

OFFICE OF THE SECRETARY OF STATE  
DENNIS RICHARDSON  
SECRETARY OF STATE  
  
LESLIE CUMMINGS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION  
MARY BETH HERKERT  
DIRECTOR  
  
800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150  
DEPARTMENT OF REVENUE

**FILED**  
04/25/2018 2:53 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Statewide Transit Tax implementation under ORS 320.550-320.560, model recordkeeping and retention requirements

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/22/2018 5:00 PM

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

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

955 Center St NE  
Salem, OR 97301

Filed By:  
Lois Williams  
Rules Coordinator

HEARING(S)

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

DATE: 05/22/2018

TIME: 9:00 AM - 11:00 AM

OFFICER: Assigned Staff

ADDRESS: Fishbowl Conf Room,  
Department of Revenue  
955 Center St NE  
Salem, OR 97301

NEED FOR THE RULE(S):

150-314-0265 – Amends rule to require taxpayers who are subject to any tax laws administered by the department that tie to provisions in ORS chapter 314 to comply with model recordkeeping and retention requirements in this rule.

150-316-0275 – Amends rule to allow the employer to instruct the department to either refund an overpayment of statewide transit tax or roll over an overpayment of statewide transit tax to the current or prior quarter.

150-320-0520 – Implementing 2017 legislation (HB 2017) to provide due dates for employers filing a statewide transit tax report and any schedules, pay statewide transit tax, and for Oregon residents required to self-report and pay statewide transit tax to the department. This rule also provides that the statewide transit tax report and any associated schedules may be filed using electronic or paper options.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2017 Oregon legislation (HB 2017):

<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2017/Enrolled>

FISCAL AND ECONOMIC IMPACT:

Employers subject to the statewide transit tax will be required to file quarterly returns (agricultural and domestic employers will file an annual return), employee detail reports, and an annual reconciliation return. The fiscal and economic impact will vary depending on the size of the organization.

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COST OF COMPLIANCE:

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

1. ORS 320.550(5) provides broad authority for the department to determine the time and manner in which statewide transit tax returns are to be filed. Employers subject to the statewide transit tax will be required to file quarterly returns (agricultural and domestic employers will file an annual return) and an annual reconciliation return. Costs on state agencies, units of local government, and the public may vary depending on the size of the organization.

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

2b. ORS 320.550(5) provides broad authority for the department to determine the time and manner in which statewide transit tax returns are to be filed. Employers subject to the statewide transit tax will be required to file quarterly returns (agricultural and domestic employers will file an annual return) and an annual reconciliation return. Costs on state agencies, units of local government, and the public may vary depending on the size of the organization.

2c. No equipment, supplies, labor, or increased administration are known for the compliance of these rules outside of what's currently being used for compliance for state income tax withholding.

(\*)Oregon Employment Department [https://www.qualityinfo.org/-/most-oregon-employers-have-fewer-than-10-employees?utm\\_campaign=November2016&utm\\_medium=email&utm\\_source=newsletter&utm\\_content=Oregon%20Statewide](https://www.qualityinfo.org/-/most-oregon-employers-have-fewer-than-10-employees?utm_campaign=November2016&utm_medium=email&utm_source=newsletter&utm_content=Oregon%20Statewide)  
(\*\*)(1,515,708-405,702-138,712)/1,515,708

(\*\*\*)Oregon Employment Department <https://www.qualityinfo.org/documents/10182/79531/111616%20-%20Businesses%20by%20Size%20of%20Firm%2050%20or%20Fewer%20Employees>

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

We communicated with small business liaison groups such as the Oregon State Bar Tax Section and the Oregon Society of Certified Public Accountants to obtain their input into how these rules will impact their clients, some of whom are small businesses. We also reached out to the Oregon Bankers Association for their input into how the rules may affect financial institutions and their small business clients.

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

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

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RULES PROPOSED:

150-314-0265, 150-316-0275, 150-320-0520

AMEND: 150-314-0265

RULE SUMMARY: Amends rule to require taxpayers who are subject to any tax laws administered by the department that tie to provisions in ORS chapter 314 to comply with model recordkeeping and retention requirements in this rule.

CHANGES TO RULE:

150-314-0265

#### Model Recordkeeping and Retention Regulation ¶

(1) Definitions, ~~f.~~ For purposes of this ~~regulation~~ rule, these terms shall be defined as follows:¶

(a) "Database ~~M~~management ~~S~~system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.¶

(b) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.¶

(c) "Hard copy" means any documents, records, reports or other data printed on paper.¶

(d) "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.¶

(e) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention, and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.¶

(f) "Taxpayer" as used in this ~~regulation~~ rule means any natural person, estate, trust, or beneficiary whose income is in whole or in part subject to ~~the taxes imposed by Chapter 316, and any employer required by Chapter 316 to withhold personal income taxes from the compensation of employees for remittance to~~ administered by the department that this state; and, any corporation subject either to provisions in ORS Chapter 317 or 318, or both.¶

(2) Recordkeeping Requirement - General:¶

(a) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under ~~Chapters 316, 317 or tax laws of this state that are administered by the department that tie to provisions in ORS chapter 318~~. All required records shall be made available on request by the ~~D~~department of Revenue or its authorized representatives as provided for in ORS 314.425.¶

(b) If a taxpayer retains records required to be retained under this ~~regulation~~ rule in both machine-sensible and hard-copy formats, the taxpayer shall make the records available to the ~~D~~department of Revenue in machine-sensible format upon request of the department.¶

(c) Nothing in this ~~regulation~~ rule shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with this ~~regulation~~ rule. However, this subsection shall not relieve the taxpayer of the obligation to comply with ~~subsection (2)(b) of this regulation~~ subsection (2)(b) of this rule.¶

