

OFFICE OF THE SECRETARY OF STATE

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

CHAPTER 150  
DEPARTMENT OF REVENUE

**FILED**

04/04/2022 2:10 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Establishes criteria to hold an individual personally liable for unpaid transient lodging taxes.

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 150-320-0041 clarifies which individuals may be held personally liable for unpaid transient lodging taxes owed by a business by establishing criteria the department will consider when establishing liability against an individual.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

The department modeled this proposed rule after existing rules for other trust fund programs such as Withholding, Statewide transit, and Marijuana taxes setting criteria for individuals who may be held liable for unpaid trust fund taxes owed by a business. OAR 150-475-2040 Liability for Unpaid Marijuana Tax; Warrant for Collection may be located at <https://secure.sos.state.or.us/oard/viewSingleRule.action?ruleVrsnRsn=22014>

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 transient

lodging taxes. This criterion ensures equity by promoting consistent application of the authority granted to DOR in ORS 320.325.

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FISCAL AND ECONOMIC IMPACT:

No fiscal. Once adopted, the department will begin the process of collecting unpaid transient lodging taxes from individuals held liable for disbursement as specified in statute.

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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 transient lodging taxes already owed by transient lodging tax collectors.

(b) None. Businesses are already required to file and pay transient lodging 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 rule.

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

The proposed rule mirrors existing rules for other trust fund tax programs such as Withholding, Statewide Transit, and Marijuana.

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ADOPT: 150-320-0041

RULE SUMMARY: Establishes criteria to be considered by the DOR to hold an individual personally liable for unpaid state transient lodging taxes.

CHANGES TO RULE:

150-320-0041

Liability for Unpaid State Lodging Taxes

(1) For purposes of this rule, "transient lodging tax collector" has the meaning given under ORS 320.300 and includes, but is not limited to, an officer, member, or employee of the transient lodging tax collector that provides the sale, service, or furnishing of transient lodging, if, among other duties, that individual has:¶

(a) Authority to see that the state lodging 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 state lodging tax returns:¶

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

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

(2) It is the duty of a transient lodging tax collector to hold in trust any amount of state lodging tax collected from the sale, service, or furnishing of transient lodging and to assume custodial liability for amounts to be paid to the department. Any transient lodging tax collector who fails to pay the state lodging tax when due is subject to penalties, as provided by law, as any other taxpayer who fails to file a return or pay a tax when due.¶

(3) If a transient lodging tax collector fails to file returns or to pay any collected tax when due, any or all officers, members, and employees may be held personally responsible, as provided in this rule, for the returns and

payments together with any interest and penalties, that are due.

(4) To be held personally liable for unpaid states lodging tax, a person must be a transient lodging tax collector. In addition, the person must be in a position to pay the state lodging tax or direct the payment of the state lodging tax at the time the duty arises to collect or pay over the state lodging taxes. The person may be held personally liable if the individual was, or should have been aware, that the state lodging taxes were not paid to the department. A transient lodging tax collector cannot avoid personal liability by delegating their responsibilities to another.

(5) The following factors do not preclude a finding that an individual is liable for the payment of state lodging taxes:

(a) Lack of willfulness in failing to pay over the required state lodging tax;

(b) The individual's receipt of remuneration;

(c) Maintenance of full-time employment elsewhere;

(d) Another individual is also liable for the same state lodging taxes;

(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) Delegation to another person any functions indicating liability.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 320.325