) Specific Employees Exempt from Withholding. ¶

(a) Military pay in the Armed Forces of the United States. See ORS 316.792. ¶

(2b) Common carrier employees. Public Law 101-322 and ORS 316.162(2)(b) exempt from state withholding railroad and trucking, motor, and air carrier employees unless they are Oregon residents. OAR 150-316-0173 contains definitions and examples of trucking common carrier employees. Public Law 91-569 and ORS 316.162(2)(b) exempt from state withholding nonresident air carrier employees unless they earn 50 percent or more of their compensation in Oregon. Employees whose scheduled flight time in Oregon is more than half of their total flight time for the year are considered to have earned more than half of their compensation in Oregon. The employees covered are those actually involved in transportation activities in more than one state. ¶

(3c) Domestic service. The exemption in ORS 316.162(2)(c) does not apply to wages paid to an employee who performs both domestic and business services, such as the chauffeur who also transports his employer's business clients, the domestic cook who also prepares meals for other employees or the paying public, etc. ¶

(4d) Casual labor. Withholding is not required from wages paid for casual labor not in the course of the employer's trade or business. Withholding is required from wages for substantial labor not in the regular course of the employer's trade or business, such as the construction of a private home where the owner is the employer. Labor which is both casual and not in the course of the business or trade of the employer is exempt from withholding requirements. "Business," as used in this section, is given a broader interpretation than "activity for profit" and includes governmental as well as proprietary functions of the state government or any of its political subdivisions. ¶

(5e) Agricultural services. Labor rendered solely in connection with the planting, cultivating, or harvesting of "seasonal agricultural crops" is exempt from withholding if the total annual wages paid the employee are less than \$300. If at least \$300 is received by the employee during the calendar year, the withholding and payments must have been timely made. ¶

(aA) A "seasonal agricultural crop" is a crop dependent upon an annual or less season for its fruition, and which is harvested at the termination of its season or shortly thereafter. ¶

(bB) Seasonal agricultural crops include:¶

(A) Field and forage crops.¶

(B) The seeds of grasses, cereal grains, vegetable crops and flowers.¶

(C) The bulbs and tubers of vegetable crops.¶

(D) Any vegetable or fruit used for food or feed.¶

(E) Holly cuttings harvested annually for Christmas sales.¶

(c) Labor performed in connection with the following are not exempt from withholding:¶

(A) Forest products.¶

(B) Landscaping.¶

(C) Nursery stock as defined in ORS 571.005(5) unless planted, cultivated, and harvested within an annual period.¶

(D) Raising, shearing, feeding, caring for, training or management of livestock, bees, poultry, fur-bearing animals or wildlife.¶

(d) Withholding is required as to the entire wages of "regular" farm employees even though, as a part of their duties, they engage in planting, cultivating, or harvesting. Withholding is required as to all wages paid in such seasonal activities as canning, or other food processing, logging, and sheep shearing, because they are not solely in connection with the planting, cultivating, or harvesting of seasonal agricultural crops. Withholding is required as to all wages paid in such agricultural activities as the care of poultry or livestock, and dairy farming, because they are not in connection with the planting, cultivating or harvesting of seasonal agricultural crops.¶

(e) Minister. Withholding is not required from wages paid to a duly ordained, commissioned, or licensed minister of a church when performing the duties of the minister's ministry, or from wages of a member of a religious order in performance of the religious duties required by the order, when the duties are not commercial in nature. Any amounts received from services performed outside of the order, and where a legal relationship of employer and employee exists between a member of a religious order or a minister and a third party, are considered income and are subject to withholding. For example, a member of a religious order has been hired by a school to teach a class for a fee. That member becomes an employee of the school and the wages are subject to withholding. ¶ (pursuant to IRS Publication 525).¶

(f) Real Estate Salespeople. Withholding is not required from services provided to real estate brokers by real estate salespeople if there is a written contract providing the salesperson will not be treated as an employee by the real estate broker with respect to the services provided for Oregon tax purposes. Their income from commissions is not subject to state withholding taxes.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.162, 316.177, 316.182

AMEND: 150-316-0257

RULE SUMMARY: Eliminates employer's ability to alter withholding formulas furnished by the department. Clarifies that supplemental wage payments made on or after January 1, 2020 are subject to withholding at a rate determined by using the formulas or tables furnished by the department or at a flat rate of 8%.

