

Secretary of State  
**NOTICE OF PROPOSED RULEMAKING HEARING\***  
A Statement of Need and Fiscal Impact accompanies this form

**FILED**  
6-29-17 11:06 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

Employment Department  
Agency and Division  
Cristina Koreski  
Rules Coordinator  
Employment Department, 875 Union St. NE, Salem, OR 97311  
Address

471  
Administrative Rules Chapter Number  
(503) 947-1471  
Telephone

**RULE CAPTION**

Align rule for offsetting employer debts through the federal Treasury Offset Program with state statute.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
8-23-17	2:00 p.m.	Employment Department Auditorium; 875 Union St NE, Salem, OR	Staff

**RULEMAKING ACTION**

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:**

471-030-0058

**REPEAL:**

**RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**AMEND AND RENUMBER:** Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

**Statutory Authority:**

ORS 657.610

**Other Authority:**

**Statutes Implemented:**

ORS 657.312

**RULE SUMMARY**

The Employment Department is updating the language in the existing rule to be consistent with the changes to Oregon Revised Statute 657.312 resulting from the passage of Senate Bill 242 in the 2015 Legislative Session. The law expanded the department's authority to intercept the federal tax refunds of employers with delinquent Unemployment Insurance tax obligations through the federal Treasury Offset Program (TOP).

The proposed amendment makes four changes to the existing rule:

- 1) Delinquent taxes are included in the types of debts which are eligible for referral to TOP for offset and which the department will notify about the intent to offset against federal tax refunds;
- 2) Update the references to the federal laws used to grant states with the authority to use TOP for offset against federal tax refunds;
- 3) The terminology used in the rule is being updated to identify the parties subject to the offsetting of refunds from "claimant" to "debtor" and the nature of the outstanding amount from "overpayment" to "debt"; and
- 4) A new stipulation that the department does not need to consider the merits of claim that a debt is not legally enforceable if the issue has already been adjudicated by a court of competent jurisdiction (in addition to the Office of Administrative Hearings and Employment Appeals Board).

The Employment Department requests public comment on whether other options should be considered for achieving the rule's substantive goals, while reducing the negative economic impact of the rule on business. The agency is holding a public hearing for this rule on Wednesday, August 23, 2017 from 2:00 p.m. - 4:00 p.m. in the Employment Department Auditorium (875 Union St NE, Salem, OR 97311). Anyone interested in providing the department feedback on the rule is welcome to attend the public hearing in person. If you are unable to

attend the hearing in person but want to provide comments on the rule, you have the option of calling the conference line at 888-850-4523 (Passcode # 440528). Written comments may also be submitted via e-mail to [OED\\_Rules@oregon.gov](mailto:OED_Rules@oregon.gov) by August 23, 2017 at 5:00 p.m. All comments received will be given equal consideration before the department proceeds with the permanent rulemaking

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.

<u>08-23-2017 5:00 p.m.</u>	<u>Cristina Koreski</u>	<u><a href="mailto:cristina.koreski@oregon.gov">cristina.koreski@oregon.gov</a></u>
Last Day ( <i>m/d/yyyy</i> ) and Time for public comment	Rules Coordinator Name	Email Address

\*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing accompanies this form.

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6-29-17 11:06 AM  
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Employment Department  
Agency and Division

471  
Administrative Rules Chapter Number

Align rule for offsetting employer debts through the federal Treasury Offset Program with state statute.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Amending OAR 470-030-0058

**Statutory Authority:**

ORS 657.610

**Other Authority:**

**Statutes Implemented:**

ORS 657.312

**Need for the Rule(s):**

Senate Bill (SB) 242, passed in the 2015 Legislative Session, and became law in June of 2015. The law expanded the Employment Department's authority to intercept the federal tax refunds of employers with delinquent unemployment insurance (UI) tax obligations through the federal Treasury Offset Program (TOP). The Employment Department is making changes to the rule for offsetting debts through TOP in order to be consistent with the statutory change.

**Documents Relied Upon, and where they are available:**

The enrolled version of SB 242 passed in the 2015 Legislative Session. A copy of the bill is available at <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB242/Enrolled> or from the agency.

Oregon Revised Statutes, available online at [www.oregonlegislature.gov](http://www.oregonlegislature.gov) or from the agency; and Oregon Administrative Rules, available online at:

[http://sos.oregon.gov/archives/Pages/oregon\\_administrative\\_rules.aspx](http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx) or from the agency.

**Fiscal and Economic Impact:**

The Employment Department does not anticipate any fiscal or economic impact from the changes to this rule, because the changes do not create any distinct impact separate from the change to statute in the 2015 Legislative Session.

**Statement of Cost of Compliance:**

**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

There is no cost for state agencies, units of local government, or the public to comply with this rule.

