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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED
04/04/2022 2:01 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establishes criteria to hold an individual personally liable for unpaid income tax withholdings.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/23/2022 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.

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Filed By:
Katie Thiel
Rules Coordinator

HEARING(S)

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

DATE: 05/23/2022

TIME: 10:00 AM

OFFICER: Steven Ito

ADDRESS: Virtual Hearing

955 Center Street NE

Salem, OR 97301-2555

SPECIAL INSTRUCTIONS:

ZoomGov Meeting

Join by video:

<https://www.zoomgov.com/j/1617345149>

Join by phone:

1-551-285-1373

Meeting ID: 161 734 5149

Passcode: 706880

NEED FOR THE RULE(S)

OAR 150-316-0243 Personal Liability of Responsible Officers, Members, or Employees for Taxes Withheld currently clarifies which individuals may be held personally liable for unpaid income tax withholdings and statewide transit taxes by establishing criteria the department will consider when establishing liability against an individual.

This rule is being amended to delete the term "power" from section 2, subsection a of this rule to remove the risk of interpreting the term "power" to mean something different than the term "authority".

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR 150-316-0243 is being amended to reflect changes concurrently being made to other existing administrative rules relating to establishing criteria for individuals who may be held personally liable for unpaid taxes owed by a business.

The other OARs being amended are:

- o OAR 150-316-0370 Liability for Unpaid Withholdings; Warrant for Collection
- o Oregon Secretary of State Administrative Rules
- o OAR 150-475-2040 Liability for Unpaid Marijuana Tax; Warrant for Collection
- o Oregon Secretary of State Administrative Rules

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

The rule establishes criteria department staff must adhere to when holding individuals liable for unpaid income tax withholdings and statewide transit taxes. This criterion ensures equity by promoting consistent application of the authority granted to DOR in ORS 316.162.

FISCAL AND ECONOMIC IMPACT:

No fiscal. This is an already existing OAR that is being amended to better adhere to language already found in Oregon statute. There have been no major fundamental changes to the intent and application of this OAR.

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) None known of.

(2)(a) Zero small businesses are subject to this rule. Individuals would be held personally liable for unpaid income tax withholdings and statewide transit taxes already owed by the business.

(b) None. Businesses are already required to file and pay income tax withholdings and statewide transit taxes timely.

(c) None.

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

We have consulted with interested parties on this proposed amendment.

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

This is an already existing OAR that is being amended to better adhere to language already found in Oregon statute. There have been no major fundamental changes to the intent and application of this OAR.

AMEND: 150-316-0243

RULE SUMMARY: Modifies criteria to be considered by the Department of Revenue to hold an individual personally liable for unpaid income tax withholdings or statewide transit taxes.

CHANGES TO RULE:

150-316-0243

Personal Liability of Responsible Officers, Members, or Employees for Taxes Withheld ¶

(1) To be held personally liable for unpaid income tax withholding or statewide transit tax under ORS 316.162, a person must have been considered to have been an "employer." In addition, the person must have been in a position to pay the income tax withholding or statewide transit tax or direct the payment of the income tax withholding or statewide transit tax at the time the duty arose to withhold or pay over the taxes. Additionally, the person must have been aware, or have been in a position that should have been aware, that the income tax

withholding or statewide transit tax was not paid to the department. An employer cannot avoid personal liability by delegating their responsibilities to another.¶

(2) "Employer" includes, but is not limited to an officer, member or employee of a corporation, partnership or other business entity, if, among other duties, that individual has:¶

(a) ~~The power or a~~ Authority to see that the income tax withholding or statewide transit taxes are paid when due;¶

(b) Authority to prefer one creditor over another;¶

(c) Authority to hire and dismiss employees;¶

(d) Authority to set employees' working conditions and schedules;¶

(e) Authority to sign or co-sign checks;¶

(f) Authority to compute and sign payroll tax or statewide transit tax reports;¶

(g) Authority to make fiscal decisions for the business;¶

(h) Authority to incur debt on behalf of the business; or¶

(i) Performed duties other than those outlined by the corporate bylaws or partnership agreement.¶

(3) The following factors do not preclude a finding that the individual is liable for the payment of taxes which were required to be withheld:¶

(a) Whether the failure to pay over the required income tax withholding or statewide transit tax was willful;¶

(b) Whether the individual received remuneration;¶

(c) Maintenance of full-time employment elsewhere;¶

(d) The department considers another individual liable for the same income tax withholding or statewide transit tax;¶

(e) A corporate bylaw or partnership agreement position description to the contrary;¶

(f) Absence of signatory authority on a business bank account;¶

(g) Absence of bookkeeping or recordkeeping duties;¶

(h) Absence of authority to hire, fire, and to set working conditions and schedules; or¶

(i) Whether any functions indicating liability have been delegated to another.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.162