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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 845
OREGON LIQUOR AND CANNABIS COMMISSION

FILED

05/30/2024 2:59 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: The amendments outline the requirements retailers must follow to obtain an extension for tax compliance.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/28/2024 12:00 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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Filed By:
Nicole Blossie
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HEARING(S)

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

DATE: 06/17/2024

TIME: 1:00 PM - 2:00 PM

OFFICER: Nicole Blossie

REMOTE HEARING DETAILS

PHONE NUMBER: 323-553-3576

SPECIAL INSTRUCTIONS:

Please visit https://www.oregon.gov/olcc/Pages/public_meetings.aspx for the hearing link and login.

NEED FOR THE RULE(S)

In 2023, the Oregon Liquor and Cannabis Commission (OLCC) and Department of Revenue (DOR) were directed by Governor Kotek to take steps to require proof of tax compliance for marijuana retailers as part of the renewal, change of ownership, addition of license holders, and/or new licensure process. Since that time, the OLCC has encountered a subset of licensees that have extenuating circumstances preventing them from obtaining certificates of tax compliance within the timeframes currently allowed in rule. Licensees may be facing deaths in the family, pending legal actions, or other technical/paperwork delays beyond their control, but are otherwise able to demonstrate an acceptable level of tax compliance.

In response to these situations, the OLCC passed a temporary rule to grant relief only in specific situations where the licensee is in compliance with marijuana taxes and diligently trying to obtain a certificate of compliance while working through other tax issues. These amendments temporarily provided the OLCC flexibility to allow additional time that will prevent the unnecessary closing of an otherwise compliant businesses. A licensee applying for an extension would need to meet specific requirements and provide proof that they are working to obtain their certificate of compliance. The OLCC is not anticipating granting such extensions frequently and intends to continue requiring strict compliance in

most cases, but needs the flexibility to allow for case-by-case circumstances, given that the process creates unique situations for individual licensees. This rulemaking makes the temporary rules permanent, with some minor changes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

OLCC rulemaking files (available upon request from the OLCC)

Directive from Governor Kotek: <https://www.oregon.gov/newsroom/pages/NewsDetail.aspx?newsid=203545>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

At this time, the Commission has no data to suggest that this rule will impact racial equity in the state.

FISCAL AND ECONOMIC IMPACT:

This statement takes into account the fiscal impact on (a) Marijuana licensees; (b) Local Government; (c) State Agencies; and (d) the Public.

(a) Marijuana Licensees: The Commission expects the proposed rule amendments to have a positive impact upon marijuana retail licensees that have extenuating circumstances preventing them from obtaining certificates of tax compliance within the timeframes currently allowed in rule. Licensees may be facing deaths in the family, pending legal actions, or other technical/paperwork delays beyond their control, but are otherwise able to demonstrate an acceptable level of tax compliance.

(b) Local Government: The Commission expects the proposed amendments to have neutral impact upon local governments, as these amendments do not impact local governments.

(c) State Agencies: The Commission expects the proposed amendments to have an impact upon the Department of Revenue as licensees may reach out and require service to work through complex tax issues.

The Oregon Liquor and Cannabis Commission forecasts an impact to the agency, as it also will need to work with and follow-up with licensees facing extenuating circumstances.

(d) The Public. The Commission does not anticipate the proposed rule amendments will have an impact on the public.

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)):

The Commission anticipates no economic impact upon local government to comply with the proposed amendments.

The Commission expects the proposed amendments to have an impact upon the Department of Revenue as licensees may reach out and require service to work through complex tax issues. The Oregon Liquor and Cannabis Commission forecasts an impact to the agency, as it also will need to work with and follow-up with licensees facing extenuating circumstances.

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

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

The Commission estimates that the proposed amendments will have a positive impact upon small business (i.e. marijuana retailers). Specifically, the amendments enable licensees to ask the Commission for a temporary extension while they work with the Department of Revenue to obtain a tax compliance certificate.

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

Marijuana retailers may have an administrative impact upon their businesses while coordinating with both the Department of Revenue and the Oregon Liquor and Cannabis Commission to gain tax compliance and subsequently obtain a certificate of compliance.

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

The Commission does not anticipate any increased costs for equipment or supplies to comply with these amendments. However, marijuana retailers may have an administrative impact upon their businesses while coordinating with both the Department of Revenue and the Oregon Liquor and Cannabis Commission to gain tax compliance and subsequently obtain a certificate of compliance.

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

On May 21, 2024, the Oregon Liquor and Cannabis Commission held a Rules Advisory Committee meeting to assist in the development of these proposed changes and invited representatives of small businesses impacted by these rules, including licensees, retailers and permit holders.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 845-025-1190

RULE SUMMARY: This rule describes license processes and requirements for license renewal. The amendments the requirement for retailer licensees to submit DOR certificate of tax compliance for each applicant with their annual renewal application; grant 90 day extensions for retailer licensees to obtain their certificates of tax compliance and reconsiderations of incomplete renewal applications.

