

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 471
EMPLOYMENT DEPARTMENT

FILED
03/07/2019 9:45 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating Confidential Information Sharing Rule to Exempt the Internal Revenue Service from Audit Requirements

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/26/2019 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Cristina Koreski
503-947-1471
cristina.koreski@oregon.gov

875 Union St NE
Salem, OR 97311

Filed By:
Cristina Koreski
Rules Coordinator

NEED FOR THE RULE(S):

The Employment Department and the Internal Revenue Service (IRS) have an annual information exchange agreement that provides for the exchange of federal and state tax information between the two agencies, as well as confidential unemployment insurance (UI) information authorized for disclosure to the IRS under 20 CFR 603.5(e). When this information exchange agreement was due for renewal, the agency received conflicting advice from the U.S. Department of Labor (U.S. DOL) and the IRS as to whether or not Federal Register Vol. 71 No. 220 (Wednesday, November 15, 2006) allows for an exemption for the IRS, under 20 CFR 603.10(d), to the requirements for agreements to disclose UI information for purposes of tax administration. When both federal agencies were made aware of this contradicting information, the U.S. DOL made the determination that the IRS's safeguards adequately satisfy the confidentiality requirement of Section 303(a)(1) of the Social Security Act, and are, therefore, exempt from the audit and on-site inspection requirement. U.S. DOL has expressed that they intend to update the Federal Register to include an exemption for the IRS to the requirements of 20 CFR 603.10(d). The Employment Department must now amend Oregon Administrative Rule (OAR) 471-010-0125 to reflect that the IRS is exempt from audit requirements outlined in the rule when sharing confidential information.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

20 CFR 603 - FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM: CONFIDENTIALITY AND DISCLOSURE OF STATE UC INFORMATION <https://www.govinfo.gov/app/details/CFR-2012-title20-vol3/CFR-2012-title20-vol3-part603>

Federal Register Vol. 71 No. 220 (Wednesday, November 15, 2006): <https://www.gpo.gov/fdsys/pkg/FR-2006-11-15/pdf/06-9202.pdf>

Oregon Administrative Rules, available online at:

http://sos.oregon.gov/archives/Pages/oregon_administrative_rules.aspx, or from the agency.

FISCAL AND ECONOMIC IMPACT:

There is no fiscal impact as this rule change puts into rule the long standing practice of exempting the IRS from the audit requirements based on the safeguards they have in place to protect confidential information.

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

There is no impact on state agencies, units of local government or the public.

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

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

Small businesses and other industries will not be affected by this rule as it affects only the Employment Department and the Internal Revenue Service.

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 amending these rules.

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

There is no increase in costs for equipment, supplies, labor, or increased administration required for compliance as a result of amending these rules.

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

Small businesses were not involved in the development of the rule as it affects only the Employment Department and the Internal Revenue Service. However, small businesses will have an opportunity to comment on the rule during the public comment period.

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

The Employment Department does not have a Rule Advisory Committee. However, as specified under Oregon Revised Statutes (ORS) 657.695, the department does have an Employment Department Advisory Council which includes an

equal number of employer and labor representatives. The department will seek input from the council and external input during the public comment period.

AMEND: 471-010-0125

RULE SUMMARY: The Internal Revenue Service (IRS) is being listed as exempt from the audit requirements for entities that have access to Employment Department confidential information. The U.S. Department of Labor (U.S. DOL) has agreed that the safeguards the IRS has in place are adequate to appropriately protect confidential information that the Employment Department shares with the IRS.

CHANGES TO RULE:

471-010-0125

Customer Information and Disclosure: Audit Authority and Written Agreements With Entities Having Access to Employment Department Information ¶

(1) All written agreements with entities other than the Internal Revenue Service and "Hosted Workers" that have access to Employment Department information shall stipulate that, no less than once a year, the entity shall conduct an audit of the processes by which the entity implements the agreement(s). The audits shall include, but are not limited to:¶

(a) How access to Employment Department information is granted;¶

(b) How access to Employment Department information is controlled;¶

(c) Why access to Employment Department information is granted, based on OAR 471-010-0105 & ORS 657.665;¶

(d) Who is authorized to grant & revoke access to Employment Department information;¶

(e) What specific programs within the entity need access to Employment Department information;¶

(f) Which specific positions within the programs referenced in OAR 471-010-0125(1)(e) need access to Employment Department information;¶

(g) What specific information within the Employment Department information is needed;¶

(h) Whether access to Employment Department information is granted to contractors, who the contractor is, and why the contractor is being given access; and¶

(i) What "informed consent" if any, the entity uses when gathering information from its customers.¶

(2) These audits shall subsequently be submitted to the Employment Department, who shall have final authority to decide compliance with the procedures in OAR 471-010-0125(1).

Statutory/Other Authority: ORS 657.610

Statutes/Other Implemented: ORS 657.665