

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***

A Statement of Need and Fiscal Impact accompanies this form.

Department of Revenue, Business Division, Personal Tax and Compliance Division	150
Agency and Division	Administrative Rules Chapter Number
Debra L Buchanan	955 Center St NE Salem OR 97301
Rules Coordinator	Address
	503-945-8653
	Telephone

**RULE CAPTION**

Inheritance tax extension; 2009 legislation conformity; 1099 filing requirement; "moist snuff" defined; "Oregon sales" defined

**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

November 23, 2009	10:00	Fishbowl Conference Rm, 955 Center St NE Salem OR 97301	Staff
Hearing Date	Time	Location	Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:** 150-323.500(9)

**AMEND:** 150-118.225; 150-314.280-(N); 150-314.360; 150-315.204-(A); 150-315.262; 150-317.090; 150-317.097;

**REPEAL:** 150-305.290; 150-314.610(4); 150-317.326; 150-323.500(9)-Temp.

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth. : ORS 305.100; 314.280; 314.360

Other Auth.:

Stats. Implemented: ORS 118.225; 314.280; 314.360; 314.610; 315.204; 315.262; 317.090; 317.097; 317.326; 323.500

**RULE SUMMARY**

150-118.225, *Extension of Time to Pay Tax*, is amended to provide that stock may not be used as collateral if an estate requests an extension of time to pay tax under ORS chapter 118.

150-305.290 is repealed as obsolete following changes in federal bankruptcy laws.

150-314.280-(N), *Modified Factors for Financial Organizations*, is amended to conform to statutory changes made by SB 180 (2009 Oregon Laws, chapter 401), which replaced references to "financial organizations" with "financial institutions."

150-314.360, *Information Return*, is amended to provide that persons who issue Forms 1099 must in some cases file copies of those forms with the department.

150-314.610(4), *Financial Organizations: Definition of "Investment Company"*, is repealed due to statutory changes made by SB 180.

150-315.204-(A), *Dependent Care Credits: General Information*, is amended to reflect statutory changes made in 2009 that extended the date on which the credit is scheduled to sunset.

150-315.262, *Working Family Childcare Credit*, is amended to reflect a 2009 legislative change to the definition of "qualifying child."

150-317.090, *Minimum Tax*, is amended to clarify the meaning of “Oregon sales” for purposes of the minimum tax changes contained in HB 3405. The statute is also amended to reflect HB 3409’s provision that the corporate minimum tax is not applied to each affiliate in a consolidated filing but instead is imposed once per return. Because HB 3406 is subject to a referendum vote on January 26, 2010, the department will consider public comment on the proposed amendment but will not adopt the rule until the outcome of the election is final.

150-317.097, *Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit*, is amended to reflect 2009 statutory changes.

150-317.326, *Adjustment to Basis for Recognized Gain*, is repealed as the corresponding statute has been repealed.

150-323.500(9), *Definition of Moist Snuff*, is adopted to provide guidance as to the types of tobacco products that are “moist snuff” in the context of HB 2672 (2009 Oregon Laws, chapter 717) and the temporary rule is repealed.

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

November 23, 2009, close of public hearing

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

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	Debra L Buchanan	10/15/2009
Signature	Printed name	Date

\*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Revenue, Business Division, Personal Tax and Compliance Division

150

Agency and Division

Administrative Rules Chapter Number

Inheritance tax extension; 2009 legislation conformity; 1099 filing requirement; “moist snuff” defined; “Oregon sales” defined

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency’s intended action.)

In the Matter of: Adoption of administrative rules

Statutory Authority: ORS 305.100; 314.280; 314.360

Other Authority:

Stats. Implemented: ORS 118.225; 314.280; 314.360; 314.610; 315.204; 315.262; 317.090; 317.097; 317.326; 323.500

Need for the Rule(s):

150-118.225, *Extension of Time to Pay Tax*, is needed to correctly reflect the type of collateral that an estate may use when the due date for payment of tax is extended.

150-305.290 needs to be repealed as it is no longer relevant because of changes in federal bankruptcy law.

150-314.280-(N), *Modified Factors for Financial Organizations*, needs to be amended to reflect the correct terms used in the statute.

150-314.360, *Information Return*, is needed to explain the requirements for filing information returns (i.e. certain forms 1099, etc.) with the department.

150-314.610(4), *Financial Organizations: Definition of “Investment Company”* needs to be repealed because changes made by the 2009 legislature (SB 180) make the distinctions in this rule obsolete.

150-315.204-(A), *Dependent Care Credits: General Information*, needs to be amended because it does not reflect the recent change to the date on which the credit is scheduled to sunset.

150-315.262, *Working Family Childcare Credit*, is amended to reflect a statutory change to the definition of “qualifying child” for purposes of the tax credit.

150-317.090, *Minimum Tax*, needs to be amended to provide guidance on the definition of “Oregon sales” for purposes of the minimum tax changes contained in HB 3405. The statute is also amended to reflect HB 3409’s provision that the corporate minimum tax is not applied to each affiliate in a consolidated filing but instead is imposed once per return. Because a January 26, 2010 special election will be held, the department will continue with a public hearing and accept comments on the proposed rule but will not act on adoption until results of the election are known.

150-317.097, *Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit*, needs to be amended to reflect 2009 statutory changes.

150-317.326, *Adjustment to Basis for Recognized Gain*, needs to be repealed as the corresponding statute has been repealed.

150-323.500(9), *Definition of Moist Snuff*, is needed to explain and further define the term “moist snuff” as in the context of HB 2672 (2009 Oregon Laws, chapter 717 and the temporary rule is repealed.

Documents Relied Upon, and where they are available:

None

Fiscal and Economic Impact:

With the exception of 150-314.360, the rules are not expected to have a fiscal or economic impact on other entities. 150-314.360 will have an impact on payors that will be required to file information returns with the department. The department's rule is intended to minimize this impact by mirroring as much as possible the filing requirements that now exist under federal tax law.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The rules are not expected to impact state agencies or units of local government. The public may be impacted by the requirement to file additional forms with the department.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: 150-314.360 is estimated to impact small businesses that currently are required to file information returns with the federal government but that have been exempted from filing with the state. The number of small businesses for all financial industries is indeterminate at this time however, we are working with the industry to identify this number. Based on information provided in *Oregon Labor Market Information System (OLMIS)*, the estimated number of business and industries that may be impacted without regard to whether the business is a small business is broken down as follows:

Commercial Banking: .....	1209 of which 20 have less than 50 employees
Credit Unions: .....	359
Savings Institutions: .....	8
Consumer Lending: .....	386
Real Estate Credit: .....	1168
Insurance Agencies and Brokerages: .....	2986

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

There will be an increase in reporting and some additional administrative activities. However, because the department has worked with business and tax professionals in developing the reporting standards, we expect the increase will be minimal.

c. Equipment, supplies, labor and increased administration required for compliance:

150-314.360 will require payors to submit an electronic file of information returns based on certain financial activities carried on in regular business. Because the payors already create and submit the same information under federal law, we do not expect that payors will incur any substantial costs to create the files to be sent to the department.

How were small businesses involved in the development of this rule?

150-314.360 – We developed the filing requirements in consultation with small business representatives and tax professionals, the Oregon Bankers' Association, and the Oregon Credit Union Association.

Administrative Rule Advisory Committee consulted?: No

If not, why?: We shared the proposed rules and sought input from members of the Oregon State Bar, the Oregon Society of Certified Public Accountants, other tax professionals and representatives of business and industry.

	Debra L Buchanan	10/15/2009
Signature	Printed name	Date



ADMINISTRATIVE RULE REVIEW

New Rule	Rule No. OAR 150-323.500(9)	
	Page Page 1 of 1	Last Revised Date September 21, 2009
	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009
Permanent Rule		

PURPOSE: The 2009 Legislature’s House Bill 2672 defines moist snuff. The purpose of the definition is to identify which tobacco products are taxed using a weight-based tax calculation.

1 **150-323.500(9)**

2 **Definition of Moist Snuff**

3 (1) Moist snuff means any finely cut, ground, milled or powdered tobacco product that is not intended to  
4 be smoked or placed in the nasal cavity. Words such as long cut, mid cut, fine cut and snus only describe  
5 minor differences of product that fit within this tobacco category.

6 (2) Moist snuff also includes other products containing tobacco that are not intended to be consumed by  
7 burning. Examples include, but are not limited to:

8 (a) Pouches, which hold fine cut tobacco in a small, teabag-like pouch.

9 (b) Dissolvable tobacco, which consists of finely-processed tobacco developed in such a way as to allow  
10 the substance to dissolve on the tongue or in the mouth and includes strips, sticks, orbs, and compressed  
11 tobacco lozenges.

12 (3) Moist snuff does not include dry snuff or chewing tobacco.

13 (a) Dry snuff is powdered tobacco that is intended to be placed in the nasal cavity.

14 (b) Chewing tobacco means any leaf tobacco that is not intended to be smoked. Examples of chewing  
15 tobacco include, but are not limited to:

16 (A) Coarsely shredded tobacco leaves, such as those sweetened and packaged loosely in aluminum lined  
17 pouches;

18 (B) Plug tobacco, which is tobacco press formed into sheets and cut into individually wrapped plugs; and

19 (C) Twist tobacco, which is tobacco spun and rolled into rope-like strands.

20 **Stat. Auth.:** ORS 305.100, 323.575

21 **Stats. Implemented:** ORS 323.500



ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150- 118.225	Last Revised Date August 19, 2009
	Page Page 1 of 3	
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: The rule is amended to remove reference to ‘closely held stock’ as collateral for extended payment agreements for Inheritance tax. The reference is in direct conflict with the Oregon Constitution.

1 **150-118.225**

2 **Extension of Time to Pay Tax**

3 (1)(a) An application for extension of time to pay the inheritance tax shown on the return shall be by letter mailed  
4 to the Department within nine months after the date of decedent’s death or within the time of any extension  
5 granted for filing of the return.

6 (b) An application for extension of time to pay a tax deficiency shall be by letter mailed to the Department within  
7 thirty days from the date of mailing of the notice of deficiency. The department shall consider that an extension of  
8 time to pay the tax has been granted if the executor has obtained an approved federal extension and collateral has  
9 been provided to the department. The extended period for the department shall agree with the extended period for  
10 federal purposes. The federal extension must be submitted with the return.

11 An approved federal extension to pay shall not waive the penalties for late filing and interest shall accrue during  
12 the extension period.

