



Executive summary

2019

Annual Report on Administrative Rules

Oregon Laws 2016, Chapter 44

February 1, 2019

Executive summary

This is the Department of Revenue's administrative rules report in response to the annual report requirement in Oregon Laws 2016, Chapter 44 (2016 HB 4106).

Rules adopted, amended, or suspended in accordance with ORS 183.335(2) and (3)

During calendar year 2018, the department adopted 18 rules, amended 18 rules, and repealed two rules in accordance with ORS 183.335(2) and (3).

Temporary rules adopted, amended, or suspended in accordance with ORS 183.335(5)

During calendar year 2018, the department adopted, amended, or suspended five rules in accordance with ORS 183.335(5).

List of rules:

- 150-305-0085, *Financial Institution Data Match* (Adopt)
- 150-307-0900, *Qualified Heavy Equipment and Qualified Heavy Equipment Rental Providers – Definitions and Responsibilities* (Adopt—and Amend)
- 150-317-0652, *Modification for Listed Jurisdiction Amounts Previously Included in Income; Election in Lieu of Claiming the Repatriation Tax Credit* (Adopt)
- 150-320-0402, *Bicycle Excise Tax* (Suspend)
- 150-320-0430, *Vehicle Use Tax Alternative Filing Format* (Adopt)



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Introduction

Oregon Laws 2016, Chapter 44, requires state agencies to submit a report no later than February 1 of each year regarding all rules that the agency adopted, amended, repealed, or suspended during the preceding 12-month period. This is the Department of Revenue’s report covering rulemaking activity during calendar year 2018.

Rules adopted, amended, or repealed [ORS 183.335(2) and (3)]

The following table shows the number of rules adopted, amended, or repealed in accordance with Oregon Revised Statutes (ORS) 183.335(2) and (3):

Adopted	18
Amended	18
Repealed	2

Temporary rules adopted, amended, or suspended [ORS 183.335(5)]

Number of rules: 5

List of rules:

- 150-305-0085, *Financial Institution Data Match* (Adopt)
- 150-307-0900, *Qualified Heavy Equipment and Qualified Heavy Equipment Rental Providers – Definitions and Responsibilities* (Adopt and amend)
- 150-317-0652, *Modification for Listed Jurisdiction Amounts Previously Included in Income; Election in Lieu of Claiming the Repatriation Tax Credit* (Adopt)
- 150-320-0402, *Bicycle Excise Tax* (Suspend)
- 150-320-0430, *Vehicle Use Tax Alternative Filing Format* (Adopt)

Statement of need for each rule and all of the agency’s findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned:

OAR 150-305-0085, *Financial Institution Data Match* (Adopt)

Financial institution data match is a new program that enables the department to more effectively and efficiently identify accounts for garnishment purposes (for debts other than delinquent child support debt). This rule is necessary to provide clarity to financial institutions regarding certain components of the data match program. ORS 305.094 requires the department to implement rules describing:

1. Procedures the department will use to perform financial institution data matching, including security standards or protocols designed to prevent unauthorized or unintentional disclosure of data.

2. A procedure by which financial institutions that lack the technical ability to participate in the data match system may transmit to the department a list of all account holders.
3. A method for verifying the actual costs to a financial institution of participating in the data match system.

If the department failed to have a rule in place by July 1, 2018 (as required by ORS 305.094), financial institutions may not have been able to fully participate in the data match system.

OAR 150-307-0900, Qualified Heavy Equipment and Qualified Heavy Equipment Rental Providers – Definitions and Responsibilities (Adopt and amend)

This rule clarifies the definition of “qualified heavy equipment” and establishes uniform guidelines for taxpayers to register as qualified heavy equipment rental providers. Under Oregon Laws 2018, Chapter 64, businesses primarily engaged in renting heavy equipment are “qualified heavy equipment rental providers,” and required to register with the Oregon Department of Revenue by December 31, 2018 and begin collecting the tax on January 1, 2019.

If the department failed to promulgate a temporary rule prior to December 31, 2018, rental providers would not have the requisite information to determine whether they were required to register in December 2018 and begin collecting the tax on January 1, 2019. Lack of guidance may have led businesses that are not subject to the tax to improperly register and collect the rental tax from their customers. Alternatively, taxpayers subject to the rental tax may have failed to register and collect the rental tax.

