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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

REV 9-2020

CHAPTER 150
DEPARTMENT OF REVENUE

FILED

05/20/2020 10:02 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: COVID-19 relief - Not imposing and waiving already imposed NSF penalty during state of emergency.

EFFECTIVE DATE: 05/21/2020 THROUGH 11/16/2020

AGENCY APPROVED DATE: 05/20/2020

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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 this 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.

JUSTIFICATION OF TEMPORARY FILING:

- (1) Not amending the rule may create additional hardship when a payee is unable to honor a payment due to financial hardship related to COVID-19. Without an amendment to this rule, ORS 305.228 requires the department to assess an NSF penalty when certain conditions are met. The same statute also limits when the department may waive an NSF penalty and is not sufficiently clear as to allow easy application to the circumstances arising because of COVID-19.
- (2) Individuals and entities in Oregon who are unable to meet their financial obligation due to having been financially impacted because of the COVID-19 crises.
- (3) The COVID-19 crisis has created an immediate need to provide financial relief to Oregonians impacted financially by the crisis. Failure to take immediate action may create additional financial hardship which may contribute to further propagation of the virus.
- (4) Temporary action will provide immediate financial relief to individuals and businesses who have lost income due to COVID-19. Taking immediate action will serve to support the state's efforts to mitigate the propagation of the virus.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

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

AMEND: 150-305-0160

RULE TITLE: Penalty for Dishonored Checks

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.

RULE TEXT:

- (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) 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) 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