13 (2) An extension of time will be granted for reasonable cause. For example, reasonable cause will generally exist  
14 where:

15 (a) Funds are not available to pay the tax except by disposing of property at a sacrifice price (less than market  
16 value) or by borrowing money at a rate in excess of the mortgage money market (on terms that would inflict loss  
17 on the estate), or

18 (b) The gross taxable estate includes a beneficial interest in a closely held business where the value of such interest  
19 exceeds either 35 percent of the gross taxable estate or 50 percent of the net taxable estate. For purposes of the 35  
20 percent and 50 percent tests provided in this paragraph, interest in two or more closely held businesses shall be  
21 treated as an interest in a single closely held business.

22 (3) The time to pay the tax shall be extended only on the portion of the tax attributable to the interest in the closely  
23 held business.

24 (4) For purposes of this rule, “interest in a closely held business” means an interest as described below determined  
25 immediately before the decedent’s death:

26 (a) An interest as a proprietor in a trade or business carried on as a proprietorship;

27 (b) An interest as a partner in a partnership carrying on a trade or business if 20 percent or more of the total capital  
28 interest in such partnership is included in the gross taxable estate, or such partnership has 15 or fewer partners;



ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150- 118.225	Last Revised Date August 19, 2009
	Page Page 2 of 3	
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: The rule is amended to remove reference to ‘closely held stock’ as collateral for extended payment agreements for Inheritance tax. The reference is in direct conflict with the Oregon Constitution.

- 1 (c) Stock in a corporation carrying on a trade or business if 20 percent or more of the voting stock of such  
2 corporation is included in the gross taxable estate, or such corporation had 15 or fewer shareholders. Stock or a  
3 partnership interest which is held by a husband and wife as community property or as joint tenants, tenants by the  
4 entirety, or tenants in common shall be treated as owned by one shareholder or one partner, whichever is  
5 applicable.
- 6 (d) A “trade or business” does not include an investment or holding company.
- 7 (5) If the time for payment has been extended, the amount extended shall be paid in equal annual installments plus  
8 accrued interest. If any installment is not paid on or before the date fixed for its payment, the unpaid portion of the  
9 tax payable in installments shall be paid upon notice and demand from the Department.
- 10 (6) An extension of time for payment of tax shall generally cease to apply, and any unpaid portion of the tax  
11 payable in installments shall be paid upon notice and demand from the Department if:
- 12 (a) One-third or more in value of an interest in a closely held business is sold, exchanged or otherwise disposed of;  
13 or
- 14 (b) Aggregate withdrawals of money and other property from the closely held business equal or exceed one-third  
15 of the value of such closely held business.
- 16 (7) Collateral acceptable to the Department will generally include the following:
- 17 (a) First mortgage on real property having a value of double the extended tax;
- 18 (b) Assignment of a contract and deed for the sale of real property where the market value of the contract is double  
19 the amount of the extended tax;
- 20 ~~(c) A deposit and pledge of closely held stock having a market value of double the extended tax;~~
- 21 ~~(c)~~ (c) A surety bond in double the amount of the extended tax executed by a corporation licensed to do business in  
22 the State of Oregon. Such bond shall be renewed every five years.
- 23 (8) Examples of reasonable cause:
- 24 (a) “A” died January 10, 1997, leaving a gross estate of \$1,200,000 of which \$700,000 was the value of a retail  
25 store operated by the decedent. The balance of the estate was listed securities, cash, a family residence and  
26 miscellaneous personal effects. The taxable estate was \$850,000 on which the Oregon tax was \$25,200. The  
27 portion that could be extended is \$20,753.  $(\$700,000 \div \$850,000) \times \$25,200 = \$20,753$ .



ADMINISTRATIVE RULE REVIEW

	Rule No. 150- 118.225	
Amended Rule	Page Page 3 of 3	Last Revised Date August 19, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: The rule is amended to remove reference to ‘closely held stock’ as collateral for extended payment agreements for Inheritance tax. The reference is in direct conflict with the Oregon Constitution.

- 1 (b) “B” died February 1, 1997, leaving a taxable estate of \$1,000,000 of which \$700,000 was stock in a closely
- 2 held corporation. The balance of the property was listed securities and personal effects. The corporation was a
- 3 holding company with the majority of corporate assets invested in real estate. It was not shown that money could
- 4 only be borrowed on terms that would inflict loss upon the estate. An extension would not be granted.
- 5 (c) “C” died January 1, 1997, leaving a taxable estate of \$1,000,000. The estate included farm land valued at
- 6 \$500,000. The balance of the estate was real property, listed securities, cash and personal effects. The farm land
- 7 was leased for cash rent. Because this is an investment in real property, it would not be considered a trade or
- 8 business and the tax would not be extended.
- 9 (d) “D” died May 10, 1997, leaving a taxable estate of \$750,000 including a tree farm valued at \$400,000. The
- 10 farm consisted of all pre-merchantable timber. It was shown that the farm could only be sold at a sacrifice price in
- 11 a depressed market and that money could only be borrowed on terms that would inflict loss upon the estate. The
- 12 tax of \$10,880 would be extended.  $(\$400,000 \div \$750,000) \times \$20,400 = \$10,880$ .
- 13 (e) “E” died May 10, 1997, leaving a taxable estate of \$5,000,000 of which tree farms were valued at \$1,000,000.
- 14 The balance of the estate was comprised of merchantable timber and timberlands valued at \$2,000,000 and an
- 15 interest in a closely held lumber manufacturing company valued at \$2,000,000. Only the portion of the tax
- 16 attributable to the closely held business (\$156,640) would qualify for the extension.
- 17 Other reasonable causes were not shown.  $(\$2,000,000 \div \$5,000,000) \times \$391,600 = \$156,640$ .
- 18 Stat. Auth.: ORS 305.100
- 19 Stats. Implemented: ORS 118.225



ADMINISTRATIVE RULE REVIEW

	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 1 of 15	Last Revised Date August 20, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

1 **150-314.280-(N)**

2 **Modified Factors for Financial ~~Organizations~~ Institutions**

3 (1) This rule is based on a model regulation adopted by the Multistate Tax Commission to promote  
4 uniform treatment of this item by the states. A financial ~~organization~~ institution having income from  
5 business activity that is taxable both within and without this state must allocate and apportion its net  
6 income as provided in this rule for tax years beginning on or after January 1, 1993. All items of  
7 nonbusiness income (income that is not includable in the apportionable tax base) must be allocated  
8 pursuant to the provisions of ORS 314.610 through 314.645 and the rules thereunder. A  
9 financial ~~organization~~ institution organized under the laws of a foreign country, the Commonwealth of  
10 Puerto Rico, or a territory or possession of the United States whose effectively connected income (as  
11 defined under the Federal Revenue Code) is taxable both within this state and within another state, other  
12 than the state in which it is organized, must allocate and apportion its net income as provided in this rule.

13 (2)(a) For tax years beginning on or after January 1, 1991 and before May 1, 2003, all business income  
14 must be apportioned to this state by multiplying the income by a fraction. The numerator of the fraction  
15 is two times the sales factor, as described in section (4) of this rule, plus the property factor, as described  
16 in section (5) of this rule, plus the payroll factor, as described in section (6) of this rule. The denominator  
17 of the fraction is four. If one of the factors is missing, the remaining factors are added and the sum is  
18 divided by three (divide by two if the missing factor is the sales factor). A factor is missing if both its  
19 numerator and denominator are zero, but it is not missing merely because its numerator is zero.

20 (b) For tax years beginning on or after May 1, 2003 and before July 1, 2005, all business income must be  
21 apportioned to this state by multiplying the income by a multiplier equal to 80 percent of the sales factor  
22 described in section (4) of this rule plus 10 percent of the property factor described in section (5) of this  
23 rule plus 10 percent of the payroll factor described in section (6) of this rule.



ADMINISTRATIVE RULE REVIEW

	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 2 of 15	Last Revised Date August 20, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (c) For tax years beginning on or after July 1, 2005, all business income must be apportioned to this state  
2 by multiplying the income by a multiplier equal to 100 percent of the sales factor described in section (4)  
3 of this rule.
- 4 (d) Each factor must be computed according to the method of accounting (cash or accrual) used by the  
5 taxpayer for the taxable year.
- 6 (e) See OAR 150-314.280-(M) for other methods of apportionment and allocation or modification of the  
7 method in this rule that may be allowable.
- 8 (3) Definitions as used in this rule, unless the context otherwise requires:
- 9 (a) "Billing address" means the location indicated in the books and records of the taxpayer on the first  
10 day of the taxable year (or on such later date in the taxable year when the customer relationship began) as  
11 the address where any notice, statement, or bill relating to a customer's account is mailed.
- 12 (b) "Borrower or credit card holder located in this state" means:
- 13 (A) A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its  
14 commercial domicile in this state; or
- 15 (B) A borrower that is not engaged in a trade or business or a credit card holder whose billing address is  
16 in this state.
- 17 (c) "Commercial domicile" means:
- 18 (A) The headquarters of the trade or business, that is, the place from which the trade or business is  
19 principally managed and directed; or
- 20 (B) If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto  
21 Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed  
22 for the purposes of this rule to be the state of the United States or the District of Columbia from which  
23 such taxpayer's trade or business in the United States is principally managed or directed. It is presumed,  
24 subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed  
25 and directed is the state of the United States or the District of Columbia to which the greatest number of



ADMINISTRATIVE RULE REVIEW

	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 3 of 15	Last Revised Date August 20, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 employees are regularly connected or out of which they are working, no matter where the services of  
2 such employees are performed, as of the last day of the taxable year.
- 3 (d) "Credit card" means credit, travel or entertainment card.
- 4 (e) "Credit card issuer's reimbursement fee" means the fee a taxpayer receives from a merchant's bank  
5 because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or  
6 services provided by the merchant to the credit card.
- 7 (f) "Financial corporation" has the same meaning as "financial ~~organization~~ institution" in subsection  
8 (3)(g) of this rule.
- 9 (g) "~~Financial organization~~ institution" is defined in ORS 314.610(4) ~~and OAR 150-314.610(4)~~.
- 10 (h) "Loan" means any extension of credit resulting from direct negotiations between the taxpayer and its  
11 customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include  
12 participations, syndications, and leases treated as loans for federal income tax purposes. Loans do not  
13 include: loans representing property acquired in lieu of or pursuant to a foreclosure under section 595 of  
14 the federal Internal Revenue Code; futures or forward contracts; options; notional principal contracts  
15 such as swaps; credit card receivables, including purchased credit card relationships; noninterest bearing  
16 balances due from other depository institutions; cash items in the process of collection; federal funds  
17 sold; securities purchased under agreements to resell; assets held in a trading account; securities; interests  
18 in a REMIC, or other mortgage-backed or asset-backed security; and other similar items.
- 19 (i) "Loan secured by real property" means that 50 percent or more of the aggregate value of the collateral  
20 used to secure a loan or other obligation, when valued at fair market value as of the time the original loan  
21 or obligation was incurred, was real property.
- 22 (j) "Merchant discount" means the fee (or negotiated discount) charged to a merchant by the taxpayer for  
23 the privilege of participating in a program whereby a credit card is accepted in payment for merchandise  
24 or services sold to the card holder.



