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

CHAPTER 170
OREGON STATE TREASURY

FILED
02/16/2019 8:32 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Oregon Retirement Savings Program Amendments to Allow Presumption of Employer Exemption

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/22/2019 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 97301

Filed By:
Kevin Willingham
Rules Coordinator

HEARING(S)

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

DATE: 03/19/2019

TIME: 9:00 AM - 10:00 AM

OFFICER: Kimberly Olson

ADDRESS: Oregon State Treasury
350 Winter St NE, Suite 100
Salem, OR 97301

SPECIAL INSTRUCTIONS:

Interested parties are welcome to attend in person or call-in to the hearing. The call-in information will be posted on the Oregon State Treasury Retirement Savings Program website (<http://www.oregon.gov/treasury/ORS/P/Pages/ORSP-Rulemaking.aspx>) in advance of the hearing. We request interested parties wishing to call-in and provide oral comment to contact Kim Olson, Hearings Officer, in advance of the hearing. The Hearings Officer will enter the interested party into a queue so we can accept comments from both those in the room and on the phone in an orderly fashion.

NEED FOR THE RULE(S):

Creates new rules and modifies existing rules for the Oregon Retirement Savings Program. The rules make permanent

temporary rules put in place in October 2018, which allow the Program to presume Employers exempt using the federal Form 5500. The rules also redirect Employees to notify the Program Administrator when changing contribution rates and ceasing contributions, rather than notifying the Participating Employer.

These revisions are necessary to make certain adjustments and additions to the existing rules. The rules allow the Program to use the federal Form 5500 to presume certain Employers exempt from facilitating the Program, and redirect Employees to the Program Administrator to make contribution changes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- 1) Rulemaking advisory committee materials, available here: <http://www.oregon.gov/retire/Pages/Rules.aspx>
- 2) Oregon Market Research Report, Center for Retirement Research at Boston College, July 2016. <http://www.oregon.gov/treasury/ORSP/Documents/ORSP%20Market%20Analysis%2013JULY2016.pdf>
- 3) Oregon Retirement Savings Plan website. <https://www.oregonsaves.com/>
- 4) Oregon Retirement Savings Board website. <http://www.oregon.gov/retire/Pages/index.aspx>

FISCAL AND ECONOMIC IMPACT:

The Program convened a rulemaking advisory committee to discuss the fiscal impacts of the proposed rules. The committee agreed that the current structure of the Program minimizes costs to small businesses. In several cases, the committee agreed that the rule revisions could reduce costs to small businesses by reducing the time Employers and Exempt Employers must spend on the exemption process, as well as redirecting Employee contribution change requests from the Facilitating Employer to the Program Administrator.

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) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

The Program will have no impact on most state agencies; however, there is a financial impact to OST to administer the Program. These costs have been addressed through legislative appropriations in 2015 and 2017. The Program is authorized to collect a fee on Program assets to pay for administrative costs.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

There are approximately 53,000 small businesses in Oregon that will be subject to the rules.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

Every Oregon Employer will either register and enroll its Employees; file a Certificate of Exemption; or receive a presumed exemption from the Program. Oregon Employers facilitating the Program are estimated to spend an aggregate 4-5 hours on these activities at the outset, plus a small number of minutes per Employee. On an ongoing basis, it is estimated that Employers will spend about 30 minutes per pay period including the Program deduction in their payroll activity, and about an hour per month on records retention and any other potential activities related to the Program.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Additional equipment or supplies are not necessary to comply with this statute or rules.

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

The proposed rules were drafted with the assistance of a rulemaking advisory committee comprised of business association representatives whose members will be impacted by the rule change.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

170-080-0010, 170-080-0015, 170-080-0020, 170-080-0030

AMEND: 170-080-0010

RULE SUMMARY: Amends definition of "Exempt Employer"

CHANGES TO RULE:

170-080-0010

Administration ¶¶

(1) Policy. The Board intends that, consistent with ORS Section 178.210(1)(p), the Program be operated, and these rules be construed, in a manner consistent with applicable guidance provided by the U.S. Department of Labor relating to payroll deduction IRA programs that are not pension plans under Title I of the Employee Retirement Income Security Act (ERISA) including, but not limited to, 29 CFR Sections 2509.99-1, 2510.3-2(d). ¶¶

