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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

04/04/2022 2:17 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Establishes criteria to hold an individual personally liable for unpaid petroleum load fees.

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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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)

OAR 150-465-0041 clarifies which individuals may be held personally liable for unpaid petroleum load fees owed by a bulk facility petroleum 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 bulk facility petroleum load fees. This criterion ensures equity by promoting consistent application of the authority granted to DOR in ORS 465.112.

FISCAL AND ECONOMIC IMPACT:

No fiscal. Once adopted, the department will begin the process of collecting unpaid bulk facility petroleum load fees from individuals held liable for disbursement as specified in statute.

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 liable for unpaid bulk facility petroleum load fees already owed by bulk facility petroleum providers and sellers.

(b) None. Businesses are already required to pay bulk facility petroleum load fees 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 rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 150-465-0041

RULE SUMMARY: Establishes criteria to be considered by the Department of Revenue to hold an individual personally liable for unpaid bulk facility petroleum load fees.

CHANGES TO RULE:

150-465-0041

Liability for Unpaid Petroleum Load Fees

(1) For purposes of this rule, "seller" has the meaning given under OAR 150-465-0040 and includes, but is not limited to, an officer, member or employee of a corporation, partnership or other business entity that sells petroleum product from a bulk facility, if, among other duties, that individual has:¶

(a) Authority to see that the petroleum load fees 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 Oregon Petroleum load fee registration forms;¶

(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 the seller to hold in trust any amount of petroleum load fee collected from the sale of petroleum product and to assume custodial liability for amounts to be paid to the department. Any seller who fails to pay the petroleum load fee 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 seller 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 petroleum load fees, a person must be a seller of petroleum product

from a bulk facility. In addition, the person must be in a position to pay the petroleum load fee or direct the payment of the petroleum load fee at the time the duty arises to collect or pay the petroleum load fees. The person may be held personally liable if the individual was, or should have been aware, that the petroleum load fees were not paid to the department. A seller 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 petroleum load fees:

(a) Lack of willfulness in failing to pay over the required petroleum load fee;

(b) The individual's receipt of remuneration;

(c) Maintenance of full-time employment elsewhere;

(d) Another individual is also liable for the same petroleum load fee;

(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, 465.121

Statutes/Other Implemented: ORS 465.112