ADMINISTRATIVE RULE REVIEW

	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 4 of 15	Last Revised Date August 20, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (k) "Participation" means an extension of credit in which an undivided ownership interest is held on a pro  
2 rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit  
3 originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The  
4 participation may or may not be known to the borrower.
- 5 (l) "Person" means an individual, estate, trust, partnership, corporation, and any other business entity.
- 6 (m) "Principal base of operations" with respect to transportation property means the place of more or less  
7 permanent nature from which said property is regularly directed or controlled. With respect to an  
8 employee, the "principal base of operations" means the place of more or less permanent nature from  
9 which the employee regularly:
- 10 (A) Starts his or her work and to which the employee customarily returns in order to receive instructions  
11 from the employer, or
- 12 (B) Communicates with customers or other persons, or
- 13 (C) Performs any other functions necessary to the exercise of the employee's trade or profession at some  
14 other point or points.
- 15 (n) "Real property owned" and "tangible personal property owned" means real and tangible personal  
16 property, respectively,
- 17 (A) On which the taxpayer may claim depreciation for federal income tax purposes; or
- 18 (B) Property to which the taxpayer holds legal title and on which no other person may claim depreciation  
19 for federal income tax purposes (or could claim depreciation if subject to federal income tax). Real and  
20 tangible personal property do not include coin, currency, or property acquired in lieu of or pursuant to a  
21 foreclosure.
- 22 (o) "Regular place of business" means an office at which the taxpayer conducts business in a regular and  
23 systematic manner and that is continuously maintained, occupied, and used by employees of the  
24 taxpayer.
- 25 (p) "State" is defined in ORS 314.610(8).

ADMINISTRATIVE RULE REVIEW

	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 5 of 15	Last Revised Date August 20, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (q) "Syndication" means an extension of credit in which two or more persons fund and each person is at  
 2 risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount.
- 3 (r) "Taxable" is defined as "taxable in another state" in ORS 314.620.
- 4 (s) "Transportation property" means vehicles and vessels capable of moving under their own power, such  
 5 as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to  
 6 such property, such as rolling stock, barges, trailers, or the like.
- 7 (4) Sales Factor.
- 8 (a) In general. The sales factor is a fraction as provided in ORS 314.665(1). The sales factor includes  
 9 only those receipts described herein that constitute business income and are included in the computation  
 10 of the apportionable income base for the taxable year.
- 11 (b) Receipts from the lease of real property. See OAR 150-314.665(4).
- 12 (c) Receipts from the lease of tangible personal property.
- 13 (A) Except as described in paragraph (B) of this subsection, the numerator of the sales factor includes  
 14 receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is  
 15 located within this state when it is first placed in service by the lessee.
- 16 (B) Receipts from the lease or rental of transportation property owned by the taxpayer are included in the  
 17 numerator of the sales factor to the extent that the property is used in this state. The extent an aircraft is  
 18 deemed to be used in this state is determined by multiplying the receipts from the lease or rental of the  
 19 aircraft by a fraction, the numerator of which is the number of landings of the aircraft in this state and the  
 20 denominator of which is the total number of landings of the aircraft. If the extent of the use of any  
 21 transportation property within this state cannot be determined, then the property is deemed to be used  
 22 wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed  
 23 to be used wholly in the state in which it is registered.
- 24 (d) Interest from loans secured by real property.



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	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 6 of 15	Last Revised Date August 20, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (A) The numerator of the sales factor includes interest and fees or penalties in the nature of interest from  
2 loans secured by real property if the property is located within this state. If the property is located both  
3 within this state and one or more other states, the receipts described in this subsection are included in the  
4 numerator of the sales factor if more than 50 percent of the fair market value of the real property is  
5 located within this state. If more than 50 percent of the fair market value of the real property is not  
6 located within any one state, then the receipts described in this subsection must be included in the  
7 numerator of the sales factor if the borrower is located in this state.
- 8 (B) The determination of whether the real property securing a loan is located within this state is made as  
9 of the time the original agreement was made, and any and all subsequent substitutions of collateral are  
10 disregarded.
- 11 (e) Interest from loans not secured by real property. The numerator of the sales factor includes interest  
12 and fees or penalties in the nature of interest from loans not secured by real property if the borrower is  
13 located in this state.
- 14 (f) Net gains from the sale of loans. The numerator of the sales factor includes net gains from the sale of  
15 loans. Net gains from the sale of loans includes income recorded under the coupon stripping rules of  
16 section 1286 of the Internal Revenue Code.
- 17 (A) The amount of net gains (but not less than zero) from the sale of loans secured by real property  
18 included in the numerator is determined by multiplying such net gains by a fraction, the numerator of  
19 which is the amount included in the numerator of the sales factor pursuant to subsection (d) of this  
20 section and the denominator of which is the total amount of interest and fees or penalties in the nature of  
21 interest from loans secured by real property.
- 22 (B) The amount of net gains (but not less than zero) from the sale of loans not secured by real property  
23 included in the numerator is determined by multiplying such net gains by a fraction, the numerator of  
24 which is the amount included in the numerator of the sales factor pursuant to subsection (e) of this

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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 section and the denominator of which is the total amount of interest and fees or penalties in the nature of  
 2 interest from loans not secured by real property.
- 3 (g) Receipts from credit card receivables. The numerator of the sales factor includes interest and fees or  
 4 penalties in the nature of interest from credit card receivables and receipts from fees charged to card  
 5 holders, such as annual fees, if the billing address of the card holder is in this state.
- 6 (h) Net gains from the sale of credit card receivables. The numerator of the sales factor includes all net  
 7 gains (but not less than zero) from the sale of credit card receivables multiplied by a fraction, the  
 8 numerator of which is the amount included in the numerator of the sales factor pursuant to subsection (g)  
 9 of this section and the denominator of which is the taxpayer's total amount of interest and fees or  
 10 penalties in the nature of interest from credit card receivables and fees charged to card holders.
- 11 (i) Credit card issuer's reimbursement fees. The numerator of the sales factor includes all credit card  
 12 issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount included in  
 13 the numerator of the sales factor pursuant to subsection (g) of this section and the denominator of which  
 14 is the taxpayer's total amount of interest and fees or penalties in the nature of interest from credit card  
 15 receivables and fees charged to card holders.
- 16 (j) Receipts from merchant discount. The numerator of the sales factor includes receipts from merchant  
 17 discount if the commercial domicile of the merchant is in this state. Such receipts are computed net of  
 18 any card holder charge backs, but are not reduced by any interchange transaction fees or by any issuer's  
 19 reimbursement fees paid to another for charges made by its card holders.
- 20 (k) Loan servicing fees.
- 21 (A) The numerator of the sales factor includes loan servicing fees derived from loans secured by real  
 22 property multiplied by a fraction, the numerator of which is the amount included in the numerator of the  
 23 sales factor pursuant to subsection (d) of this section and the denominator of which is the total amount of  
 24 interest and fees or penalties in the nature of interest from loans secured by real property.



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	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 8 of 15	Last Revised Date August 20, 2009
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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (B) The numerator of the sales factor includes loan servicing fees derived from loans not secured by real  
2 property multiplied by a fraction, the numerator of which is the amount included in the numerator of the  
3 sales factor pursuant to subsection (e) of this section and the denominator of which is the total amount of  
4 interest and fees or penalties in the nature of interest from loans not secured by real property.
- 5 (C) In circumstances in which the taxpayer receives loan servicing fees for servicing either the secured or  
6 the unsecured loans of another, the numerator of the sales factor must include such fees if the borrower is  
7 located in this state.
- 8 (l) Receipts from services. See OAR 150-314.665(4).
- 9 (m) Receipts from investment assets and activities and trading assets and activities.
- 10 (A) Interest, dividends (less Oregon dividend deduction), net gains (but not less than zero), and other  
11 income from investment assets and activities and from trading assets and activities are included in the  
12 sales factor. Investment assets and activities and trading assets and activities include but are not limited  
13 to: investment securities, trading account assets, federal funds; securities purchased and sold under  
14 agreements to resell or repurchase, options, future contracts, forward contracts, notional principal  
15 contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and  
16 trading assets and activities described in subparagraphs (i) and (ii) of this paragraph, the sales factor  
17 includes the amounts described in such subparagraphs.
- 18 (i) The sales factor includes the amount by which interest from federal funds sold and securities  
19 purchased under resale agreements exceeds interest expense on federal funds purchased and securities  
20 sold under repurchase agreements.
- 21 (ii) The sales factor includes the amount by which interest, dividends (less Oregon dividend deduction),  
22 gains, and other income from trading assets and activities, including but not limited to assets and  
23 activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts  
24 paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities.



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	Rule No. 150-314.280-(N)	
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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (B) The numerator of the sales factor includes interest, dividends (less Oregon dividend deduction), net  
2 gains (but not less than zero), and other income from investment assets and activities and from trading  
3 assets and activities described in paragraph (A) that are attributable to this state.
- 4 (i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero)  
5 and other income from investment assets and activities in the investment account to be attributed to this  
6 state and included in the numerator of the sales factor is determined by multiplying all such income from  
7 such assets and activities by a fraction, the numerator of which is the average value of such assets that are  
8 properly assigned to a regular place of business of the taxpayer within this state and the denominator of  
9 which is the average value of all such assets.
- 10 (ii) The amount of interest from federal funds sold and purchased and from securities purchased under  
11 resale agreements and securities sold under repurchase agreements attributable to this state and included  
12 in the numerator of the sales factor is determined by multiplying the amount described in subparagraph  
13 (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the  
14 average value of federal funds sold and securities purchased under agreements to resell that are properly  
15 assigned to a regular place of business of the taxpayer within this state and the denominator of which is  
16 the average value of all such funds and such securities.
- 17 (iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from  
18 trading assets and activities, including but not limited to assets and activities in the matched book, in the  
19 arbitrage book, and foreign currency transactions, (but excluding amounts described in subparagraphs (i)  
20 and (ii) of this paragraph), attributable to this state and included in the numerator of the sales factor is  
21 determined by multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the  
22 numerator of which is the average value of such trading assets that are properly assigned to a regular  
23 place of business of the taxpayer within this state and the denominator of which is the average value of  
24 all such assets.