CHANGES TO RULE:

150-316-0257

Employers Election of Method of Computing Withholding ¶

(1) Employers have the option of using either the tax tables or the formulas developed and furnished by the D department in computing the amount to be withheld from regular wage payments. The tax tables and formulas are published by the D department. Employers may not modify the published tables or formulas ~~except to update the exemption credit allowance as modified by state law.~~ ¶

~~Example: The version of the published formula for an annual wage, effective January 1, 1988, contains a subtraction of \$90 x allowances, this may be modified to \$128 x allowances because under 1997 state law the exemption credit is \$128.~~ ¶

~~If a supplemental wage payment is made.~~ ¶

(2) If a supplemental wage payment is made on or after January 1, 2020, the employer may compute the amount to be withheld by using the tax tables or formulas, or may withhold at a flat rate ~~which shall be 9 of 8~~ percent.

Supplemental wage payments include bonuses, premiums, awards, gifts and other payments made to an employee, on the condition of their employment, occurring no more than twice a year.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.167

REPEAL: 150-316-0280

RULE SUMMARY: Repealing rule made unnecessary by proposed amendments to OAR 150-316-0237.

CHANGES TO RULE:

~~150-316-0280~~

~~Exemption Status of Employees~~

~~Effective January 1, 1982 Internal Revenue Service's Form W-4, Employee's Withholding Allowance Certificate, may be used by an employer in the same manner for Oregon withholding as it is used for federal withholding. For the exemption claimed on line 7 of the W-4 to be effective for Oregon, all of the following conditions must be met.~~

~~The employee:~~

~~(1) Did not owe any Oregon income tax last year.~~

~~(2) Does not expect to owe any Oregon income tax for the current tax year.~~

~~Statutory/Other Authority: ORS 305.100~~

~~Statutes/Other Implemented: ORS 316.177~~

AMEND: 150-316-0359

RULE SUMMARY: Amends rule to replace reference of "withholding statement" to "W-2." The term "withholding statement" isn't defined in this rule, but is defined in other rules as a form other than the federal Form W-2. Allows hardship exceptions if an employer can show a hardship with the requirement to file W-2s electronically with the department and combines other hardship exceptions in this rule into one section.

CHANGES TO RULE:

150-316-0359

Withholding: Annual Report by Employer ¶¶

(1) Definitions. As used in this rule: ¶¶

(a) "Employer" has the meaning given that term in ORS 316.162 and also includes lenders, sureties, and other persons subject to withholding and reporting requirements under ORS 316.169. ¶¶

(b) "Payer" has the meaning given that term in ORS 316.189(1)(g). ¶¶

(c) "Payroll service provider" is any person that prepares payroll tax returns on behalf of another person for remuneration. ¶¶

(d) "Periodic payment" has the meaning given that term in ORS 316.189(1)(h). ¶¶

(e) "W-2" means the federal Form W-2 required to be filed under 26 USC § 6051 with the addition of the information required under section (3) of this rule. ¶¶

(ef) "Wages" has the meaning given that term in ORS 316.162. ¶¶

(f) "Periodic payment" has the meaning given that term in ORS 316.189(1)(h). ¶¶

(2) ~~Withholding Statement~~ W-2 reports. ¶¶

(a) Every employer or other payer must complete an individual ~~withholding statement~~ W-2 for each employee. The ~~Oregon withholding statement~~ W-2 must contain the same information as is required to be reported on a federal ~~withholding statement~~ W-2 including: ¶¶

(A) Total state and local wages; ¶¶

(B) State and local tax withheld during the calendar year; and ¶¶

(C) The Oregon business identification number of the employer. ¶¶

(b) The employer or other payer must use a federal ~~withholding statement~~ (W-2) for purposes of section (2) of this rule. If the employer or other payer is withholding from certain periodic payments, the employer or payer must use federal Form 1099-R for purposes of section (2) of this rule. ¶¶

(c) The employer or other payer must provide a copy of the ~~withholding statement~~ W-2 to the employee within 31 days of the close of the calendar year. If an employee is terminated and requests a copy of the ~~withholding statement~~ W-2, the employer must provide the form to the employee within 30 days of either the request or the final wage payment, whichever is later. ¶¶

(d) The information in the ~~withholding statement~~ (W-2) must be filed electronically with the department. ¶¶

(e) Under ORS 314.385, the due date for electronic filing of W-2s for Oregon purposes is the same as the federal due date for electronically filed W-2s. ¶¶

(3) Reporting for Statewide Transit Tax Withheld. ¶¶

(a) Employers must report statewide transit tax withheld in Box 14 of the W-2 with the designation ORSTT W/H in addition to the requirements in subsection (2)(a) of this rule. ¶¶

Example: ORSTT W/H - \$15.00 ¶¶

(b) Subsection (3)(a) of this rule is effective for tax years beginning on or after January 1, 2019. ¶¶

(4) Employer Reconciliation Reports (Form WR and Statewide Transit Tax Annual Report). ¶¶