**2. Cost of compliance effect on small business (ORS 183.336):**

**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

Based on 2016 unemployment insurance (UI) tax data, approximately 96% of businesses in Oregon are considered small and cover a wide variety of business and industry types. The department currently has a total of 2,561 outstanding accounts for delinquent UI tax obligations for all businesses in Oregon. Based on the percentage of small businesses in Oregon subject to UI taxes, the department estimates that approximately 2,558 small businesses and types of business and industries with small business will be subject to rule. That number will change over time with the number of small businesses in Oregon subject to UI tax, and with the rate at which those small businesses timely pay their UI tax obligations.

**b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:**

There is no increase in costs for projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services, as a result of the adoption of this rule.

**c. Equipment, supplies, labor and increased administration required for compliance:**

There is no increase in costs for equipment, supplies, labor and increased administration required for compliance as a result of the adoption of this rule.

**How were small businesses involved in the development of this rule?**

Small businesses were not specifically involved in the development of this rule. However, the department will continue to seek input from small businesses during the public comment and public hearing process.

**Administrative Rule Advisory Committee consulted?: No**

**If not, why?:**

The department does not have an Administrative Rule Advisory Committee. However, as specified under ORS 657.695, the department does have an Employment Department Advisory Council which includes an equal number of employer and employee representatives. The department will continue to seek input from stakeholders during the public comment and public hearing stage, and seek input from the Employment Department Advisory Council.

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08-23-2017 5:00 p.m.	Cristina Koreski	cristina.koreski@oregon.gov
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Rule Caption: Align rule for offsetting of employer debts through the federal Treasury Offset Program with state statute

Purpose: The Employment Department is updating the language in the existing rule to be consistent with the changes to Oregon Revised Statutes 657.312 resulting from Senate Bill 242 (2015 Legislative Session).

Please note: **Boldfaced type** in an amended section is new language; *[italic and bracketed]* is existing rule language to be omitted.

471-030-0058

#### Offset of Unemployment Compensation Debt Through U.S. Treasury Offset Program

(1) The Oregon Employment Department may submit liquidated unemployment insurance overpayments **and delinquent taxes** for offset against federal tax refunds through the "Treasury Offset Program" under [31] 26 USC [3716(h)] **6402(f)** and 31 CFR 285.[6]8. For purposes of this rule, liquidated means legally enforceable because:

- (a) The liability is assessed by the department;
- (b) The department has made written demand for payment of the liability;
- (c) The [*claimant*] **debtor** is not in bankruptcy; and
- (d) All relevant appeal periods for contesting the liability have expired.

(2) Notice of intent to offset. Before submitting an unemployment insurance overpayment **or delinquent tax debt** to Financial Management Service, U.S. Treasury for offset against a federal refund, the Oregon Employment Department must send written notice of intent to offset to the [*claimant*] **debtor** by mail.

(3) Disagreement procedures. If a [*claimant*] **debtor** disagrees with the notice of intent to offset and wants reconsideration, the [*claimant*] **debtor** must submit a letter of disagreement within 60 days of the date shown on the notice of intent to offset. The [*claimant*] **debtor** must provide, and the department will limit consideration to, evidence that the [*overpayment*] **debt** scheduled for offset is not:

- (a) Past due; or
- (b) Legally enforceable.

(4) If the [*claimant*] **debtor** claims that the debt is not legally enforceable, the department will consider the merits of such a claim unless the issue has already been finally adjudicated by the Office of Administrative Hearings, [*or*] Employment Appeals Board, **or court of competent jurisdiction** in a proceeding to which the department is a party.

(5) Review of disagreement. For each letter of disagreement provided by the [*claimant*] **debtor**, the department will:

(a) Review evidence provided by the [*claimant*] **debtor**, and

(b) Remove [*claimant's*] **debtor's** name from the federal refund offset list for this debt if evidence supports the [*claimant's*] **debtor's** position that the debt is not past due or **is not** legally enforceable.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610, 657.155, 657.260 & SB 259 2013

Hist.: ED 2-2013(Temp), f. 8-22-13, cert. ef. 9-1-13 thru 2-26-14; ED 1-2014, f. 1-3-14, cert. ef. 2-23-14; ED 2-2014, f. 1-15-14, cert. ef. 2-23-14

Links:

Rules listing: <http://www.oregon.gov/EMPLOY/Agency/Pages/Pending-Rules.aspx>

The agency is holding a public hearing for this rule on Wednesday, August 23, 2017 from 2:00 p.m. - 4:00 p.m. in the Employment Department Auditorium (875 Union St NE, Salem, OR, 97311). Anyone interested in providing the department feedback on the rule is welcome to attend the public hearing in person. If you are unable to attend the hearing in person but want to provide comments on the rule, you have the option of calling the conference line at 888-850-4523 (Passcode # 440528). Written comments may also be submitted via e-mail to [OED\\_Rules@oregon.gov](mailto:OED_Rules@oregon.gov) by August 23, 2017 at 5:00 p.m. All comments received will be given equal consideration before the department proceeds with the permanent rulemaking.