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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (iv) For purposes of this paragraph, average value is determined using the rules for determining the  
2 average value of tangible personal property set forth in subsections (c) and (d) of section (5).
- 3 (C) In lieu of using the method set forth in paragraph (B) of this subsection, the taxpayer may elect, or  
4 the department may require in order to fairly represent the business activity of the taxpayer in this state,  
5 the use of the method set forth in this paragraph.
- 6 (i) The amount of interest, dividends (less Oregon dividend deduction), net gains (but not less than zero),  
7 and other income from investment assets and activities in the investment account to be attributed to this  
8 state and included in the numerator of the sales factor is determined by multiplying all such income from  
9 such assets and activities by a fraction, the numerator of which is the gross income from such assets and  
10 activities that are properly assigned to a regular place of business of the taxpayer within this state and the  
11 denominator of which is the gross income from all such assets and activities.
- 12 (ii) The amount of interest from federal funds sold and purchased and from securities purchased under  
13 resale agreements and securities sold under repurchase agreements attributable to this state and included  
14 in the numerator of the sales factor is determined by multiplying the amount described in subparagraph  
15 (i) of paragraph (A) from such funds and such securities by a fraction, the numerator of which is the  
16 gross income from such funds and such securities that are properly assigned to a regular place of business  
17 of the taxpayer within this state and the denominator of which is the gross income from all such funds  
18 and such securities.
- 19 (iii) The amount of interest, dividends (less Oregon dividend deduction), gains, and other income from  
20 trading assets and activities, including but not limited to assets and activities in the matched book, in the  
21 arbitrage book, and foreign currency transactions (but excluding amounts described in subparagraphs (i)  
22 and (ii) of this paragraph) attributable to this state and included in the numerator is determined by  
23 multiplying the amount described in subparagraph (ii) of paragraph (A) by a fraction, the numerator of  
24 which is the gross income from such trading assets and activities that are properly assigned to a regular



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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 place of business of the taxpayer within this state and the denominator of which is the gross income from  
2 all such assets and activities.
- 3 (D) If the taxpayer elects or is required by the department to use the method set forth in paragraph (C) of  
4 this subsection, it must use this method on all subsequent returns unless the taxpayer receives prior  
5 written permission from the department, or the department requires the use of a different method.
- 6 (E) The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity  
7 was properly assigned to a regular place of business outside of this state by demonstrating that the day-  
8 to-day decisions regarding the asset or activity occurred at a regular place of business outside this state.  
9 Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur  
10 at more than one regular place of business, and one such regular place of business is in this state and one  
11 such regular place of business is outside this state, such asset or activity is considered to be located at the  
12 regular place of business of the taxpayer where the investment or trading policies or guidelines with  
13 respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such  
14 policies and guidelines are presumed to be established at the commercial domicile of the taxpayer.
- 15 (n) All other receipts. The numerator of the sales factor includes all other receipts pursuant to the rules  
16 set forth under ORS 314.665.
- 17 (o) Attribution of certain receipts to commercial domicile. All receipts that would be assigned under this  
18 section to a state in which the taxpayer is not taxable are included in the numerator of the sales factor if  
19 the taxpayer's commercial domicile is in this state.
- 20 (5) Property Factor.
- 21 (a) In general. The property factor is a fraction, the numerator of which is the average value of the  
22 taxpayer's real property, tangible personal property, loans, and credit card receivables located and used  
23 within this state during the taxable year and the denominator of which is the average value of all such  
24 property located and used both within and without this state during the taxable year.



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	Rule No. 150-314.280-(N)	
Amended Rule	Page Page 12 of 15	Last Revised Date August 20, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (b) Property included. The property factor includes only property the income or expenses of which are  
2 included (or would have been included if not fully depreciated or expensed, or depreciated or expensed to  
3 a nominal amount) in the computation of the apportionable income base for the taxable year.
- 4 (c) Value of property owned by the taxpayer.
- 5 (A) The value of real property and tangible personal property owned by the taxpayer is the original cost  
6 or other basis of such property for federal income tax purposes without regard to depletion, depreciation,  
7 or amortization.
- 8 (B) Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts.  
9 If a loan is charged off in whole or in part for federal income tax purposes, the portion of the loan  
10 charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or  
11 financial accounting guidelines that is treated as charged off for federal income tax purposes is treated as  
12 charged off for purposes of this section.
- 13 (C) Credit card receivables are valued at their outstanding principal balance, without regard to any  
14 reserve for bad debts. If a credit card receivable is charged off in whole or in part for federal income tax  
15 purposes, the portion of the receivable charged off is not outstanding.
- 16 (d) Average value of property owned by the taxpayer. See OAR 150-314.655(2)-(A) and 150-314.655(3).
- 17 (e) Average value of real property and tangible personal property rented to the taxpayer. See OAR 150-  
18 314.655(2)-(B).
- 19 (f) Location of real property and tangible personal property owned by or rented to the taxpayer.
- 20 (A) Except as described in paragraph (B) of this subsection, real property and tangible personal property  
21 owned by or rented to the taxpayer is considered to be located within this state if it is physically located,  
22 situated, or used within this state.
- 23 (B) Transportation property is included in the numerator of the property factor to the extent that the  
24 property is used in this state. The extent an aircraft is deemed to be used in this state and the amount of  
25 value that is included in the numerator of this state's property factor is determined by multiplying the



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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 average value of the aircraft by a fraction, the numerator of which is the number of landings of the  
2 aircraft in this state and the denominator of which is the total number of landings of the aircraft  
3 everywhere. If the extent of the use of any transportation property within this state cannot be determined,  
4 then the property is deemed to be used wholly in the state in which the property has its principal base of  
5 operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.
- 6 (g) Location of loans.
- 7 (A)(i) A loan is considered to be located within this state if it is properly assigned to a regular place of  
8 business of the taxpayer within this state.
- 9 (ii) A loan is properly assigned to the regular place of business with which it has a preponderance of  
10 substantive contacts. A loan assigned by the taxpayer to a regular place of business without the state is  
11 presumed to have been properly assigned if:
- 12 (I) The taxpayer has assigned, in the regular course of its business, such loan on its records to a regular  
13 place of business consistent with federal or state regulatory requirements;
- 14 (II) Such assignment on its records is based upon substantive contacts of the loan to such regular place of  
15 business; and
- 16 (III) The taxpayer uses said records reflecting assignment of loans for the filing of all state and local tax  
17 returns for which an assignment of loans to a regular place of business is required.
- 18 (iii) The presumption of proper assignment of a loan provided in subparagraph (A)(ii) of this section may  
19 be rebutted upon a showing by the department, supported by a preponderance of the evidence, that the  
20 preponderance of substantive contacts regarding such loan did not occur at the regular place of business  
21 to which it was assigned on the taxpayer's records. When such presumption has been rebutted, the loan is  
22 located within this state if:
- 23 (I) The taxpayer had a regular place of business within this state at the time the loan was made; and  
24 (II) The taxpayer fails to show, by a preponderance of the evidence, that the preponderance of  
25 substantive contacts regarding such loan did not occur within this state.



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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 (B) In the case of a loan that is assigned by the taxpayer to a place without this state that is not a regular  
2 place of business, it is presumed, subject to rebuttal by the taxpayer on a showing supported by the  
3 preponderance of evidence, that the preponderance of substantive contacts regarding the loan occurred  
4 within this state if, at the time the loan was made the taxpayer's commercial domicile, as defined by  
5 subsection (3)(c), was within this state.
- 6 (C) To determine the state in which the preponderance of substantive contacts relating to a loan have  
7 occurred, the facts and circumstances regarding the loan at issue will be reviewed on a case-by-case basis  
8 and consideration will be given to such activities as the solicitation, investigation, negotiation, approval,  
9 and administration of the loan. The terms "solicitation," "investigation," "negotiation," "approval," and  
10 "administration" are defined as follows:
- 11 (i) Solicitation. Solicitation is either active or passive. Active solicitation occurs when an employee of the  
12 taxpayer initiates the contact with the customer. Such activity is located at the regular place of business  
13 that the taxpayer's employee is regularly connected with or working out of, regardless of where the  
14 services of such employee were actually performed. Passive solicitation occurs when the customer  
15 initiates the contact with the taxpayer. If the customer's initial contact was not at a regular place of  
16 business of the taxpayer, the regular place of business, if any, where the passive solicitation occurred is  
17 determined by the facts in each case.
- 18 (ii) Investigation. Investigation is the procedure whereby employees of the taxpayer determine the credit-  
19 worthiness of the customer as well as the degree of risk involved in making a particular agreement. Such  
20 activity is located at the regular place of business that the taxpayer's employees are regularly connected  
21 with or working out of, regardless of where the services of such employees were actually performed.
- 22 (iii) Negotiation. Negotiation is the procedure whereby employees of the taxpayer and its customer  
23 determine the terms of the agreement (e.g., the amount, duration, interest rate, frequency of repayment,  
24 currency denomination, and security required). Such activity is located at the regular place of business



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PURPOSE: Amend the rule to replace the term “financial organizations” with “financial institutions” based on the legislative changes of SB 182, and to remove the reference to OAR 150-314.610(4) from subsection (3)(g) as 150-314.610(4) is being repealed based on SB 182 changes.

- 1 that the taxpayer's employees are regularly connected with or working out of, regardless of where the  
2 services of such employees were actually performed.
- 3 (iv) Approval. Approval is the procedure whereby employees or the board of directors of the taxpayer  
4 make the final determination whether to enter into the agreement. Such activity is located at the regular  
5 place of business that the taxpayer's employees are regularly connected with or working out of,  
6 regardless of where the services of such employees were actually performed. If the board of directors  
7 makes the final determination, such activity is located at the commercial domicile of the taxpayer.
- 8 (v) Administration. Administration is the process of managing the account. This process includes  
9 bookkeeping, collecting the payments, corresponding with the customer, reporting to management  
10 regarding the status of the agreement, and proceeding against the borrower or the security interest if the  
11 borrower is in default. Such activity is located at the regular place of business that oversees this activity.
- 12 (h) Location of credit card receivables. For purposes of determining the location of credit card  
13 receivables, credit card receivables are treated as loans and are subject to the provisions of subsection (g)  
14 of this section.
- 15 (i) Period for which properly assigned loan remains assigned. A loan that has been properly assigned to a  
16 state, absent any change of material fact, remains assigned to that state for the length of the original term  
17 of the loan. Thereafter, the loan may be properly assigned to another state if the loan has a preponderance  
18 of substantive contact to a regular place of business there.
- 19 (6) Payroll factor. In general. The payroll factor is determined as provided in ORS 314.660 and the rules  
20 thereunder.