This temporary rule (originally adopted October 25, 2018) was modified on November 29, 2018, to clarify that the term “gross rental revenue,” as used in the rule, pertains to rental revenue earned from the rental of personal property in Oregon. “Gross rental revenue,” as used in the temporary rule, does not mean income from real property rentals or revenue earned outside of Oregon. If the department did not amend the temporary rule prior to December 31, 2018, rental providers would not have the requisite information to determine whether they were required to register in December 2018 and begin collecting the tax on January 1, 2019.

OAR 150-317-0652 Modification for Listed Jurisdiction Amounts Previously Included in Income; Election in Lieu of Claiming the Repatriation Tax Credit (Adopt)

This rule provides guidance for calculating the modification allowed under ORS 317.038 (in lieu of the repatriation tax credit allowed under SB 1529, 2018 session) for listed jurisdiction income previously included in Oregon income.

Oregon corporate taxpayers were required to include ORS 317.716 listed jurisdiction income in their Oregon taxable income for tax years 2014, 2015, and 2016. This listed jurisdiction income may be taxed again in tax years 2017 and 2018 because of a one-time mandatory repatriation of earnings and profits at the federal level under IRC 965 that flows through to Oregon taxable income. During the 2018 session, the Oregon Legislature addressed this issue through SB 1529 that allowed taxpayers a tax credit equal to the lesser of a taxpayer’s tax attributable to the 2014-2016 listed jurisdiction inclusion or the 2017 repatriation.

However, the tax credit provides no relief to taxpayers who have a repatriation obligation in tax year 2018. Also, the tax credit provides no relief to taxpayers who included listed jurisdiction income in at least one tax year between 2014 and 2016 but had no tax attributable to the listed jurisdiction income.

This temporary rule prescribes a method to compute a modification that provides relief for taxpayers who could not claim the tax credit, but who are otherwise required to include an item of income more than once in computing Oregon taxable income. The first returns affected by the issues described were due to be filed May 15, 2018, but the department assumed that most affected taxpayers obtained extensions to file on or before November 15, 2018. The basis for this assumption was that more returns for tax year 2017 would be filed on extension due to significant federal and Oregon tax law changes for tax year 2017 being passed between December 2017 and April 2018. Taxpayers needed additional time to understand how tax law changes affected their filing positions for tax year 2017.

The statutory authority for the substantive content of OAR 150-317-0652 is ORS 317.038(1), which provides that nothing in ORS Chapter 317 “shall be construed to require a corporation to include an item of income *** more than once in computing Oregon taxable income.”

There was no prescribed method for taxpayers to compute a modification and meet their November 15, 2018 filing obligations without this rule. Affected taxpayers include Oregon corporate taxpayers with an IRC 965 repatriation obligation who would be required to include listed jurisdiction income previously included in Oregon income in their IRC 965 repatriation if the repatriation tax credit did not offer the taxpayer full relief. Failure to immediately adopt a rule would have increased taxpayer compliance costs and the enforcement costs of the department. Also, there would have been administrative costs for both taxpayers and the department associated with amended returns if this rule were not immediately put in place.

OAR 150-320-0402, *Bicycle Excise Tax (Suspend)*

This temporary rule was adopted in late 2017 (effective January 1, 2018) to provide definitions and guidance for taxpayers regarding the new bicycle tax program and to help ensure immediate and efficient collection of the bicycle excise tax. Definitions for the bicycle excise tax were then changed by 2018 legislation. Effective June 2, 2018, Revenue merged definitions and guidance for the bicycle tax into OAR 150-320-0400, Definitions for purposes of the transportation project taxes imposed under ORS 320.405 to 320.415. Failure to provide accurate guidance on the definition of taxable bicycles would have led to retailers or sellers failing to collect taxes or not collecting the proper amount of tax. Retailers or sellers and consumers would suffer from having conflicting guidance on definitions pertaining to which bicycles were subject to the tax.

OAR 150-320-0430, *Vehicle Use Tax Alternative Filing Format (Adopt)*

This rule provides an alternative filing format for vehicle use tax paid by licensed Oregon vehicle dealers who submit title and registration applications through the DMV’s Electronic Vehicle Registration system. Without this rule, licensed Oregon dealers purchasing taxable motor vehicles outside of Oregon for business use in Oregon would be required to continue filing vehicle use tax returns as frequently as every day, as well as making tax payments potentially every day. They would also then be required to amend those daily returns in situations where the retail sales price was not known at the time of filing, which increases administrative costs

for themselves and the department. This rule allowed such taxpayers to file only one return and make one payment to report taxable motor vehicles purchased in the months of November and December 2018.