CHANGES TO RULE:

845-025-1190

License Renewal ¶¶

(1) A licensee must annually submit a renewal application and the applicable fees regardless of whether the Commission has acted on a previous renewal application. A research certificate holder must submit a renewal application and the applicable renewal fees every three years, regardless of whether the Commission has acted on a previous renewal application.¶¶

(2) For purposes of this rule "license expiration date" means:¶¶

(a) The date of expiration on a license; or¶¶

(b) If the Commission has not acted on a pending license renewal application, the date the pending license would expire if the application had been approved.¶¶

(3) Except as described in section (9) of this rule, a licensee who annually and timely submits a renewal application as described in section (8) of this rule on or before the license expiration date may continue to operate, pending a decision by the Commission.¶¶

(4) A licensee who fails to annually and timely submit a renewal application as described in section (8) of this rule on or before the license expiration date must stop engaging in any licensed activity when the license expires.¶¶

(5) Except as described in section (9) of this rule, if a licensee annually submits a renewal application as described in section (8) of this rule within 30 days after the license expiration date, the licensee may resume operation pending a decision by the Commission on the renewal application.¶¶

(6) The Commission will not accept a renewal application that is received more than 30 days after the license

expiration date. In this circumstance, a person:¶

(a) May submit a new application, including the application fee, license fee, documents, and information required by the Commission; and¶

(b) Must not engage in any licensed activity unless and until granted a new license by the Commission.¶

(7) A person who engages in any activity that would require a license but who is not licensed or who is not otherwise authorized to operate under this rule may be subject to administrative and criminal sanctions.¶

(8) For purposes of this rule, in order for a renewal application to be considered submitted all of the following must be received by the Commission:¶

(a) A fully completed renewal application signed by an applicant; and¶

(b) The appropriate renewal application and license and renewal fees described in OAR 845-025-1060 and 845-025-1070.¶

(9) Certificates of tax compliance.¶

(a) A retailer licensee that submits a renewal application must also submit a certificate of tax compliance issued no earlier than 90 calendar days prior to the expiration date listed on the current license certificate for each applicant as that term is described in OAR 845-025-1045.¶

(b) Temporary Extensions.¶

(A) A retailer licensee that has submitted a renewal application but has not submitted all certificates of tax compliance may continue to operate no more than 90 calendar days following the expiration date listed on the current license certificate, pending a decision by the Commission.¶

~~(e) Unless the Commission grants additional extensions under subsection (9)(b)(B) of this rule.¶~~

(B) A retailer licensee may request additional time to obtain all required certificates of tax compliance, which the Commission will consider on a case-by-case basis. The request must be made in writing and made at least seven calendar days prior to the expiration of the timeframe set forth in (9)(b)(A) of this rule, and must include, at a minimum documentation that:¶

(i) Verifies the retailer licensee has corresponded promptly and accurately to all the requests made by the Department of Revenue; ¶

(ii) Explains the reasons the retailer licensee has not obtained all certificates of compliance prior to expiration of the timeframe set forth in this subsection; and¶

(iii) Substantiates that the retail licensee is compliant with all marijuana tax payments due to Department of Revenue at the time of the request.¶

(c) Unless granted an extension under this section, if a retailer licensee fails to provide all certificates of tax compliance as required under this rule within 90 calendar days of the expiration date listed on the current license certificate, the Commission shall consider the renewal application to be incomplete and the license to be expired as of the expiration date listed on the current license certificate. The Commission shall notify the applicant in writing that the application is incomplete.¶

(d) For the purposes of this section, if the Commission has not acted on the retailer licensee's previous renewal application, "the expiration date listed on the current license certificate" means the license expiration date prior to the submission of the most recent renewal application.¶

(10) The Commission may require a licensee with a pending renewal application to submit forms, documents, and information described in OAR 845-025-1030 in order to complete an investigation of a renewal application. Failure to submit fees, forms, documents or information requested by the Commission under this section within a time period prescribed by the Commission may result in denial of the renewal application.¶

(11) If the Commission approves a renewal application, the Commission must notify the licensee in writing that the renewal application has been approved and provide the licensee with proof of licensure that includes a unique license number, the effective date of the license, date of expiration, and a description of premises for which the license was issued. The renewed license is effective for a license year beginning the date following the license expiration date for the previous license year.¶

(12) An applicant may submit a written request for reconsideration of a decision that a renewal application is incomplete. Such a request must be received by the Commission within ten days of the date the incomplete notice was sent to the applicant. The Commission shall give the applicants the opportunity to be heard if an application is rejected. A hearing under this section is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.¶

(13) Except as provided in OAR 845-025-1060 (6), the Commission will refund a renewal license fee to an applicant whose application is not timely submitted and whose license expires, within 180 calendar days of when the license renewal fee was paid.

Statutory/Other Authority: ORS 475C.017, 475C.065, 475C.085, 475C.093, 475C.097, 475C.548

Statutes/Other Implemented: ORS 475C.033