NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED: 04/29/2026 4:05 PM
ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Substantial Understatement Penalty (SUP)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/01/2026 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:
Katie McCann
503-509-9787
RulesCoordinator.dor@dor.oregon.gov
955 Center St NE
Salem, OR 97301

Filed By:
Katie McCann
Rules Coordinator

HEARING(S)
Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/01/2026
TIME: 10:00 AM
OFFICER: Robert Oakes

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 503-446-4951
SPECIAL INSTRUCTIONS:
Join by video:
https://www.microsoft.com/en-us/microsoft-teams/join-a-meeting
Meeting ID: 281 706 150 48
Passcode: fP9QN2gW

Join by phone:
503-446-4951
Conference ID: 589 383 598#

NEED FOR THE RULE(S):

The current administrative rule contains outdated threshold figures for the Substantial Understatement of Net Tax Penalty and contains unnecessary examples.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 314.402, available on the website of the Oregon Legislature
Oregon Department of Revenue Web site.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE:

The proposed amendment is not anticipated to affect racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

The proposed amendment removes indexed figures from rule, and those figures will continue to be published in department publications and on the department Web site. No fiscal or economic impact is anticipated.

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) The proposed amendment will not have any cost of compliance impact on state agencies, units of local government, or the public.
(2)(a) According to the federal Small Business Administration, Oregon has approximately 402,928 small businesses with fewer than 500 employees, which employ approximately 53.4% of the state's workforce. Based on this information and information from the Oregon Employment Department reporting number of employees, we estimate that 108,353 small businesses in the state of Oregon with fewer than 50 employees are subject to this rule.
(b) The proposed amendment will not result in a change for any of the small businesses subject to the rule.
(c) N/A

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

Small businesses are not impacted by the rule, but they were able to participate in the Rules Advisory Committee meeting and can also participate in the public hearing.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 150-314-0205

RULE SUMMARY: The substantial understatement penalty rule must be amended to update the threshold amount at which a penalty is imposed.

CHANGES TO RULE:

150-314-0205
Substantial Understatement Penalty (SUP) ¶

(1) The department will assess a penalty if a substantial understatement of net tax exists for any taxable year. The penalty is equal to 20 percent of the amount of any underpayment of net tax attributable to the understatement. A

