

## **150-305.100-(C)**

### **Tax Amnesty Program**

(1) Definitions. For purposes of Chapter 710, Oregon Laws 2009 (Senate Bill 880) and this rule:

(a) "Amnesty program" refers to the tax amnesty program created by Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) "Amnesty period" refers to the time in which the application is required to be filed (October 1 through November 19, 2009).

(c) "Amnesty return" refers to the original or amended tax return filed in accordance with section (3) of this rule.

(d) "Amnesty liability" is a liability that is reported on an original tax return or additional liability that is reported on an amended tax return filed in conjunction with the amnesty program.

(d) "Application" is the department-produced form entitled "Amnesty Application" that is referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(e) "Participant" means the person, entity, or corporation taking part in the amnesty program.

(f) "Post amnesty penalty" means the 25 percent penalty established by Section 4, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(h) "Tax program" means a type of tax that is collected and administered by the Department of Revenue and that is eligible for amnesty. The following are tax programs eligible for amnesty:

(A) Personal Income Tax;

(B) Corporate Income or Excise Tax;

(C) Inheritance Tax;

(D) Fiduciary (trust/estate) Tax;

(E) Transit District (self-employment) Tax.

(2) Applications. In order to be eligible for amnesty, a participant must file an application within the amnesty period on a form prescribed by the department. Applications are due on or before November 19, 2009 and must be complete and signed by the participant(s). Applications that are not complete or received after November 19, 2009 will not be accepted and the participant will not qualify for the amnesty being sought on that application.

(3) Amnesty Returns. Amnesty returns may be filed with or after the application but are due no later than January 19, 2010. Amnesty returns that are not complete or are received after January 19, 2010 will not qualify for the amnesty being sought and all amnesty-related waivers of penalty and interest will be disallowed. Disqualified amnesty returns will be processed as if there had been no amnesty program.

(4) Installment Payments.

(a) Amnesty participants may enter into an installment payment agreement with the department to satisfy an amnesty liability by making regular monthly, or more frequent, payments over a designated period of time.

(A) No agreement may extend beyond May 31, 2011 and participant(s) must satisfy all amnesty liabilities on or by May 31, 2011.

(B) If an amnesty participant fails to fully comply with the terms of an installment payment agreement, all amnesty-related waivers of penalty and interest will be disallowed. However, the participant may ask the department to find that the failure to fully comply with the terms of the installment payment agreement was due to "reasonable cause" as that term is defined in subsection (b) of this section. If the department makes such a finding, the installment payment agreement may resume, notwithstanding the failure to fully comply, subject to further conditions satisfactory to the department and provided that full payment is received no later than May 31,

2011. Upon a department finding of “reasonable cause,” the participant will remain eligible for the penalty and interest waivers referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) For purposes of this section, “reasonable cause” exists when the participant exercises ordinary care and prudence in abiding by the terms of the installment agreement but was unable to comply with that agreement due to the participant’s individual circumstances. To determine if the participant used ordinary care and prudence, the department will consider:

(A) The participant’s reasons for not abiding by the terms of the installment plan;

(B) The length of time between the event cited as a reason for the noncompliance and the missed or reduced installment payment(s); and

(C) Whether or not the participant could have anticipated the event(s) causing the noncompliance and taken reasonable steps to avoid it.

(c) The following nonexclusive list describes circumstances when reasonable cause may exist:

(A) Death or serious illness of the participant or a member of the participant’s immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the participant’s home, or place of business;

(C) Unavoidable and unforeseen absence of the participant from the state immediately prior to the due date of the missed or reduced installment payment;

(D) An unplanned and significant change in the participant’s financial circumstances, through no fault of the participant, such that the participant demonstrates to the department’s satisfaction that they are unable to meet reasonably necessary living expenses and also comply with the terms of the agreement; or

(E) Erroneous written information from the department which caused the failure of the participant to timely pay.

(d) The following nonexclusive list describes circumstances that do not, in isolation, result in a determination of reasonable cause:

(A) Reliance on an employee or tax professional to pay on time; or

(B) Inability of, or failure of oversight by, the participant to pay the amnesty liability.

(5) Applicable waivers of penalty and interest under Chapter 710, Oregon Laws 2009 (Senate Bill 880) will occur only after the participant has paid all of the tax and one-half of the interest due.

(6) Closing Agreements.

(a) Policy. In order to assure that the amnesty program is administered efficiently and equitably, the department may waive penalties and interest for taxpayers entering into a closing agreement, under subsections (b) and (c) of this section, for the period of time immediately prior to, or during, the amnesty period. Or, if the taxpayer has filed a timely and complete application, a closing agreement may be executed through January 19, 2010.

(b) Interest waiver. Consistent with its authority under ORS 305.145(3) and notwithstanding OAR 150-305.145(3), the department may, when it determines that “good and sufficient cause” exists, based on the facts and circumstances of each case, waive up to 50% of the interest normally imposed. For purposes of this paragraph, “good and sufficient cause” exists when the department determines that entering into a closing agreement will result in an equity or efficiency by providing a streamlined alternative filing mechanism for taxpayers.

(c) Penalty waiver. Consistent with its authority under ORS 305.145(4) the department may, based on the facts and circumstances of each case and when it determines that entering into a

closing agreement under this section will enhance the long-term effectiveness, efficiency or administration of the tax system, waive all, or a portion of, penalties otherwise imposed.

(7) Post amnesty penalty.

(a) Generally, the post amnesty penalty imposed under Section 4, Chapter 710, Oregon Laws 2009 (Senate Bill 880) will be applied to any unpaid tax that is otherwise due for any tax year or reporting period for which amnesty could be sought under Chapter 710, Oregon Laws 2009 (Senate Bill 880) and for which:

(A) The taxpayer failed to apply (and file a return or report) for amnesty; or

(B) The taxpayer filed for amnesty and underreported tax liability on the amnesty return.

(b) The department will not impose the post amnesty penalty when an additional tax liability results from an adjustment made to a return by the Internal Revenue Service unless the service has finally imposed a penalty under sections 6662, 6662A, 6663 or 7201 of the Internal Revenue Code. In addition, the department generally will not impose the post amnesty penalty under the following circumstances including, but not limited to, when an adjustment to a return occurs:

(A) Based on an arithmetical error or transposition of numbers on a return or schedule;

(B) Based on an inadvertent error made in calculating a depreciation tax deduction allowed to recover the cost or other basis of certain property allowed under the Internal Revenue Code or the Oregon Revised Statutes;

(C) Based on an error or omission of an item of income, deduction or credit that results in an additional tax due that is de minimis.

(c) Generally and notwithstanding subsection (b) of this section, the department will impose the post amnesty penalty when a penalty is also imposed under:

(A) ORS 314.402 (substantial understatement of income);

(B) ORS 305.265 (failure to file a report or return with intent to evade the tax);

(C) ORS 314.403, 314.404 or 314.406 (abusive tax avoidance transaction);

(D) ORS 314.075 (evasion of any requirement of any law imposing income taxes);

(E) ORS 305.815 or 305.265(13) (filing false return or report); or

(F) ORS 118.260, 305.992, or 314.400(2) or (3) (failure to file);

(G) A finally imposed penalty under Internal Revenue Code Sections 6662, 6662A, 6663 or 7201.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Stat. Auth.: ORS 305.100, 305.145, 305.229

Stats. Implemented: Chapter 710, 2009 Oregon Laws, (Senate Bill 880)