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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

09/25/2020 8:03 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Authority to not impose or waive an NSF penalty in circumstances related to COVID-19.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/27/2020 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 McCann
503-509-9787
RulesCoordinator.dor@oregon.gov

955 Center St NE
Salem, OR 97301

Filed By:
Katie McCann
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/27/2020

TIME: 9:00 AM - 11:00 AM

OFFICER: Katie McCann

ADDRESS: Remote Hearing -
Conference Call

955 Center St NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Conference call line 541- 465 - 2805;

PIN 234470

NEED FOR THE RULE(S):

The state's response to mitigate the propagation of COVID-19 has resulted in economic hardship to individuals and entities in Oregon, creating an inability for some to follow thru with financial obligations. ORS 305.228 requires the department to impose a penalty for dishonored payments (NSF penalty) unless the department adopts a rule pursuant to ORS 305.229 specifically setting forth circumstances or conditions under which this penalty will not be imposed. ORS 305.228 also authorizes the department to waive all or part of an NSF penalty, but it is not sufficiently clear that the department can waive the penalty due to hardship related to COVID-19, without the amendment. The amendment to the rule invokes that authority under ORS 305.229 to not impose or waive an already imposed NSF penalty for a dishonored payment that occurs during the State of Emergency related to COVID-19 and 90 days after the emergency is lifted.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes: 305.228 and 305.229, available online through Legislative Counsel.

FISCAL AND ECONOMIC IMPACT:

Due to the quickly evolving crisis related to COVID-19, the department is unable to determine how many individuals or entities will require this relief. During March and April 2020 there have been approximately 300 NSF penalties assessed each month, which is above average of 229 per month.

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. To comply with the temporary rule in effect May 21, 2020 through November 16, 2020, the department has already made updates to it's system. Costs to implement the changes were minimal. Further updates would not be required.

2.a. We do not anticipate a cost for small businesses. The amendments to the rule are taxpayer friendly in order to provide financial relief during the COVID-19 crisis. We estimated there are approximately 368,308 small business in Oregon that would be subject to this rule.

b. None known.

c. None known.

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

Stakeholder feedback was not obtained because the department is adopting the amendments as relief options related to COVID-19.

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

The department did not use a formal Advisory Committee for this rule because the department is adopting this rule to provide relief related to the COVID-19 crisis.

AMEND: 150-305-0160

RULE SUMMARY: Amending the rule to provide financial relief to debtors due to financial hardship related to COVID-19. Adoption of the amendment would suspend the department's obligation to assess a penalty for dishonored checks (NSF penalty) beginning March 8, 2020 until 90 days after the end of the state of emergency related to COVID-19.

CHANGES TO RULE:

150-305-0160

Penalty for Dishonored Checks ¶¶

(1) A penalty on dishonored checks will be assessed in the amount of \$25.00 or three times the amount of the check, whichever is greater, but not to exceed \$500.00. This is in addition to all other penalties provided by statute.¶

(2) ~~This~~ Other than as provided in sections (5) and (6) of this rule, the penalty will be imposed on a dishonored check if a prior dishonored check has been tendered by any individual, firm, corporation, company, association, copartnership, estate, trust, trustee, receiver syndicate or any group or combination acting as a unit to the

Department of Revenue within the immediately preceding two years. Checks tendered in the same envelope will be considered a single occurrence for the purpose of determining if a prior dishonored check has been received.¶¶

(3) This penalty will be assessed on all types of dishonored checks to the department including, but not limited to:¶¶

(a) Advance deposits on withholding accounts.¶¶

(b) Estimated tax payments for personal income and corporate excise tax.¶¶

(c) Payments to the department for transfer to other agencies or governmental units.¶¶

(4) For the purposes of this rule, "check" includes checks, drafts, orders and electronic funds transfers.¶¶

(5) ~~The department may waive all of th~~Under authority granted in ORS 305.229, the department will not impose the penalty described in section (1) of this rule for a period of time beginning March 8, 2020 and extending until 90 days after the Governor of the State of Oregon declares an end to the state of emergency existing in the state of Oregon related to COVID-19.¶¶

(6) Under authority granted in ORS 305.229, the department will not impose the penalty described in section (1) of this rule on a second dishonored check if the first dishonored check was received by the department during the period of time set forth in section 5 of this rule.¶¶

(7) The department may waive the entire penalty if a reasonable basis exists. "Reasonable basis" means any situation in which circumstances beyond the taxpayer's reasonable ability to control resulted in the refusal to honor the check. In determining reasonable basis for waiving the penalty the department will examine all facts and circumstances. Examples of reasonable basis for waiver include, but are not limited to:¶¶

(a) The bank returns the check to the payee in error.¶¶

(b) The taxpayer issues a stop payment order for presumably lost or stolen checks that are later located and processed.¶¶

(c) The check was dishonored during the period set forth in section 5 of this rule.

Statutory/Other Authority: ORS 305.100

Statutes/Other Implemented: ORS 305.228, 305.229