(a) Every employer must file a summary of total compensation paid, Oregon income tax withheld, and statewide transit tax withheld for each employee. Each reconciliation report must include a reconciliation of income tax and statewide transit tax remitted to the department by the employer for the calendar year to the total of income tax and statewide transit tax withheld from employees' pay for the calendar year. ¶¶

(b) The reconciliation reports for income tax withholding and statewide transit tax must be filed electronically

with the department. ¶

(c) If the reconciliation reports for income tax withholding and statewide transit tax are not filed within 30 days of the department's notice to the employer of a failure to file, a \$100 failure-to-file penalty applies for each instance. ¶

(d) If there is a difference between the amount paid to the department by the employer and the amount withheld by the employer from the employees' wages, the employer must explain the difference on the report. ¶

(e) The due date for each reconciliation report is the same as the due date of the corresponding federal report for income tax withholding. If the employer ceases doing business, each reconciliation report is due within 30 days of termination of business. ¶

(f) Subsection (4)(b) is effective for tax years beginning on or after January 1, 2019 for income tax withholding and statewide transit tax reconciliation reports. ¶

~~(g) The department may grant an exception to the filing requirement in section (4) of this rule upon a showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each employer and determined on a case-by-case basis. ¶~~

(5) Payer Reconciliation Reports. ¶

(a) Every payer must file a summary of total periodic payments paid and Oregon income tax withheld for each payee. Each reconciliation report must include a reconciliation of income tax remitted to the department by the payer for the calendar year to the total of income tax withheld from payees' pay for the calendar year. ¶

(b) The reconciliation report for income tax withholding must be filed electronically with the department. ¶

(c) If the reconciliation reports for income tax withholding are not filed within 30 days of the department's notice to the payer of a failure to file, a \$100 failure-to-file penalty applies for each instance. ¶

(d) If there is a difference between the amount paid to the department by the payer and the amount of income tax withheld by the payer from the payees' periodic payments, the payer must explain the difference. ¶

(e) The due date for each reconciliation report is the same as the due date of the corresponding federal report for income tax withholding. If the payer ceases doing business, each reconciliation report is due within 30 days of termination of business. ¶

(f) Subsection (5)(b) is effective for tax years beginning on or after January 1, 2019 for income tax withholding reconciliation reports. ¶

~~(g) The department may grant an exception to the filing requirement in section (5) of this rule upon a showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each payer and determined on a case-by-case basis. ¶~~

(6) Penalties. The department will assess penalties, as described in ORS 316.202(5), if an employer or other payer fails to file W-2s by the due date as required under subsection (2)(e) of this rule or the employer or other payer files incorrect or incomplete W-2s. ¶

(a) A W-2 is incorrect or incomplete if one or more of the following occur: ¶

(A) Identifying employee information is missing, such as the first or last name or social security number. ¶

(B) The W-2 contains an incorrect statement of state income tax withheld, federal income, or state income amounts. Obvious math or clerical errors are not considered an incorrect statement for this purpose. ¶

(C) Other information is missing or incorrect on the W-2. ¶

(b) An employer or other payer knowingly fails to file a W-2 by the due date if: ¶

(A)(i) The W-2 was not received by the department on or before the due date of the corresponding federal Form W-2 for the tax year under consideration; ¶

(ii) The employer or other payer has been assessed the penalty under ORS 316.202(5)(a) for one or more filing periods preceding the period at issue; and ¶

(iii) The employer or other payer fails to file the W-2 upon written request to file by the department; or ¶

(B) The department determines that the facts and circumstances in the particular case warrant penalty assessment. ¶

(c) An employer or other payer knowingly files an incomplete, false, or misleading W-2 if one or more of the following occur: ¶

- (A) The employer or other payer has a pattern of repeatedly filing incorrect W-2s; ¶
- (B) The employer or other payer failed to correct the W-2 upon discovering incorrect information; ¶
- (C) The employer or other payer issued a corrected W-2 upon written request of the department; ¶
- (D) The amount of the potential penalty is less than the cost of complying with the requirement to include correct information on the W-2; ¶
- (E) The department determines that the facts and circumstances in the particular case warrant penalty assessment. ¶
- (d) A penalty may be assessed under ORS 316.202(5)(b) even though a prior penalty assessed under ORS 316.202(5)(a) was waived under OAR 150-305-0062. ¶
- (7) If the employer or other payer fails to produce documentation to support the information on the W-2 or the number of W-2s required to be filed, the department will use the best information available to determine the appropriate penalty assessment amount. ¶
- (8) The department may grant an exception to the filing requirements in sections (2), (4), or (5) of this rule upon a showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each employer or payer and determined on a case-by-case basis. ¶

[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.202, 320.550