21 **Stat. Auth.:** ORS 305.100

22 **Stats. Implemented:** ORS 314.280



ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150-314.360	
	Page Page 1 of 1	Last Revised Date October 29, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: To require the electronic filing of information returns. Provide a phase-in for implementation and hardship exception. Also, clarifies that information returns are due following federal due dates.

1 **150-314.360**

2 **Information Returns**

3 ~~(1) In general. Except as provided in Section (3) of this rule, taxpayers are not required to file~~  
4 ~~information returns as described in ORS 314.360.~~Information returns are required to be filed  
5 electronically with the department as set forth in section (3) of this rule and using federal due dates. For  
6 purposes of this rule, information returns are as defined in Internal Revenue Code Sections 6724 and  
7 408(i).

8 (2) Exceptions for Salaries and Wages. See ORS 316.202 and ~~related rules~~Rules pertaining thereto.

9 ~~(3) Notwithstanding any other provision of this rule, the department may require the filing of information~~  
10 ~~returns in situations it deems necessary.~~Information returns must be filed electronically as follows:

11 (a) For payors that issue 250 or more of any one type of information return, electronic filing begins with  
12 2010 forms due in 2011.

13 (b) For payors that issue 100 or more but less than 250 of any one type of information return, electronic  
14 filing begins with 2011 forms due in 2012.

15 (c) For payors that issue more than 10 but less than 100 of any one type of information return, electronic  
16 filing begins with 2012 forms due in 2013.

17 (4) The department may grant an exception to this filing requirement upon a showing of undue hardship.  
18 Undue hardship is based on the facts and circumstances specific to each payor and is determined on a  
19 case-by-case basis.

20 Stat. Auth.: ORS 305.100

21 Stats. Implemented: ORS 314.360



ADMINISTRATIVE RULE REVIEW

	Rule No. 150-315.204A	
Amended Rule	Page Page 1 of 2	Last Revised Date October 26, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend rule to delete the sunset date based on HB 2067 of 2009 Legislative session.

1 **150-315.204-(A)**

2 **Dependent Care Credits: General Information**

3 (1) For tax years beginning on or after January 1, 2002, taxpayers must apply to the Child Care Division  
4 of the Employment Department and receive certification before being eligible for the Dependent Care  
5 Assistance or Dependent Care Information and Referral Services credits. See chapter 414, division 300  
6 of the Oregon Administrative Rules (e.g., OAR 414-300-0000 to 414-300-0410) and contact the Child  
7 Care Division of the Employment Department for more information.

8 (2) For taxable years beginning on or after January 1, 1988, ~~and prior to January 1, 2017,~~ the following  
9 credits are available to employers that provide dependent care assistance or information and referral  
10 services to their employees:

11 (a) Dependent Care Assistance Credit. This credit is available to employers for the expenses paid or  
12 incurred by the employer for the care of employees' dependents.

13 (b) Dependent Care Information and Referral Services Credit. This credit is available to employers that  
14 provide information and referral services to assist their employees in obtaining dependent care.

15 (3) Any tax credit otherwise allowable that is not used by the taxpayer in a tax year may be carried  
16 forward and offset against the taxpayer's tax liability for up to five tax years. The amount of credit  
17 carried forward to a succeeding tax year is the sum of credits that exceed the tax liability, after other  
18 credits, for all prior tax years that are within the carryover period.

19 The following publication statement is needed if the rule references external resources such as the  
20 Internal Revenue Code, Treasury Regulations, etc. If it does not make such a reference, please delete the  
21 statement from your draft.

22 (a) If a credit carried forward from a prior year and a current year's credit are available, the taxpayer must  
23 use the credit from the prior year first and then the current year's credit.

24 (b) If a credit carried forward from a prior year and a current year's credit are available, the two credits  
25 may be combined and taken up to the amount of tax liability for the year.



ADMINISTRATIVE RULE REVIEW

	Rule No. 150-315.204A	
Amended Rule	Page Page 2 of 2	Last Revised Date October 26, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend rule to delete the sunset date based on HB 2067 of 2009 Legislative session.

- 
- 1 (4) If the taxpayer is an individual and the tax year is changed resulting in a short period return (a return
  - 2 covering a period of less than 12 months), the credit must be computed in a manner consistent with ORS
  - 3 314.085.
  - 4 (5) If the taxpayer is a part-year resident individual, the credit must be computed in a manner consistent
  - 5 with ORS 316.117.
  - 6 **[Publications:** The publication(s) referred to or incorporated by reference in this rule is available from
  - 7 the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]
  - 8 **Stat. Auth.:** ORS 305.100
  - 9 **Stats. Implemented:** ORS 315.204

ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150-315.262	
	Page Page 1 of 12	Last Revised Date October 26, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

1 **150-315.262**

2 **Working Family Childcare Credit**

3 (1) Definitions. For purposes of ORS 315.262 and this rule:

4 (a) ~~"Qualifying child" is:~~

5 (A) ~~A son, daughter, stepson, stepdaughter, grandchild, step grandchild, brother, sister, stepbrother,~~  
6 ~~stepsister, niece, nephew, step niece, step nephew, eligible foster child, child legally placed with the~~  
7 ~~taxpayer for adoption by the taxpayer, or adopted child of the taxpayer, and descendants of all such~~  
8 ~~individuals who;~~

9 ~~(i) Lived more than half the year with the qualifying taxpayer;~~

10 ~~(ii) Is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption~~  
11 ~~credit under ORS 316.099 is allowed; and~~

12 ~~(iii) Does not provide more than half of his or her own support.~~

13 ~~(ab) "Federal poverty level" is~~means the federal poverty level for the same tax year as determined by the  
14 federal Department of Health and Human Services.

15 ~~(be) "Household size" is generally~~ means the number of individuals related by birth, marriage, or  
16 adoption who are living in the home and that are allowed as exemptions on the taxpayer's return. There  
17 are special rules for children whose parents are divorced, legally separated, or permanently living apart,  
18 ~~or not married but living together~~. See section (42) of this rule for those special rules below.

19 **Example 1:** Chris and Shelly live together but are not married. They have two children together; Tyler  
20 and Alec. Each child could be the qualifying child of one parent or the other, but not both parents. Each  
21 parent may claim their qualifying child(ren) in their household size. See definition of qualifying child  
22 later in this section.

23 **Example 2:** Mike and Sarah are married and have three children and also support Sarah's parents who do  
24 not live with Mike and Sarah in their home. Because they meet the federal tests for claiming individuals  
25 not living with them, their federal return allows seven exemptions. Mike and Sarah cannot increase their

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	Rule No. 150-315.262	
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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

- 1 household size by the people they claim as dependents on their federal return that do not live with them.  
2 Their household size for purposes of the working family childcare credit is five.  
3 (c) "Physical or cognitive condition" means a state where an individual's ability to perform a basic  
4 activity of daily living is markedly restricted where all or substantially all of the time, even with therapy  
5 and the use of appropriate devices and medication, the individual is unable (or requires an inordinate  
6 amount of time) to perform an activity of daily living. "Activities of daily living" include:  
7 (A) Bathing;  
8 (B) Dressing oneself, except that it does not include any of the activities of identifying, finding, shopping  
9 for or otherwise procuring clothing;  
10 (C) Feeding oneself, except that it does not include any of the activities of identifying, finding, shopping  
11 for or otherwise procuring food, or the activity of preparing food to the extent that the time associated  
12 with the activity would not have been necessary in the absence of a dietary restriction or regime;  
13 (D) Medicating oneself;  
14 (E) Toileting; or  
15 (F) Transferring, ambulating, and being mobile.  
16 (d) "Qualifying child" means a son, daughter, stepson, stepdaughter, grandchild, step grandchild, brother,  
17 sister, stepbrother, stepsister, niece, nephew, step niece, step nephew, eligible foster child, child legally  
18 placed with the taxpayer for adoption by the taxpayer, or adopted child of the taxpayer, and descendants  
19 of all such individuals who:  
20 (A) Lived more than half the year with the qualifying taxpayer;  
21 (B) Is under 13 years of age or who is a disabled child of the taxpayer for whom the additional exemption  
22 credit under ORS 316.099 is allowed; and  
23 (C) Is not claimed as a qualifying child by another taxpayer. A child can only be the qualifying child of  
24 one taxpayer. See section (4) of this rule for the special rules for divorced and separated parents and  
25 taxpayers filing as married filing separately.

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

**Example 3:** John and Kim have never been married and have two children; Kyle who lives with John all year, and Shannon who lives with Kim all year. In the summer each child spends one month with the child's other parent and sibling. John has both Kyle and Shannon in July and Kim has both kids in August. In addition to the child care for the child that lives with them, each parent also has daycare expenses during those months where both children are living in the parent's home. John may claim one "qualifying child" because Kyle lives with him. He may claim the expenses he paid for Kyle, but he may not claim the child care expenses he paid for Shannon because Shannon is not his qualifying child; Shannon is Kim's qualifying child. Kim may claim one "qualifying child" because Shannon lives with her. She may claim the expenses she paid for Shannon, but she may not claim the child care expenses she paid for Kyle because Kyle is not her qualifying child; Kyle is John's qualifying child. John and Kim each have a household size of two.

(2) Schedule WFC. To claim the working family child care credit, the taxpayer must provide all information requested on the Schedule WFC and file the Schedule WFC with the tax return to the department. Failure to file a completed Schedule WFC with the department may result in denial of the working family child care credit.

