

# **2017**

## **Oregon Department of Revenue**

### **Administrative Rules Annual Report**

**HB 4106  
(2016 Session)**

**February 2017**



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# HB 4106—Annual Report on Administrative Rules

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## Introduction

HB 4106, enacted by the 2016 Legislative Assembly, requires state agencies to submit a report no later than February 1 of each year regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. This is the Department of Revenue’s first report, covering calendar year 2016.

## Rules adopted, amended, or repealed [ORS 183.335(2) and (3)]

The following table shows the number of rules adopted, amended, or repealed in accordance with Oregon Revised Statutes (ORS) 183.335(2) and (3):

<b>Adopted</b>	14
<b>Amended</b>	30
<b>Repealed</b>	16

Additionally, Revenue renumbered all of its administrative rules (981) in order to meet the requirements of the Secretary of State Archives Division’s new rules database. The new rule numbers are effective September 1, 2016. Permanent notice was filed for these changes, but public comment was not required.

## Temporary rules adopted, amended, or suspended [ORS 183.335(5)]

Number of rules: 3

### List of rules:

150-314.280-(O), *Public Utilities: Sale of Commodities*

150-475B.705, *Marijuana Retailer Receipt Requirements*

150-305-0360, *Rules Application*

### Statement of need for each rule and all of the agency’s findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned:

**150-314.280-(O), *Public Utilities: Sale of Commodities***

This temporary rule was needed to immediately delete the rule’s effective date because inadvertent and incorrect wording was used at the time the rule was originally adopted and filed.

**150-475B.705, *Marijuana Retailer Receipt Requirements***

This temporary rule was needed to ensure that customers have the documentation needed to file a refund claim under ORS 475B.740. The rule specified information required to be included

on receipts from marijuana retailers.

### **150-305-0360, *Rules Application***

This temporary rule was needed to clarify that the provisions of ORS 305.620 apply to both local transit and local marijuana taxes, and to ensure that the department could administer local marijuana taxes through intergovernmental agreements with municipalities in Oregon.

**For each rule, an explanation of why proceeding under ORS 183.335(5) was the most appropriate method for adopting, amending, or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335(2) and (3):**

### **150-314.280-(O), *Public Utilities: Sale of Commodities***

Taxpayers needed clarity on the rule's effective date. This temporary rule corrected an error that was made at the time the permanent rule was originally filed. The intent was for the rule to be applicable to all open tax years prior to 2016, but that was not clear in the permanent rule.

If this temporary rule was not adopted, taxpayers would have been misled as to which tax years the rule applied. That could seriously impact taxpayers' tax planning ability and could lead to litigation over the applicability of the rule to tax years prior to 2016. Corporate taxpayers who sell electricity and other commodities would have to cover the cost of litigation if the department tried to apply the rule to years prior to 2016. The state would also be responsible for costs related to this litigation and would be limited in its ability to apply the rule as intended.

The temporary rule made clear to taxpayers that, in conjunction with OAR 150-305-0010 [previously numbered 150-305.100], the rule is intended to apply to all tax years open to examination. This will reduce the chance that taxpayers will challenge the application of the rule to tax years prior to 2016 and allow the department to administer tax programs as intended and allowed under statute.

### **150-475B.705, *Marijuana Retailer Receipt Requirements***

SB 1511 (2016) imposed a tax on new marijuana items under the Early Start program. A new temporary rule was needed to inform retailers of what information must be included on sales receipts. These requirements will help alleviate potential errors caused by retailers taxing products that should not be taxed or in not taxing products that should be taxed. Errors in taxation could lead to refund requests from taxpayers. Without detailed receipts as documentation of sales transactions, the department would not have been able to adjudicate refund requests. Additionally, in the pre-seed-to-sale environment of the Early Start program, proper sales documentation was needed for audit purposes.

### **150-305-0360, *Rules Application***

Laws adopted during the 2016 Legislative Session (HB 4014 and SB 1601) authorized municipalities to impose a local tax on marijuana sales of up to 3 percent, and authorized those municipalities to enter into intergovernmental agreements with the state of Oregon to administer those taxes. Existing administrative rules associated with ORS 305.620 explicitly discuss "transit taxes" but do not mention "local marijuana taxes." This rule modification was necessary to

clarify that the administrative rule for intergovernmental agreements applies to both transit and marijuana taxes.

*OAR 150-314.280-(O) and 150-475B.705 were subsequently replaced with permanent rules adopted in accordance with ORS 183.335(2) and (3). A permanent rule pertaining to the provisions of OAR 150-305-0360 is currently scheduled to proceed in accordance with ORS 183.335(2) and (3) in spring 2017.*

# Appendix 1

## House Bill 4106

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78th OREGON LEGISLATIVE ASSEMBLY--2016 Regular Session

### Enrolled

## House Bill 4106

Sponsored by Representatives KENNEMER, GOMBERG, Senator JOHNSON; Representatives DAVIS, DOHERTY, EVANS, HOYLE, HUFFMAN, KENY-GUYER, KOMP, MCLANE, PILUSO, SPRENGER, STARK, WEIDNER, WILSON, WITT, Senators BEYER, BOQUIST, KNOPP, THATCHER (Pre-session filed.)

CHAPTER .....

AN ACT

Relating to state agency adoption of temporary rules.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. (1) As used in this section:**

- (a) "Agency" has the meaning given that term in ORS 183.310.
- (b) "Rule" has the meaning given that term in ORS 183.310.
- (c) "Statement of need" means the statement described in ORS 183.335 (5)(c).

(2) No later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed or suspended during the preceding 12-month period. The report must include:

- (a) The number of rules adopted, amended or repealed in accordance with ORS 183.335 (2) and (3); and
- (b) With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335 (5):

- (A) The number of rules;
- (B) A list of the rules;

(C) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned; and

(D) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

**Passed by House February 17, 2016**

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate February 26, 2016**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M.,....., 2016

**Approved:**

.....M.,....., 2016

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Kate Brown, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2016

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Jeanne P. Atkins, Secretary of State