

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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

CHAPTER 150  
DEPARTMENT OF REVENUE

**FILED**

04/04/2022 2:06 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Modifies 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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955 Center St. NE  
Salem, OR 97301

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)

Liability for Unpaid Withholdings; Warrant for Collection 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 OAR also states how personal liability is transferred as a result of a merger or consolidation.

This rule is being amended to remove provisions already enumerated in statute.

This rule is being amended to address grammatical and sentence structure issues.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR 150-316-0370 is also 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 OAR being amended are:

- o OAR 150-316-0243 Personal Liability of Responsible Officers, Members, or Employees for Taxes Withheld
- 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

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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 316.207.

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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.

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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) 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.

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

We have consulted with interested parties on this proposed amendment.

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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.

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AMEND: 150-316-0370

RULE SUMMARY: The rule modifies the criteria to be considered by the Department of Revenue to hold an individual personally liable for unpaid income tax withholding and statewide transit taxes, removes provisions already stated in statute, and addresses grammatical and sentence structure issues.

CHANGES TO RULE:

150-316-0370

Liability for Unpaid Withholdings; ~~Warrant for Collection ¶~~

(1) It is the employer's duty to hold in trust any amount of income tax withholding and statewide transit tax withheld from employee wages and to assume custodial liability for amounts to be paid to the department. Any employer who fails to pay the tax when due is subject to penalties as provided in ORS Chapter 314, the same as any other taxpayer who fails to file a return or pay a tax when due. ~~Any employer who fails to pay the tax withheld to the department violates ORS 314.075 and is subject to the penalty provisions of subsection (1) of ORS~~

~~314.991.~~

(2) If a corporation or partnership is absorbed by another corporation or partnership in a statutory merger or consolidation, the resulting entity is regarded as the same employer as the absorbed entity. The new entity is liable for payment of income tax and statewide transit taxes withheld.

(3) If a corporation or partnership fails to file returns, or to pay the tax withheld when due, any or all officers, members, and employees who are responsible for exercising the duties of an employer may be held personally responsible for the returns and payments together with any interest and penalties due. Whether the person has actually exercised the duties or not is immaterial.

~~(4) If the department issues a notice of liability or notice of determination and assessment naming any officer, member, or employee as liable for unpaid income tax or statewide transit tax withheld, the department may issue a warrant against the person to enforce collection of any amount of delinquent income tax withholding or statewide transit tax, including interest and penalties. A notice of determination and assessment issued only in the name of the corporation or partnership does not authorize the department to issue a warrant against any officer, member, or employee for collection of delinquent income tax withholding or statewide transit tax.~~

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 316.207