~~(2) For purposes of this credit, a qualifying child is included in the household size of the custodial parent even if the exemption was released to a noncustodial parent under Internal Revenue Code (IRC) section 152(e). In situations where both parents live in the home with the child more than 50 percent of the year, the child may be included in the household size of either parent, but not both. If the child is claimed on both parent's returns, the child is included in the household size of the parent with the highest adjusted gross income (AGI). An individual cannot be counted in household size on more than one tax return.~~

~~**Example 1:** Dale and Lisa are divorced with two children. The children live in Lisa's home with Lisa for more than half of the year, but she releases the dependent exemption for one child to Dale. Dale has the children on certain weekends, holidays, and one month in the summer. Lisa has remarried and her mother-in-law is a qualifying dependent having lived in Lisa's home the entire year. Both Dale and Lisa may claim the credit based on the child care expenses each paid. Lisa's household size equals five~~

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

1 ~~(herself, spouse, one dependent child, one dependent child whose exemption is released to the father, and~~  
2 ~~mother in law.) Dale has not remarried so his household size equals one (himself). Although he claims~~  
3 ~~one child on his tax return, the child does not live with him and is not included in his household size.~~  
4 **Example 2:** ~~John and Kim have never been married and have two children; Kyle who lives with John all~~  
5 ~~year, and Shannon who lives with Kim all year. In the summer each child spends one month with the~~  
6 ~~child's other parent and sibling. John has both Kyle and Shannon in July and Kim has both kids in~~  
7 ~~August. In addition to the child care for the child that lives with them, each parent also has daycare~~  
8 ~~expenses during those months where both children are living in the parent's home. John may claim one~~  
9 ~~"qualifying child" because Kyle lives with him. He may claim the expenses he paid for Kyle, but he may~~  
10 ~~not claim the child care expenses he paid for Shannon because Shannon is not his qualifying child;~~  
11 ~~Shannon is Kim's qualifying child. Kim may claim one "qualifying child" because Shannon lives with~~  
12 ~~her. She may claim the expenses she paid for Shannon, but she may not claim the child care expenses she~~  
13 ~~paid for Kyle because Kyle is not her qualifying child; Kyle is John's qualifying child. Each parent will~~  
14 ~~have a household size of two.~~  
15 **Example 3:** ~~Chris and Shelly live together but are not married. They have two children together; Tyler~~  
16 ~~and Alec. Chris's AGI is \$55,000 and Shelly's AGI is \$17,000. The children are qualifying children of~~  
17 ~~both Chris and Shelly because Tyler and Alec live with both parents for more than half the year. Chris~~  
18 ~~and Shelly can choose which of them includes Tyler and Alec in their household size. If Chris and Shelly~~  
19 ~~cannot agree and because Tyler and Alec are qualifying children of more than one taxpayer they are~~  
20 ~~deemed to be the qualifying children of Chris because Chris's AGI is higher than Shelly's.~~  
21 **Example 4:** ~~Jason and Larena have three children and also support their parents who do not live with~~  
22 ~~Jason and Larena in their home. Because they meet the federal tests for claiming individuals not living~~  
23 ~~with them, their federal return allows seven exemptions. Jason and Larena cannot increase their~~  
24 ~~household size by the people they claim as dependents on their federal return that do not live with them.~~  
25 ~~Their household size for purposes of the working family child care credit is five.~~

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

(3) Costs associated with child care. For purposes of determining the credit, the credit is limited to costs associated with child care. The payments must be made by the parent claiming the working family child care credit. Payments made by an entity or individual other than the parent claiming the credit are not payments made by the taxpayer.

**Example 4:** Shannon and Caleb are not married and live together with their son, Adam. Adam's child care expense for the year is \$4,600 of which each parent pays half. Caleb's adjusted gross income (AGI) is \$30,000 and Shannon's AGI is \$16,000. Under federal law, either Caleb or Shannon could claim the dependency exemption for Adam as their qualifying child. They agree that Shannon will claim Adam as her qualifying child, therefore Caleb cannot. Shannon may claim the working family child care credit based on the \$2,300 of child care expenses she paid and a household size of two. Even though Caleb paid child care expenses, he may not claim the working family child care credit because Adam is not his qualifying child.

~~**Example 5:** Maria and Kendall are not married and live together with their son, Michael. Michael's child care expense for the year is \$4,600 of which each parent pays half. Kendall's adjusted gross income (AGI) is \$30,000 and Maria's AGI is \$16,000. Under federal law, Michael is the qualifying child of both Kendall and Maria and either could claim Michael for tax purposes. Maria chooses to claim Michael on her return therefore Kendall may not. Maria may claim the working family child care credit based on the \$2,300 of child care she paid and a household size of two.~~

~~**Example 6:** Assume the same facts as example 5 except that both Maria and Kendall file returns listing Michael as a qualifying child and each claims a household size of two. Because Kendall and Maria cannot agree which of them will claim Michael, the tie breaker rule applies. Kendall's federal AGI is higher than Maria's so Kendall is entitled to claim Michael as a qualifying child based on a household size of two. Maria may not claim the working family child care credit because the tie breaker rule only allows Kendall to claim Michael as a qualifying child.~~

(a) Costs associated with child care include:

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

- 1 (A) Child care expenses paid with amounts excluded from income as dependent care benefits under IRC
- 2 section 129;
- 3 (B) Child care expenses paid from dependent care benefits provided as part of a cafeteria plan under IRC
- 4 section 125; or,
- 5 (C) Reimbursement of child care expenses as part of a flexible spending arrangement under IRC section
- 6 125.

7 ~~**Example 7:** Joan's younger child (Susan) stays at her employer's on-site child care center while she~~  
8 ~~works. The value of the benefits from this child care qualifies to be excluded from her income under IRC~~  
9 ~~section 129. She received this benefit instead of a salary increase. Her employer reports the value of this~~  
10 ~~service as \$3,000 for the year. This \$3,000 is shown in box 10 of her Form W-2, but is not included in~~  
11 ~~taxable wages in box 1. A neighbor cares for Joan's older child (Seth) after school, on holidays, and~~  
12 ~~during the summer. She pays her neighbor \$2,400 for this care. Because the benefits Joan received from~~  
13 ~~her employer qualify to be excluded from income under IRC 129 Joan may claim a working family child~~  
14 ~~care credit based on \$5,400 in qualifying child care expenses.~~

15 ~~**Example 8:** Jorge is single with one qualifying child. His employer provides him a \$1,000 qualified~~  
16 ~~child care benefit under an IRC section 125 cafeteria plan. This \$1,000 is excluded from Jorge's income.~~  
17 ~~Jorge's child care expense is \$2,900, of which \$1,000 is paid through the section 125 plan and \$1,900 is~~  
18 ~~paid by Jorge. Jorge may claim a working family child care credit based on \$2,900 in qualifying child~~  
19 ~~care expenses.~~

20 ~~**Example 9:** Tanner has two qualifying children. He contributes \$4,000 pre-tax each year to a flexible~~  
21 ~~spending account (FSA) under IRC section 125. He provides his employer with the required~~  
22 ~~documentation in order to be reimbursed for his child care expenses. Tanner has \$5,000 in child care~~  
23 ~~expenses for his two children. He paid \$1,000 with after-tax dollars and he was reimbursed \$4,000 from~~  
24 ~~his pre-tax FSA. Tanner may claim the working family child care credit based on \$5,000 in qualifying~~  
25 ~~child care expenses.~~

26 (b) Costs associated with child care do not include:

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

1 (A) Expenses for a child's kindergarten through twelfth grade education at a public or a private  
2 institution;

3 **Example 5:** Traci has a five-year-old son who attends a local academy. She pays \$750 per month for her  
4 son's kindergarten and child care. Of the amount she pays each month, \$500 is the contract price for child  
5 care and \$250 is an additional amount she pays for the child's education. Traci can only claim \$500 per  
6 month as qualifying child care.

7 (B) Expenses for extracurricular activities or elective courses such as swimming, dance lessons, or other  
8 such activities unless the activities or courses are an ordinary part of the care provided to the child and  
9 cannot be separated;

10 **Example 6:** David and Lisa are married and they have a three-year old son, Noah. David and Lisa are  
11 both gainfully employed and they send Noah to a daycare center near Lisa's work for child care. Noah's  
12 parents signed him up for a swimming class through the daycare center that costs \$50 per month. The  
13 daycare center charges \$400 per month for the full-time care of a toddler. The daycare center bills David  
14 and Lisa \$450 per month for Noah's child care and activities. David and Lisa can use the child care  
15 expenses they paid (\$400 per month or \$4,800 annually) to determine the working family child care  
16 credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons.

17 (C) Expenses for care provided when one spouse on a joint return is not gainfully employed, not seeking  
18 employment, ~~or~~ not a full-time or part-time student, or not disabled as explained in Section (5) of this  
19 rule.;

20 **Example 7:** James and Holly are married and James stays home to take care of their four children. Holly  
21 earns \$55,000 annually and they paid \$4,000 in child care during the year. The child care expenses they  
22 paid are not costs associated with both James and Holly being gainfully employed, seeking employment,  
23 or being a full-time or part-time student. James and Holly cannot claim the working family child care  
24 credit.

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

1 (D) Expenses paid by a federal or state assistance agency (such as Department of Human Services or the  
2 Employer Related Day Care program) for child care expenses on behalf of the taxpayer who is claiming  
3 the working family child care credit;

4 **Example 8:** Debbie works full time and qualifies for state assistance in paying her child care expenses.  
5 The child care provider charges Debbie \$600 per month to care for her two children or \$7,200 per year.  
6 Of the \$600 per month, the state pays \$450 and Debbie has a copay of \$150. Debbie cannot claim the  
7 entire \$7,200 because she did not pay it. She can only claim \$1,800, the amount she actually paid.

8 (E) The value of a child care owner-operator's forgone revenue relating to child care that the owner-  
9 operator provided to his or her own child; or,

10 **Example 9:** Shirley is the owner-operator of a registered daycare facility. She cares for six children  
11 every day, of which two are her own children. Shirley cannot use the value of the two spaces her children  
12 use to calculate her working family child care credit because the forgone revenue is not a cost associated  
13 with child care.

14 (F) Transactions that are not arm's-length or have no economic substance.