For each rule, an explanation of why proceeding under ORS 183.335(5) was the most appropriate method for adopting, amending, or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335(2) and (3):

150-305-0085, *Financial Institution Data Match (Adopt)*

ORS 305.094 required the department to implement rule(s) for the financial institution data match program by July 1, 2018. Without guidance to financial institutions on the procedures the department would use to administer the program, financial institutions would not know:

- Security standards or protocols designed to prevent unauthorized or unintentional disclosure of data.
- How financial institutions that lack the technical ability to participate in the data match system may transmit to the department a list of all account holders
- The method for verifying financial institutions' actual costs of participating in the data match system.

Meeting the July 1, 2018 deadline and achieving the desired consensus amongst advisory committee members regarding the rule's content necessitated that this rule be filed on a temporary basis. The department continued to seek input from affected parties as the department implemented the financial institution data match program and developed a permanent rule that became effective December 17, 2018.

OAR 150-307-0900, *Qualified Heavy Equipment and Qualified Heavy Equipment Rental Providers – Definitions and Responsibilities (Adopt and amend)*

Taxpayers needed to register by December 31, 2018 and start collecting the tax on January 1, 2019. The permanent rule was expected to go into effect no earlier than January 1, 2019. Without a temporary rule and the subsequent amendment to the rule, the guidelines for taxpayers to determine whether they were required to register and collect the tax would have been confusing.

150-317-0652, *Modification for Listed Jurisdiction Amounts Previously Included in Income; Election in Lieu of Claiming the Repatriation Tax Credit (Adopt)*

Most of the first corporate tax returns affected by this modification were expected to be filed on extension no later than November 15, 2018. A permanent rule was anticipated to be effective on January 1, 2019. Without a temporary rule, there would have been no prescribed method to calculate the modification described above before returns were due on extension. Without guidance, taxpayers would either use their own method to calculate the modification for returns filed between November 15, 2018 and January 1, 2019, or claim a modification after January 1, 2019 through an amended return. Use of amended returns would have increased administrative costs for both taxpayers and the department. Temporary action avoided or mitigated these consequences by prescribing a method of computing the modification that was put in place well in advance of the November 15, 2018 filing deadline.

OAR 150-320-0402, *Bicycle Excise Tax (Suspend)*

The temporary rule contained guidance that was outdated due to changes made by 2018 legislation that became effective June 2, 2018. Failure to suspend the temporary rule once a new permanent rule (OAR 150-320-0400) was effective would result in two rules with conflicting guidance being in effect. Suspending the temporary rule at the same time the permanent rule became effective avoided confusion for retailers or sellers and consumers.

OAR 150-320-0430, *Vehicle Use Tax Alternative Filing Format (Adopt)*

Temporary rulemaking allowed taxpayers to immediately cease filing returns and making payments daily. Taxpayers were able to file one return and make one payment to report taxable motor vehicles purchased in the months of November and December 2018. A permanent rule went through the public rulemaking process in Fall 2018 and became effective January 1, 2019.

Appendix 1

Oregon Laws 2016, Chapter 44

CHAPTER 44

AN ACT

HB 4106

Relating to state agency adoption of temporary rules.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) "Agency" has the meaning given that term in ORS 183.310.

(b) "Rule" has the meaning given that term in ORS 183.310.

(c) "Statement of need" means the statement described in ORS 183.335 (5)(c).

(2) No later than February 1 of each year, an agency that is subject to ORS 183.335 shall provide a report to the Legislative Assembly, in the manner provided in ORS 192.245, regarding all rules that the agency adopted, amended, repealed or suspended during the preceding 12-month period. The report must include:

(a) The number of rules adopted, amended or repealed in accordance with ORS 183.335 (2) and (3); and

(b) With respect to rules adopted, amended or suspended using the procedure described in ORS 183.335 (5):

(A) The number of rules;

(B) A list of the rules;

(C) A statement of need for each rule and all of the agency's findings that a failure to act promptly would result in serious prejudice to the public interest or the interest of parties concerned; and

(D) For each rule, an explanation of why proceeding under ORS 183.335 (5) was the most appropriate method for adopting, amending or suspending the rule and why it was not appropriate to proceed in accordance with ORS 183.335 (2) and (3).

Approved by the Governor March 14, 2016

Filed in the office of Secretary of State March 14, 2016

Effective date January 1, 2017