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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
10/14/2019 10:40 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Align rule for offsetting non-tax debts through the federal Treasury Offset Program with statute

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/29/2019 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.

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Salem, OR 97311

Filed By:
Cristina Koreski
Rules Coordinator

HEARING(S)

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

DATE: 11/22/2019

TIME: 2:00 PM - 4:00 PM

OFFICER: David Genz

ADDRESS: Employment Department
Auditorium

875 Union St NE

Salem, OR 97311

SPECIAL INSTRUCTIONS:

888-850-4523 (Passcode # 440528)

NEED FOR THE RULE(S):

Senate Bill (SB) 259 was passed into law on April 18, 2013. SB 259 created the law, Oregon Revised Statute (ORS) 657.312, which provided the Employment Department with the authority to enter into an intergovernmental agreement with the federal government to offset against certain types of liquidated state debt moneys that the federal government owes to the debtor under certain conditions. Using the Treasury Offset Program (TOP), the federal government agency responsible for administering these offsets, the Bureau of Fiscal Service (BFS), began offsetting against federal tax refunds on behalf of the department in 2014. The BFS began using TOP to offset against non-tax payments including, but not limited to, federal vendor payments, to recover monies on behalf of states on January 1, 2019. Although the department currently has the authority to do this under ORS 657.312, the department is proposing to align our authority in rule with the statute.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate (SB) 259: <https://olis.leg.state.or.us/liz/2013R1/Downloads/MeasureDocument/SB259/Enrolled>. Oregon Revised Statutes (ORS), available online at www.oregonlegislature.gov, or from the agency; and Oregon Administrative Rules, available online at 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 external fiscal or economic impact due to the change in rule because the department has had the authority in statute to offset against federal non-tax payments since 2013.

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) There are no state agencies, units of local government, or members of the public likely to be economically affected by the rule.

(2)(a) It does not appear to the department that there are any small businesses currently subject to this rule.

(b) The department does not anticipate any change in expected reporting, record keeping and administrative activities and cost required to comply with the rule.

(c) The department does not anticipate any increase in costs of professional services, equipment supplies, labor and increased administration required to comply with the rule.

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

While the department did not consult with any specific small businesses on the proposed amendment to this rule, the department will seek input from small businesses during the public comment period and at the public hearing.

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

The department did not consult with an administrative rule advisory committee. The department opted not to conduct one because, as specified under Oregon Revised Statute (ORS) 657.695, the department has an Employment Department Advisory Council. By law, this council serves to assist in the effective development of policies and programs with respect to unemployment insurance and employment service and is composed of men and women representing employers and employees in equal numbers, and representatives of the public who shall elect their chairperson. The department will consult with the council prior to the filing of this proposed rulemaking and will continue to seek input from stakeholders during the public comment period and at the public hearing.

AMEND: 471-030-0058

RULE SUMMARY: The purpose of the amendment proposed by the department is to include "federal non-tax payments" to the existing type of payment in rule, federal tax payments, which may potentially be offset by the federal government to recover monies for liquidated unemployment insurance overpayments and delinquent taxes.

CHANGES TO RULE:

471-030-0058

~~Benefits and Claims~~-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 and federal non-tax payments through the "Treasury Offset Program" under 26 USC 6402(f) and 31 CFR 285.8. 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 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 or a federal non-tax payment, the Oregon Employment Department must send written notice of intent to offset to the debtor by mail.¶¶

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

(a) Past due; or¶¶

(b) Legally enforceable.¶¶

(4) If the 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, 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 debtor, the department will:¶¶

(a) Review evidence provided by the debtor, and¶¶

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

Statutory/Other Authority: ORS 657.610

Statutes/Other Implemented: ORS 657.610, 657.155, 657.260, SB 259 2013