15 **(4) Divorced or Separated Parents and Married Individuals Filing Separately:**

16 **(a) Divorced or Separated Parents:**

17 **(A) For purposes of this credit, a child is the qualifying child of the custodial parent, even if the**  
18 **exemption was released to a noncustodial parent under Internal Revenue Code (IRC) section 152(e). In**  
19 **situations where both parents live in the home with the child more than 50 percent of the year, the child**  
20 **may be the qualifying child of either parent, but not both. If the child is claimed on both parent's returns,**  
21 **the child is the qualifying child of the parent with the highest adjusted gross income (AGI).**

22 **Example 10:** Maria and Kendall are divorced with two children. The children live in Maria's home with  
23 Maria for more than half of the year. Kendall has the children on certain weekends, holidays, and one  
24 month in the summer. Maria pays childcare expenses for 11 months during the year. Kendall pays  
25 childcare expenses for the one month in the summer when the children are with him. Maria releases the  
26 exemption for one child to Kendall. Only Maria may claim the working family child care credit because

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

1 the children are her qualifying children. Kendall may not claim the working family child care credit  
2 because he does not have a qualifying child.  
3 (B) An individual cannot be counted in the household size on more than one tax return.  
4 ~~Rusty has a five-year-old son who attends a local academy. He pays \$750 per month for his son's~~  
5 ~~kindergarten and child care. Of the amount he pays each month, \$500 is the contract price for child care~~  
6 ~~and \$250 is an additional amount he pays for the child's education. Rusty can only claim \$500 per month~~  
7 ~~as qualifying child care.~~  
8 **Example 11:** Sam and Sally are divorced with two children, Ben and Brianna. Ben lives with Sam and  
9 Brianna lives with Sally. Each parent pays the child care expenses for the child that lives with them.  
10 Sally releases the dependent exemption for Brianna to Sam under IRC section 152(e). Brianna is counted  
11 in the household size of Sally because she lives with Sally. Ben is counted in the household size of Sam,  
12 because he lives with Sam. Sam and Sally will each have a household size of two to determine the  
13 percentage of child care costs each may claim as a working family child care credit.  
14 ~~: Jeff and Rochelle are married and they have a three-year old son, Jakob. Jeff and Rochelle are both~~  
15 ~~gainfully employed and they send Jakob to a daycare center near Rochelle's work for child care. Jakob's~~  
16 ~~parents signed him up for a swimming class through the daycare center that costs \$50 per month. They~~  
17 ~~also signed him up for a \$75 per month second language class that the daycare center offers. The daycare~~  
18 ~~center charges \$400 per month for the full time care of a toddler. The daycare center bills Jeff and~~  
19 ~~Rochelle \$525 per month for Jakob's child care and activities. Jeff and Rochelle can use the child care~~  
20 ~~expenses they paid (\$400 per month or \$4,800 annually) to determine the working family child care~~  
21 ~~credit they are entitled to claim. They cannot use the amounts they paid for the swimming lessons or the~~  
22 ~~language class.~~  
23 **Example 12:** Kent and Kristen are married and Kent stays home to take care of their four children.  
24 Kristen earns \$55,000 annually and they paid \$4,000 in child care during the year. The child care  
25 expenses they paid are not costs associated with both Kent and Kristen being gainfully employed,

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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

1 ~~seeking employment, or being a full time or part time student. Kent and Kristen cannot claim the~~  
2 ~~working family child care credit.~~

3 ~~**Example 13:** Jim and Denise are married and have two children. Denise works full time and earns~~  
4 ~~\$25,000. Jim is a full time student at the local college. He also works part time and earns \$2,000. They~~  
5 ~~paid \$3,600 in child care expenses while Jim was at school and work. Jim and Denise's qualifying child~~  
6 ~~care expenses are \$3,600 because Denise is gainfully employed and Jim is a full time student.~~

7 ~~**Example 14:** Debbie works full time and qualifies for state assistance in paying her child care expenses.~~  
8 ~~The child care provider charges Debbie \$600 per month to care for her two children or \$7,200 per year.~~  
9 ~~Of the \$600 per month, the state pays \$450 and Debbie has a copay of \$150. Debbie cannot claim the~~  
10 ~~entire \$7,200 because she did not pay it. She can only claim \$1,800, the amount she actually paid.~~

11 ~~**Example 15:** Shirley is the owner operator of a registered daycare facility. She cares for six children~~  
12 ~~every day, of which two are her own children. Shirley cannot use the value of the two spaces her children~~  
13 ~~use to calculate her working family child care credit because the forgone revenue is not a cost associated~~  
14 ~~with child care.~~

15 ~~(e) Married taxpayer with disabled spouse. Beginning in tax year 2007, a qualified taxpayer is allowed to~~  
16 ~~claim the working family credit based on child care expenses paid even if the expenses were paid when~~  
17 ~~the taxpayer has a spouse did not work, look for work, or attend school as required in subsection (3)(b) of~~  
18 ~~this rule. The expenses may be claimed if the taxpayer's disabled spouse has a physical or cognitive~~  
19 ~~condition which causes the disabled spouse to require assistance in performing basic activities of daily~~  
20 ~~living and prevents the disabled spouse from working, looking for work, and attending school.~~

21 ~~(A) A "physical or cognitive condition" is a state where an individual's ability to perform a basic activity~~  
22 ~~of daily living is markedly restricted where all or substantially all of the time, even with therapy and the~~  
23 ~~use of appropriate devices and medication, the individual is unable (or requires an inordinate amount of~~  
24 ~~time) to perform an activity of daily living.~~

25 ~~(B) "Activities of daily living" include:~~

26 ~~(i) Bathing;~~



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PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

- 1 ~~(ii) Dressing oneself, except that it does not include any of the activities of identifying, finding, shopping~~  
 2 ~~for or otherwise procuring clothing;~~
- 3 ~~(iii) Feeding oneself, except that it does not include any of the activities of identifying, finding, shopping~~  
 4 ~~for or otherwise procuring food, or the activity of preparing food to the extent that the time associated~~  
 5 ~~with the activity would not have been necessary in the absence of a dietary restriction or regime;~~
- 6 ~~(iv) Medicating oneself;~~
- 7 ~~(v) Toileting; or~~
- 8 ~~(vi) Transferring, ambulating, and being mobile.~~
- 9 ~~(C) Certification by physician. For a taxpayer to claim child care expenses paid when the taxpayer's~~  
 10 ~~spouse is unable to work, look for work, or attend school because the spouse has a disability that prevents~~  
 11 ~~the spouse from such tasks, the taxpayer must obtain certification from the physician or other qualified~~  
 12 ~~medical professional that the taxpayer's spouse meets the definition of disabled in the statute and this~~  
 13 ~~rule. This certification is to be kept in the taxpayer's records and provided to the department upon~~  
 14 ~~request.~~
- 15 ~~(4) Schedule WFC, Working Family Child Care Credit.~~
- 16 ~~(a) To claim the working family child care credit, the taxpayer must provide all information requested on~~  
 17 ~~the Schedule WFC and file the Schedule WFC with the tax return to the department. Failure to file a~~  
 18 ~~completed Schedule WFC with the department may result in denial of the working family child care~~  
 19 ~~credit.~~
- 20 ~~(b5) Married Individuals Filing Separately:~~
- 21 ~~(Aa) Taxpayers filing separate returns who share a common household cannot claim the working family~~  
 22 ~~child care credit.~~
- 23 ~~(Bb) Taxpayers maintaining separate residences at the end of the tax year, and who intend to live apart in~~  
 24 ~~the future, determine their household size based on the computation defined in subsection (1)(c) of this~~  
 25 ~~rule.~~

ADMINISTRATIVE RULE REVIEW

	Rule No. 150-315.262	
Amended Rule	Page Page 12 of 12	Last Revised Date October 26, 2009
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Correct definition, add and remove some examples, and organize for better understanding and readability.

1 **Example 162:** John and Sue are married and have two children. They are legally separated and live apart  
 2 permanently, and one child lives with each. John and Sue file separate returns for the tax year and each  
 3 claims a child as a dependent. John and Sue will each have a household size of two to determine the  
 4 percentage of child care costs each may claim as a working family child care credit. John may claim the  
 5 credit based on the child care costs he paid for the child that lives with him and Sue may claim the credit  
 6 based on the child care costs she paid for the child that lives with her.

7 (5) Disabled Spouse:

8 (a) Married taxpayer with disabled spouse. Beginning in tax year 2007, a qualified taxpayer is allowed to  
 9 claim the working family credit based on child care expenses paid even if the expenses were paid when  
 10 the taxpayer has a spouse who did not work, look for work, or attend school. The expenses may be  
 11 claimed if the taxpayer's disabled spouse has a physical or cognitive condition which causes the disabled  
 12 spouse to require assistance in performing basic activities of daily living and prevents the disabled spouse  
 13 from working, looking for work, and attending school.

14 (b) Certification by physician. For a taxpayer to claim child care expenses paid when the taxpayer's  
 15 spouse is unable to work, look for work, and attend school because the spouse has a disability that  
 16 prevents the spouse from such tasks, the taxpayer must obtain certification from the physician or other  
 17 qualified medical professional that the taxpayer's spouse meets the definition of disabled in the statute  
 18 and this rule. This certification is to be kept in the taxpayer's records and provided to the department  
 19 upon request.

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

21 Stat. Auth.: ORS 305.100

22 Stats. Implemented: ORS 315.262

ADMINISTRATIVE RULE REVIEW

	Rule No. OAR 150-317.090	
Amended Rule	Page Page 1 of 3	Last Revised Date October 23, 2009
	NOTICE OF INTENDED ACTION	
Permanent Rule	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend rule to add provisions outlined in HB 3405, for tax years beginning on or after January 1, 2009. Describe computation of Oregon minimum excise tax and that only one minimum tax is computed per filing group on a return, regardless of companies on return with Oregon sales. Define Oregon sales for corporations who apportion business income using a method different from the method prescribed in ORS 314.650 to 314.665.

1 **150-317.090**

2 **Minimum Tax**

3 (1)(a) For tax years beginning on or after January 1, 2009, the tax liability of an affiliated group of  
 4 corporations filing a consolidated return may not be less than the minimum tax as defined in ORS  
 5 317.090. Only one minimum tax is charged per return, regardless of the number of corporations in the  
 6 group that are doing business in Oregon.

7 **Example 1:** X Corporation and its only subsidiary, Y Corporation, are doing business in Oregon and file  
 8 a consolidated Oregon Excise Tax Return showing a net loss for the 2009 tax year. The consolidated  
 9 Oregon excise tax return properly shows Oregon sales for X of \$500,000 and for Y of \$250,000. The  
 10 minimum tax for the year is \$500 based on Oregon sales of \$750,000.

11 (b) For tax years beginning on or after January 1, 2006, and before January 1, 2009 the tax liability of an  
 12 affiliated group of corporations filing a consolidated return may not be less than the \$10 minimum tax  
 13 multiplied by the number of corporations in the group that are doing business in Oregon.