(2) Definitions. All capitalized terms used in these rules shall be as defined in the Act. Where a conflict is found to exist between a definition stated in these rules and the corresponding definition in the Act, the statutory definition shall apply. As used in these rules, unless the context indicates otherwise: ¶¶

(a) "Act" means ORS 178.200 to 178.245, as amended from time to time. ¶¶

(b) "Automatic Contribution Plan" means a program that allows a Participating Individual to contribute funds to a Program Roth or Traditional IRA at regular intervals through electronic transmission. Contributions shall be deemed to be made at regular intervals if they are made at least quarterly. ¶¶

(c) "Beneficiary" means the individual(s), person(s), or entity(ies) entitled to receive the proceeds of a Program

IRA.¶

(d) "Board" means the Oregon Retirement Savings Board established in ORS 178.200(1).¶

(e) "Certificate of Exemption" means a truthful statement by an authorized representative of an Employer that it offers a Qualified Plan to some or all of its Employees. ¶

(f) "Client Employer" means a client of a Worker Leasing Company that obtains services of Leased Workers as defined in OAR 436-050-0005. ¶

(g) "Code" means the Internal Revenue Code and any regulations, rulings, announcements, or other guidance issued thereunder, as amended. ¶

(h) "Compensation" means W-2 wages, as defined in 26 CFR 1.415(c)-2(d)(4).¶

(i) "Distribution" means any distribution of funds from an IRA established pursuant to the Program.¶

(j) "Employee" means any person 18 years of age and older working in an Employment, as defined herein.¶

(k) "Employer" means any employing unit which employs one or more individuals in an Employment in each of 18 separate weeks during any calendar year, or in which the employing unit's total payroll during any calendar quarter amounts to \$1,000 or more.¶

(l) "Employer of Record" means the business associated with the Business Identification Number (BIN), or if unavailable, the Federal Employer Identification Number (FEIN), listed on an Employee's or Participating Employee's W-2.¶

(m) "Employment" means any employment subject to ORS Chapter 657 provided that, notwithstanding the exemptions from the definition of Employment contained in Chapter 657, for the purposes of the Program, Employment includes: ¶

(A) Agricultural labor, as defined in ORS 657.045; and¶

(B) Commissioned positions, as defined in ORS 657.085, 657.087(1) and (2), and 657.090.¶

(n) "Enrollment Date" means either:¶

(A) the Initial Enrollment Date, for Participating Employees hired on or before the Facilitating Employer's required Registration Date; or¶

(B) a date not more than 60 days following start of employment, for Participating Employees hired after the Facilitating Employer's required Registration Date. ¶

(o) "Executive Director" means the Executive Director of the Oregon Savings Network.¶

(p) "Exempt Employer" means an Employer who offers a Qualified Plan to some or all of its Employees; and¶

(A) has filed a valid and current Certificate of Exemption pursuant to procedures established by the Board; or¶

(B) has received a notice of presumed exemption, as provided in OAR 170-080-0020.¶

(q) "Facilitating Employer" means an Employer whose Registration Date has passed and who is not an Exempt Employer.¶

(r) "Initial Enrollment Date" means the date not more than 60 days after the Facilitating Employer's required Registration Date, by which a Facilitating Employer must initially enroll its Participating Employees.¶

(s) "IRA" means the individual retirement account established by a Participating Individual or by or for a Participating Employee under the Program.¶

(t) "IRS" means the Internal Revenue Service of the United States Treasury Department.¶

(u) "Minimum Initial Contribution" means the minimum Non-Payroll Contribution required for a Participating Individual to establish a Program IRA. ¶

(v) "Non-Payroll Contributions" means contributions other than Payroll Deduction Contributions, rollover contributions, or transfer contributions.¶

(w) "Number of Employees" means the number of employees as submitted on the Employer's Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, in accordance with OAR 170-080-0015.¶

(x) "Participating Employee" means any person who is an Employee of a Facilitating Employer, enrolled in the Program, maintains a Program IRA and is not a Participating Individual. ¶

(y) "Participating Individual" means any person who is in the Program independent of an employment relationship with a Facilitating Employer, maintains a Program IRA, and is not a Participating Employee. ¶