substantial understatement exists only if incurred on the return of the individual, corporation, or reporting entity required to file a return and pay tax.¶
(2) Net Tax. In determining if a substantial understatement of net tax exists, net tax equals the total tax as calculated in accordance with the applicable provisions of ORS chapters 314, 315, 316, 317, and 318, reduced by nonrefundable and refundable credits.¶
(3) Substantial Understatement of Net Tax. An understatement of net tax is substantial if the understatement exceeds ~~$3,850 for corporations (other than S corporations, as defined in section 1361 of the Internal Revenue Code, or a personal holding company, as defined in section 542 of the Internal Revenue Code), or exceeds $2,650 for individuals and all other taxable entities~~the applicable threshold for the tax year, as adjusted for inflation. The department will publish the applicable threshold amount for each tax year on the department's website.¶
(4) Penalty. The substantial understatement penalty is equal to 20 percent of the amount of the understatement of net tax.¶
(a) The total understatement of net tax is the amount of net tax due as determined by the department, minus:¶
(A) Net tax as reported on the return by the taxpayer for the taxable year,¶
(B) The tax attributable to any item for which there is or was substantial authority, and¶
(C) The tax attributable to any item for which the relevant facts affecting the item's tax treatment are adequately disclosed on the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of the item by the taxpayer.¶
(b) Net tax as reported on the return is the amount of net tax reported by the taxpayer and determined before the taxpayer was first notified by the department concerning their tax liability. If the return shows no net income tax, the amount of net tax shown on the return is considered to be zero. In all cases, net tax as reported is computed without regard to:¶
(A) Withholdings;¶
(B) Estimated tax paid by the taxpayer; or¶
(C) The state surplus refund pursuant to ORS 291.349.¶
(5) The department will not impose a penalty under ORS 314.402 unless a return has been filed.~~¶~~
~~(6) The following table shows threshold amounts used by the department to compute the substantial understatement penalty.¶~~
~~Effective year - Corporation - Individuals¶~~
~~2017 - $3,500 - $2,400¶~~
~~2018 - $3,550 - $2,400¶~~
~~2019 - $3,650 - $2,500¶~~
~~2020 - $3,700 - $2,550¶~~
~~2021 - $3,750 - $2,550¶~~
~~2022 - $3,850 - $2,650¶~~
~~Example 1: A 2017 partnership return is adjusted for a $50,000 increase in unreported income. The partnership is owned by Renton, Mark, and Paul. The partnership adjustment results in an increase in net tax of $2,700 on Renton's individual return, $1,350 on Mark's individual return, and $900 on Paul's individual return. The SUP penalty is only assessed on Renton's tax due because only his return had an understatement of net tax exceeding $2,400 (the understatement threshold for the tax year). The adjustment to Mark and Paul's individual returns will not include the SUP penalty, although all three may be subject to other penalties as provided by law.¶~~
~~Example 2: Bobbie is a full-year resident who reported a federal adjusted gross income of $25,000 on his 2017 return, and claimed a $3,200 credit for taxes paid to California. Bobbie reported a net tax of zero on his personal income tax return because the $3,200 credit was larger than the $1,394 tax calculated on his taxable income. Upon audit, it was determined Bobbie did not qualify for the credit for taxes paid to California, and his return was adjusted to reflect a reduction of nonrefundable credits of $3,200. Bobby's net tax was understated by $1,394, the amount of net tax that would have been reported, had he not claimed the credit. Bobbie is not assessed an SUP penalty because his understatement was not more than $2,400 (the understatement threshold for the tax year).¶~~
~~Example 3: Tyler and Leah are full-year residents who filed a joint return reporting a federal adjusted gross income of $38,000 on their 2015 return. Tyler and Leah claimed a $200 child and dependent care credit, a $4,800 working family childcare credit, and a $1,200 earned income credit. Tyler and Leah reported tax before credits of $1,514 and a zero net tax, because their refundable credits were more than the tax calculated on their taxable income. Upon audit it was determined Tyler and Leah had $25,000 unreported Schedule C income and they no longer qualified for the child and dependent care credit, the working family child care credit, or the earned income credit. After the audit adjustment, Tyler and Leah's tax before credits is $3,773 and their net tax is $2,818. Tyler and Leah's net tax understatement is $2,818 because the net tax reported on their return was zero. Tyler and Leah will be assessed an understatement of net tax penalty of $564 ($2,818 x 20%) because their understatement exceeded the understatement threshold for the tax year.¶~~
~~Example 4: Meghan moved from Idaho to Oregon on May 1, 2017. Meghan filed a 2017 Oregon Form 40P on April~~

~~15th of the following year. Meghan reported $86,000 in wages and $55,000 of Schedule E rental income in the federal column of her return, and $45,000 of wages and no Schedule E rental income in the Oregon column. Meghan also claimed $16,500 in moving expenses in both the federal and Oregon columns. Meghan's income after subtractions is $124,500 in the federal column and $28,500 in the Oregon column. Meghan's Oregon percentage is 23% (28,500/124,500). After deductions, Meghan reported $94,150 in taxable income and $1,950 tax before credits. Meghan claimed $3,500 in withholding payments, a $191 exemption credit, and an $800 credit for taxes paid to Idaho on mutually taxed income. Meghan's net tax as reported is $959 ($1,950 - $191 - $800). Upon audit, the department determined $32,000 of Meghan's Schedule E income should have been reported in the Oregon column. Meghan's return was adjusted to report a total of $60,500 in the Oregon column, and her Oregon percentage was revised to 49%. Meghan's taxable income did not change because the adjustment only affected the Oregon column. However, her tax before credits was increased to $4,152 because of the increase to the Oregon percentage. Meghan's net tax as determined by the department is $3,161 ($4,152 - $191 - $800). Meghan's withholding payment is not regarded in calculating net tax for the purpose of the substantial understatement penalty. Meghan did not have substantial authority for excluding the Schedule E income from the Oregon column and there was not adequate disclosure and a reasonable basis for the position. Meghan's understatement of net tax is $2,202. Meghan is not assessed an SUP as her understatement of net tax is less than the understatement threshold for the tax year.¶~~

~~[Publications: Contact the Oregon Department of Revenue for information about how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]~~

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 314.402