

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

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

CHAPTER 150  
DEPARTMENT OF REVENUE

**FILED**

04/04/2022 2:21 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Modifies criteria to hold an individual personally liable for unpaid marijuana 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.*

CONTACT: Katie Thiel  
503-949-8385  
rulescoordinator.dor@dor.oregon.gov

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)

OAR 150-475-2040 Liability for Unpaid Marijuana Tax; Warrant for Collection

currently clarifies which individuals may be held personally liable for unpaid marijuana taxes by establishing criteria the department will consider when establishing liability against an individual.

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

This rule is being amended to reflect reenumeration of marijuana statutes which occurred in 2021.

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

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OAR 150-475-2040 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 150-316-0370 Liability for Unpaid Withholdings; 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 marijuana tax. This criterion ensures equity by promoting consistent application of the authority granted to DOR in ORS 475C.688, 475C.722

---

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 marijuana taxes already owed by the business.

(b) None. Businesses are already required to file and pay marijuana 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: 150-475-2040

RULE SUMMARY: Modifies criteria to be considered by the Department of Revenue to hold an individual personally liable for unpaid marijuana taxes.

CHANGES TO RULE:

150-475-2040

Liability for Unpaid Marijuana Tax; ~~Warrant for Collection~~ ¶

(1) For purposes of this rule, "marijuana retailer" has the meaning given under OAR 150-475-2010 and includes, but is not limited to, an officer, member, or employee of a corporation, partnership, or other business entity that makes retail sales of marijuana items to consumers, if, among other duties, that individual has:¶

(a) ~~The power or a~~ Authority to see that the marijuana 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 marijuana tax reports;¶

(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 marijuana retailer to hold in trust any amount of marijuana tax collected from the sale of limited retail marijuana products or marijuana items and to assume custodial liability for amounts to be paid to the department. Any marijuana retailer who fails to pay the marijuana 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. ~~Any marijuana retailer who fails to pay any marijuana tax when due to the department violates ORS 314.075 and is subject to the penalty provisions of ORS 314.991(1).~~¶

(3) If a marijuana retailer fails to file returns or to pay any collected marijuana 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 due.¶

~~(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 marijuana tax, the department may issue a warrant against the individual to enforce collection of any amount of delinquent marijuana tax, including penalties and interest.¶~~

~~(5) To be held personally liable for unpaid marijuana tax under ORS 475B.715C.688, a person must be a marijuana retailer. In addition, the person must be in a position to pay the marijuana tax or direct the payment of the marijuana tax at the time the duty arises to collect or pay over the marijuana taxes. The person may be personally liable if the individual was, or should have been aware, that the marijuana taxes were not paid to the department. A marijuana retailer cannot avoid personal liability by delegating their responsibilities to another.¶~~

~~(6) The following factors do not preclude a finding that an individual is liable for the payment of marijuana taxes:¶~~

~~(a) Lack of willfulness in failing to pay over the required marijuana tax;¶~~

~~(b) The individual's receipt of remuneration;¶~~

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

~~(d) Another individual is also liable for the same marijuana 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, 475BC.75014

Statutes/Other Implemented: ORS 475B.715C.688, 475BC.75522