



PERMANENT ADMINISTRATIVE ORDER

MCTD 28-2020

CHAPTER 740
DEPARTMENT OF TRANSPORTATION
MOTOR CARRIER TRANSPORTATION DIVISION

FILED
07/29/2020 7:46 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Waiver or reduction of charges and penalties assessed in motor carrier weight-mile tax audits

EFFECTIVE DATE: 07/29/2020

AGENCY APPROVED DATE: 07/15/2020

CONTACT: Howard Russell	MCTD Safety Compliance	Filed By:
503-373-1979	3930 Fairview Industrial Drive SE	Lauri Kunze
howard.h.russell@odot.state.or.us	Salem, OR 97301	Rules Coordinator

ADOPT: 740-055-0230

NOTICE FILED DATE: 05/05/2020

RULE SUMMARY: Rule makes provision for charges and penalties assessed in a weight-mile audit to be waived.

CHANGES TO RULE:

740-055-0230

Discretionary Waiver or Reduction of Charges and Penalties Assessed in Motor Carrier Weight-Mile Tax Audits

(1) The following charges and penalties assessed in motor carrier weight-mile tax audits may be waived or reduced under this rule at the discretion of the Department:¶

(a) Late payment charges assessed pursuant to ORS 825.490(1), 825.490(2), or 825.490(3);¶

(b) Penalties assessed pursuant to ORS 825.490(5), 825.490(6) or 825.494(3);¶

(c) Interest charges assessed pursuant to ORS 825.490(4) or 825.494(2).¶

(2) To qualify for a waiver or reduction, a motor carrier must make a written request for a waiver or reduction according to ORS 825.496(2). The motor carrier must explain the reasons for the failure to file, to file timely, or to pay amounts required by law, and identify the criteria that qualifies it for a reduction or waiver.¶

(3) Requesting a waiver or reduction does not temporarily stop the taxes from being due. Payment is due within 30 days after the service of the notice. A motor carrier's failure to pay within that time will result in an additional assessment of a penalty equal to 10 percent of the amount of the tax due, which cannot be waived or reduced by the Department.¶

(4) In exercising its discretion under ORS 825.496(2) to waive or reduce charges or penalties described in section (1), the Department shall consider:¶

(a) The facts of each circumstance on a case-by-case basis;¶

(b) Whether the reduction or waiver is in the best interests of the Department. The Department may waive or reduce any or all of the charges and penalties described in section (1) of this rule if it determines that doing so is in the Department's best interests. Notwithstanding any other consideration, the Department may refuse to waive or reduce any penalty or charge described in section (1) if the Department determines that the reduction or waiver is not in the Department's best interests;¶

(c) Whether the motor carrier has cooperated in the audit process. The Department may not waive or reduce any

charges or penalties described in section (1) of this rule if the auditor evaluates the motor carrier as "uncooperative" in the audit. A motor carrier cooperates with the audit by:

(A) Willingly providing requested records and information to the auditor;

(B) Maintaining continued communication during the audit, including returning all phone calls from the auditor and all emails that require a response and answering the auditor's questions; and,

(C) Generally helping the auditor to complete the audit.

(d) Whether the motor carrier has demonstrated a good payment history. A good payment history means that the carrier timely filed at least 75 percent of its tax reports during the current audit period and the tax assessed in the current audit is 15 percent or less of the total tax reported during that period. If the Department determines that the motor carrier has a good payment history, it may reduce or waive late payment charges;

(e) Whether the error was due to a recent policy, rule, or statutory change. If the Department determines that this circumstance caused the failure, it may reduce or waive penalty charges;

(f) Whether the error was due to reasonable confusion about an area of law that the motor carrier was unfamiliar with because application of the law does not ordinarily arise in the normal course of the industry's operations. If the Department determines that this circumstance caused the failure, it may reduce or waive penalty charges;

(g) Whether the failure was due to a unique error that is unlikely to be repeated. If the Department determines that this circumstance caused the failure, it may reduce or waive penalty charges;

(h) Whether the failure was inadvertent, meaning due to a mistake or accident. However, the Department may reduce or waive penalty charges based on inadvertence only in unusual and compelling circumstances. The Department expects motor carriers to conduct their business in an orderly and professional manner. In addition, the Department may reduce or waive late payment charges for errors caused by inadvertence only if the inadvertence caused the degree of error in the audit to exceed 15 percent.

(A) Failures that may be considered inadvertent include, but are not limited to:

(i) Errors due to circumstances beyond the reasonable control of the motor carrier, such as when a lessor operated on credentials without the knowledge of the motor carrier after the lease has been broken; and,

(ii) Errors that the Department did not cause but to which it may have contributed.

(B) Errors caused by the following circumstances will not be considered inadvertent:

(i) Personnel turnover at the motor carrier;

(ii) Reliance on computerized mileage programs;

(iii) Reliance on third parties (other than the Department);

(iv) Lack of awareness of reporting requirements;

(v) Mismanagement of business operations; or,

(vi) Lack of control over actions of drivers (employees or owner/operators).

(i) Whether the failure was caused solely by the Department providing incorrect information to the motor carrier and upon which the motor carrier reasonably relied. If the Department determines that this circumstance caused the failure, the Department may waive any late payments, interest, and penalties.

Statutory/Other Authority: ORS 184.619, 825.496

Statutes/Other Implemented: ORS 825.474, 825.490, 825.494