14 **Example 2:** Alpha Corporation and its only subsidiary, Beta Corporation, are doing business in Oregon  
 15 and file a consolidated Oregon Excise Tax Return showing a net loss for the 2006 tax year. The Oregon  
 16 minimum tax for the year is \$20.

17 (c) For consolidated returns filed for tax years beginning before January 1, 2006, the department  
 18 determines that a \$10 minimum tax is due for the consolidated group and the \$10 minimum tax due for  
 19 each affiliate included in the return doing business in Oregon is cancelled. This determination is made  
 20 under authority of ORS 305.145(3).

21 **Example 3:** On July 1, 2006, Corporation A and Affiliates filed an amended tax return for 2005. The  
 22 return included three affiliates doing business in Oregon and showed a net loss for the tax year. Although  
 23 ORS 317.090 provides that each of the four corporations owes \$10 of minimum tax, the department will  
 24 cancel the tax attributable to the affiliates and only one \$10 tax is owed by Corporation A and Affiliates.



ADMINISTRATIVE RULE REVIEW

	Rule No. OAR 150-317.090	
Amended Rule	Page Page 2 of 3	Last Revised Date October 23, 2009
	NOTICE OF INTENDED ACTION	
Permanent Rule	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend rule to add provisions outlined in HB 3405, for tax years beginning on or after January 1, 2009. Describe computation of Oregon minimum excise tax and that only one minimum tax is computed per filing group on a return, regardless of companies on return with Oregon sales. Define Oregon sales for corporations who apportion business income using a method different from the method prescribed in ORS 314.650 to 314.665.

- 1 (2) For tax years beginning on or after January 1, 1999, the excise tax is measured by the corporation's  
2 Oregon taxable income as computed in accordance with the provisions of the statute, but the tax cannot  
3 be less than the specified minimum. The minimum tax is due even though the corporation had a net loss  
4 and it must be paid in full even though the taxpayer was subject to the statute for only a part of the year,  
5 except that it may be apportioned in the case of a change of accounting periods. A corporation with no  
6 business activity in Oregon is not subject to the \$10 minimum tax.
- 7 (3) For tax years beginning before January 1, 1999, the provisions of section (2) of this rule apply, except  
8 that a corporation qualified to do business in Oregon, but engaging in no business activity in the state, is  
9 subject to the \$10 minimum tax.
- 10 (4) Definition of "Oregon Sales". For tax years beginning on or after January 1, 2009, the minimum  
11 excise tax is determined by referencing the taxpayer's "Oregon sales." Corporations using the  
12 apportionment method described in ORS 314.650 to 314.665 compute Oregon sales as provided under  
13 ORS 314.665. For corporations that apportion business income using a method different from that  
14 prescribed by ORS 314.650 to 314.665, "Oregon sales" means the numerator of the sales factor for:
- 15 (a) Carriers of freight or passengers in general, as provided in OAR 150-314.280-(G);  
16 (b) Railroads, as provided in OAR 150-314.280-(H);  
17 (c) Airlines, as provided in OAR 150-314.280-(I);  
18 (d) Trucking companies, as provided in OAR 150-314.280-(J);  
19 (e) Companies engaged in sea transportation service, as provided in OAR 150-314.280-(K);  
20 (f) Companies involved in interstate river transportation service, as provided in OAR 150-314.280-(L);  
21 (g) Public utilities (other than those provided for in subsections (ae) through (fh)), as provided in OAR  
22 150-314.280-(E)(5), OAR 150-314.280-(F), and ORS 314.650;  
23 (h) Financial organizations, as defined in ORS 314.610(4), as provided in OAR 150-314.280-(N);  
24 (i) Taxpayers with income from long-term construction contracts, as provided in OAR 150-314.615-(F);



ADMINISTRATIVE RULE REVIEW

	Rule No. OAR 150-317.090	
Amended Rule	Page Page 3 of 3	Last Revised Date October 23, 2009
	NOTICE OF INTENDED ACTION	
Permanent Rule	Bulletin Dated November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Amend rule to add provisions outlined in HB 3405, for tax years beginning on or after January 1, 2009. Describe computation of Oregon minimum excise tax and that only one minimum tax is computed per filing group on a return, regardless of companies on return with Oregon sales. Define Oregon sales for corporations who apportion business income using a method different from the method prescribed in ORS 314.650 to 314.665.

- 1 (j) Motion picture and television film producers, as provided in OAR 150-314.615-(H);
- 2 (k) Publishers, as provided in OAR 150-314.670-(A);
- 3 (l) Interstate broadcasters, as provided in ORS 314.684;
- 4 (m) Insurers (as defined in ORS 317.010(11)), as provided in ORS 317.660(1); and
- 5 (n) Title insurers, and health care service contractors not classed as insurers under ORS 317.010(11), as
- 6 provided in OAR 150-314.280-(E)(4), including gross premium receipts.
- 7 **Stat. Auth.:** ORS 305.100 and 317.090
- 8 **Stats. Implemented:** ORS 317.090

ADMINISTRATIVE RULE REVIEW

	Rule No. <b>150-317.097</b>	
Amended Rule	Page <b>Page 1 of 1</b>	Last Revised Date <b>August 20, 2009</b>
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated <b>November 1, 2009</b>	Hearing Scheduled <b>November 23, 2009</b>

PURPOSE: Amend rule to reflect the legislative changes to ORS 317.097.

1 **150-317.097**

2 **Affordable Housing Credit; Definitions; Transfers; Carry Forward of Unused Credit**

3 (1) Definitions, as used in ORS 317.097.

4 (a) Community Rehabilitation Program. A "community rehabilitation program" is a program sponsored  
5 by a nonprofit corporation or local government unit for the rehabilitation of low income housing.

6 (b) Project. A "project" is one or more units of housing that will be sold or rented to households whose  
7 incomes are less than 80 percent of the area median income.

8 (c) Time the qualified loan for housing construction, development, acquisition or rehabilitation is made.  
9 The "time the qualified loan for housing construction, development, acquisition or rehabilitation is made"  
10 is the date a note is signed for a loan and the interest rate becomes effective with the closing of the loan,  
11 or the date a conversion loan becomes a permanent loan. Either date may be used to determine the  
12 interest rate on nonsubsidized loans made under like terms and conditions as the qualifying affordable  
13 housing loan.

14 (2) If a qualifying loan is transferred by a lending institution to another entity, the transferee's credit must  
15 be computed in the same way and subject to the same limitations as the prior lending institution's credit.  
16 The transferee cannot claim a credit on the loan beyond the 20 year period that started with the date the  
17 loan was originally made.

18 (3) Unused credits from tax years starting before January 1, 1995 may be carried forward 15 years.  
19 Unused credits from tax years starting on or after January 1, 1995 may be carried forward 5 years.

20 (4) See OAR 813-110-0005 through 813-110-0040 for Housing and Community Development  
21 Department rules relating to the Oregon Affordable Housing Tax Credit Program.

22 **Stat. Auth.:** ORS 305.100 & 317.097

23 **Stats. Implemented:** ORS 317.097



ADMINISTRATIVE RULE REVIEW

Repealed Rule	Rule No. <b>OAR 150-305.290</b>	
	Page <b>Page 1 of 1</b>	Last Revised Date <b>8-14-09</b>
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated <b>November 2008</b>	Hearing Scheduled <b>November 23, 2009</b>

**PURPOSE:**

The rule is obsolete. The 1994 Bankruptcy reform authorized tax assessments during an open bankruptcy.

1 **150-305.290** [Repealed 1/1/2010]

2 **Assessment after Bankruptcy**

3 ~~The period for making the assessment shall not expire until one year after the automatic stay is lifted, as~~  
4 ~~outlined in 11 USC 362(e).~~

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

6 ~~Stat. Auth.: ORS 305.100~~

7 ~~Stats. Implemented: ORS 305.290~~

ADMINISTRATIVE RULE REVIEW

		Rule No. OAR 150-314.610(4)	
Repealed Rule	Page	Page 1 of 1	Last Revised Date August 20, 2009
	NOTICE OF INTENDED ACTION		
Permanent Rule	Bulletin Dated	November 2009	Hearing Scheduled November 23, 2009

PURPOSE: Based on the legislative changes of SB 182, the rule (which defines the term investment company) is not applicable as the term "investment company" is no longer used in the definition of financial institution. Repeal the rule.

1 **150-314.610(4)**

2 **Financial Organizations: Definition of "Investment Company"**

3 [Repealed 1/1/2010]

4 ~~(1) As used in ORS 314.610(4), the term "investment company" means a corporation that:~~

5 ~~(a) Is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of~~  
6 ~~investing, reinvesting, or trading in securities;~~

7 ~~(b) Is engaged or proposes to engage in the business of issuing face amount certificates of the installment~~  
8 ~~type, or has been engaged in such business and has any such certificates outstanding;~~

9 ~~(c) Is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading~~  
10 ~~in securities, and owns or proposes to acquire investment securities having a value exceeding 40 percent~~  
11 ~~of the value of its total assets (exclusive of Government securities and cash items) on an unconsolidated~~  
12 ~~basis; or~~

13 ~~(d) Is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of~~  
14 ~~mortgage banking.~~

15 ~~(2) As used in this section, the term "investment securities" includes all securities except:~~

16 ~~(a) Government securities,~~

17 ~~(b) Securities issued by employees' securities companies, and~~

18 ~~(c) Securities issued by majority-owned subsidiaries of the owner that are not investment companies.~~

19 Stat. Auth.: ORS 305.100, 314.610

20 Stats. Implemented: ORS 314.610



ADMINISTRATIVE RULE REVIEW

Repealed Rule	Rule No. <b>OAR 150- 317.326</b>	
	Page <b>Page 1 of 1</b>	Last Revised Date <b>August 21, 2009</b>
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated <b>November 2009</b>	Hearing Scheduled <b>November 23, 2009</b>

Purpose: To repeal the rule following repeal of the corresponding statute.

1 | **150-317.326** [Repealed 1/1/2010]

2 | **Adjustment to Basis for Recognized Gain**

3 | ~~For Oregon tax purposes, any gain recognized pursuant to ORS 314.290, and added to income in ORS~~  
4 | ~~317.326, shall be added to the basis of the newly acquired property. Upon the later sale, exchange or~~  
5 | ~~other disposition of such property, federal taxable income shall be increased or decreased to reflect the~~  
6 | ~~difference between the adjusted bases for Oregon and for federal purposes.~~

7 | Stat. Auth.: ORS 305.100

8 | Stats. Implemented: ORS 317.326