(3) Recordkeeping Requirements - Machine-Sensible Records:¶

(a) General Requirements:¶

(A) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under this ~~regulation~~ rule are met.¶

(B) At the time of an examination, the retained records shall be capable of being retrieved and converted to a standard record format.¶

(C) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.¶

(b) Electronic Data Interchange Requirements:¶

(A) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, shall be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.¶

(B) The taxpayer may capture the information necessary to satisfy section (3)(b)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the ~~D~~department of Revenue. In this example, the taxpayer need not retain its EDI transaction for tax purposes.¶

(c) Electronic Data Processing Systems Requirements - The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation rule.¶

(d) Business Process Information:¶

(A) Upon the request of the ~~D~~department of Revenue, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.¶

(B) The taxpayer shall be capable of demonstrating:¶

(i) The functions being performed as they relate to the flow of data through the system;¶

(ii) The internal controls used to ensure accurate and reliable processing; and¶

(iii) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.¶

(C) The following specific documentation is required for machine-sensible records retained pursuant to this regulation rule:¶

(i) Record formats or layouts;¶

(ii) Field definitions (including the meaning of all codes used to represent information);¶

(iii) File descriptions (e.g., data set name); and¶

(iv) Detailed charts of accounts and account descriptions.¶

(4) Records Maintenance Requirements:¶

(a) The ~~D~~department of Revenue recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.¶

(b) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.¶

(5) Access ¶to Machine-Sensible Records:¶

(a) The manner in which ~~D~~the department of Revenue is provided access to machine-sensible records as required in subsection (2)(b) of this regulation rule may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.¶

(b) Such access will be provided in one or more of the following manners:¶

(A) The taxpayer may arrange to provide the department with the hardware, software, and personnel resources to access the machine-sensible records.¶

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.¶

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the department including copies of files, on a magnetic medium that is agreed to by the department.¶

(D) The taxpayer and the department may agree on other means of providing access to the machine-sensible records.¶

(6) Taxpayer Responsibility ~~A~~ and Discretionary Authority:¶

(a) In conjunction with meeting the requirements of section ~~3(3) of this rule~~, a taxpayer may create files solely for the use of the department. For example, if a data-base management system is used, it is consistent with this ~~regulation~~ rule for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of section ~~3(3) of this rule~~. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.¶

(b) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this ~~regulation~~ rule.¶

(7) Alternative Storage Media:¶

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this ~~regulation~~ rule to microfilm, microfiche, or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.¶

(b) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements:¶

(A) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche, or other storage-only imaging system shall be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.¶

(B) Procedures shall be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under section (9) ~~of this rule~~.¶

(C) Upon request by the ~~D~~ department of Revenue, a taxpayer shall provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.¶

(D) When displayed on such equipment or reproduced on paper, the documents shall exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.¶

(E) All data stored on microfilm, microfiche, or other storage-only imaging systems shall be maintained and arranged in a manner that permits the location of any particular record.¶

(F) There is no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.¶

(8) Effect ~~O~~ on Hard-Copy Recordkeeping Requirements:¶

(a) Except as otherwise provided in this section, the provisions of this ~~regulation~~ rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and ~~regulation~~ rules. Hard-copy records may be retained on a recordkeeping medium as provided in section (7) of this ~~regulation~~ rule.¶

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.¶

(c) Hard-copy records generated at the time of a transaction using a credit or debit card shall be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this regulation. Such details include those listed in subsection

(3)(b)-(A).¶

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.¶

(e) Nothing in this section shall prevent the ~~D~~Department of Revenue from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.¶

(9) Records Retention - Time Period - All records required to be retained under this regulation shall be preserved pursuant to ORS 314.425 unless the ~~D~~Department of Revenue has provided in writing that the records are no longer required.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 314.425

AMEND: 150-316-0275

RULE SUMMARY: Amends rule to allow the employer to instruct DOR to either refund an overpayment of statewide transit tax or roll over an overpayment of statewide transit tax to the current or prior quarter.

CHANGES TO RULE:

150-316-0275

Treatment of Payroll-Based Program Overpayments ¶¶

(1) If an employer has overpaid ~~their~~income tax withholding, statewide transit tax withholdings, or transit district payroll taxes due for a quarter and files an original or amended combined quarterly tax return or an original or amended statewide transit tax return, the department will refund the overpayment or apply the overpayment (roll over) toward the employer's liability for the current or prior quarter as instructed by the employer. However, the following rules apply if the employer does not instruct the department otherwise:¶¶

(2) If an employer has overpaid ~~their~~income tax withholding, statewide transit tax withholdings, or transit district payroll taxes due for a quarter, the overpayment will be rolled over as a payment toward the employer's liability for that tax program for the current quarter.¶¶

(3) If the department records show that the employer is no longer in business, and all returns have been filed, the overpayment will be refunded.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.171, 320.555

ADOPT: 150-320-0520

RULE SUMMARY: Establishes new rule to provide due dates for employers filing a statewide transit tax report and any schedules, pay statewide transit tax, and for Oregon residents required to self-report and pay statewide transit tax to the department. This rule also provides that the statewide transit tax report and any associated schedules may be filed using electronic or paper options.

CHANGES TO RULE:

150-320-0520

Statewide Transit Tax: Reporting and Payment Due Dates

(1) An employer required to withhold and remit statewide transit taxes to the department under ORS 320.550 must submit a statewide transit tax return and any schedules required to be filed with the return on or before the last day of the month following the end of each calendar quarter.¶

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

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

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

(4) Statewide transit tax payments are due on or before the filing due dates in section (1) of this rule.¶

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

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

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

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

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

Statutory/Other Authority: ORS 320.550

Statutes/Other Implemented: ORS 320.550