

Oregon Administrative Rule 150-316.007-(B)

Policy—Application of Various Provisions of Tax Law to Domestic Partners

(1) The imputed value of health insurance benefits provided by an employer to an employee's domestic partner shall be exempt from state income tax.

(2) As used in this rule, "domestic partner" means a person in a relationship with an employee, each of whom:

(a) is under no legal disability to marry the other person, but for the fact that each is of the same sex;

(b) desires a relationship of marriage under Oregon law and would enter into marriage with the other person, and only with the other person, if Oregon law permitted it;

(c) is committed to the care and support of the other person;

(d) is responsible for the needs of the other person;

(e) is responsible for financial obligations to others equivalent to such financial obligations that arise within a marriage recognized under Oregon law; and

(f) is not married and has no similar commitment and responsibility relative to any other individual.

(3) As used in this rule, "imputed value" means the amount included in federal taxable income of the employee because the premiums provided health insurance benefits to the domestic partner rather than a spouse.

(4) The provisions of this rule apply to:

(a) tax years beginning on or after January 1, 2000; and

(b) any tax year for which an overpayment of tax may be refunded or a notice of deficiency may be issued under any law of this state applicable to personal income taxation.

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A new provision for Oregon allows some taxpayers who qualify as domestic partners to claim a subtraction from Oregon income.

Following are common questions that may be asked about this new provision and answers to those questions.

If you need more information, contact the Department of Revenue at 503-378-4988.

Question 1 . My employer offers health insurance to me and to another person that I certify to the employer is my “domestic partner.” My employer told me that the cost of covering my domestic partner results in “imputed income” that is taxable to me. What is “imputed income?”

Answer 1. In general, imputed income is the difference between the cost of providing the insurance to you with and without the cost of covering your domestic partner.

Question 2 . Why is imputed income taxable to me and not to a married employee?

Answer 2. Under federal tax law, certain fringe benefits provided to employees are not taxable. Health insurance benefits provided by an employer are not taxed to an employee, as long as the benefits are for the employee, the spouse or dependents of the employee. Because a domestic partner is not a spouse, the value of the benefit is taxed to the employee unless the domestic partner also qualifies as a dependent under tax law.

Question 3 . Is the imputed income taxable by Oregon?

Answer 3. The state’s attorneys have interpreted the Oregon Court of Appeals decision in *Tanner v. OHSU* to mean that the value of the benefits is not taxable by Oregon if the person qualifies as a same-sex domestic partner.

Question 4 . What is a same-sex domestic partner?

Answer 4. This administrative rule (OAR 150-316.007 (B)) describes the requirements a person must meet to qualify as a same-sex domestic partner. In general, the employee must be in a committed relationship with one other person of the same sex.

Question 5 . My employer provides benefits to opposite-sex couples who aren't married. Why don't they qualify for the subtraction?

Answer 5. The court decision dealt only with the provision of benefits to same-sex domestic partners and did not address opposite-sex couples. Thus, there is nothing in Oregon law to allow opposite-sex couples to exclude the imputed income.

Question 6 . If I am a domestic partner, how do I exclude the income from Oregon tax?

Answer 6. Your employer should include the value of the benefit in your federal wages. The employer should also provide you with information as to how much was added to your wages because of the imputed income. This information may be on your W-2 form, or it could be reported on your earnings report or your payroll stub. If you qualify as a domestic partner, you can claim the imputed value as an "other subtraction" when you file your Oregon tax return.

Question 7 . If I am a domestic partner, can I tell my employer to stop withholding Oregon tax on the amount of imputed income?

Answer 7. If you decide you qualify as a domestic partner, you can give your employer a separate Form W-4 for Oregon. You can adjust your withholding by claiming an additional exemption or by requesting a certain dollar amount of Oregon withholding. It is your responsibility to accurately determine whether you qualify to exclude the income and how much you want to change your withholding. Your employer is not required to report a different federal and state amount of wages on your W-2.

Question 8 . I usually end up paying additional tax when I file my Oregon tax return. Do I have to change my withholding amount?

Answer 8. No. If you usually owe tax when you file, or if you have other sources of income not subject to withholding, you may not want to change your withholding. You can still claim the subtraction on your Oregon tax return when you file. This is how the income is excluded from Oregon tax.

Question 9 . If I want to change the withholding, do I have to certify to my employer or the state that I meet the requirements of the rule?

Answer 9. No. You are not required to certify to your employer or the state that you are entitled to exclude the income from Oregon tax. You must decide whether you and your partner meet the requirements of the rule. If you do, then you may claim the subtraction when you file your Oregon tax return. No additional documentation of eligibility is required.

Question 10 . If I don't change my withholding and my employer doesn't report different wages for federal and Oregon, then aren't I really being taxed on the imputed income?

Answer 10. No. There is a difference between your wages being subject to tax and being subject to withholding. Even though the income is included in your Oregon wages for withholding purposes, you will be able to subtract it when you figure the income that is subject to tax. Again, if you think you will have too much in withholding, you can give your employer a new Form W-4.

Question 11 . What years are covered by this rule?

Answer 11. The rule takes effect December 31, 1999 and applies to any year that is "open" under the tax laws. A year is open if the department can issue a refund for that year. In general, tax years remain open for 3 years after the due date of the return. For example, tax year 1996 remains open for refunds until April 17, 2000.

Question 12 . Can I file an amended return for an earlier year and claim a refund?

Answer 12. Yes. If you reported imputed income for Oregon for a prior year and you also qualified as a domestic partner for that year, you can file for a refund.