- (z) "Payroll Date" means the date that an Employee's Compensation is paid to the Employee by the Employer through the payment of cash, issuance of a check, electronic funds transfer or other method. ¶¶
- (aa) "Payroll Deduction Contributions" means contributions made by a Participating Employee or Participating Individual pursuant to a payroll deduction. ¶¶
- (bb) "Program" means the Oregon Retirement Savings Program established by the Board pursuant to ORS 178.205(1). ¶¶
- (cc) "Program Administrator" means a third party administrator chosen by the Board to assist in carrying out the requirements of the Act. ¶¶
- (dd) "Qualified Plan" means a retirement plan qualified under the Code section 401(a), section 401(k), section 403(a), section 403(b), section 408(k), section 408(p), section 413(c), section 414(f), or a governmental plan qualified under section 457(b) of the Code. For purposes of this rule, a payroll deduction IRA program as defined in 29 CFR 2510.3-2(d) is not a Qualified Plan. ¶¶
- (ee) "Registration Date" means, for each Employer, the date by which the Employer is required to register with the Program or file a Certificate of Exemption, in accordance with OAR 170-080-0015. ¶¶
- (ff) "Roth IRA" means an individual retirement account as defined in Code section 408A. ¶¶
- (gg) "Standard Elections" means the default Program elections applicable to a Participating Employee who has not opted for different elections, as specified in OAR 170-080-0030. ¶¶
- (hh) "Target Date Fund" means a professionally-managed fund containing a mix of investments that invests based on the employee's age and/or projected retirement date. ¶¶
- (ii) "Traditional IRA" means an individual retirement account as defined in Code section 408(a). ¶¶
- (jj) "Worker Leasing Company" (also known as a Professional Employer Organization or PEO) means a person who provides workers, by contract and for a fee, to work for a client and is licensed as a Worker Leasing Company by the Oregon Department of Consumer and Business Services.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0015

RULE SUMMARY: Clarifies that an Employer who has received a notice of presumed exemption is not required to take further action. Clarifies the registration date for an Exempt Employer that ceases to offer a Qualified Plan to some or all of its Employees.

CHANGES TO RULE:

170-080-0015

Employer Registration and ~~Employee Enrollment~~ ¶

(1) Registration ¶

(a) ~~On or before the Registration Date~~ Except as provided in subsection (e), each Employer shall register with the Program or file a Certificate of Exemption: on or before the Registration Date. ¶

(b) Unless otherwise permitted by the Program Administrator, the Registration Date for an Employer shall be as follows: ¶

(A) An Employer employing one hundred (100) or more Employees: November 15, 2017 ¶

(B) An Employer employing at least fifty (50) but no more than ninety-nine (99) Employees: May 15, 2018 ¶

(C) An Employer employing at least twenty (20) but no more than forty-nine (49) Employees: December 15, 2018 ¶

(D) An Employer employing at least ten (10) but no more than nineteen (19) Employees: May 15, 2019 ¶

(E) An Employer employing at least five (5) but no more than nine (9) Employees: November 15, 2019 ¶

(F) Client Employers, as defined in 170-080-0010: November 15, 2019 ¶

(G) An Employer employing four (4) or fewer Employees: May 15, 2020 ¶

(c) In determining the Number of Employees for the purposes of this section, Employers shall use data as submitted on the 2016 4th quarter Oregon Quarterly Tax Report (Form OQ): Number of covered workers for Unemployment Insurance, except under the following circumstances: ¶

(A) An Employer who first meets the definition of Employer after January 1, 2017 will use the number of employees submitted on the Employer's most recently filed Form OQ; ¶

(B) An Employer with no Employees reported on Form OQ will have a Registration Date of May 15, 2020; or ¶

(C) At the Program Administrator's discretion, an Employer with a valid business reason may use data from a more recent Form OQ. ¶

(d) To register with the Program, a Facilitating Employer shall use the internet portal established by the Program Administrator to provide the following information: ¶

(A) Employer name and assumed business name, if any; ¶

(B) Employer Identification Numbers (Federal Employer Identification Number and Business Identification Number); ¶

(C) Employer mailing address; ¶

(D) Name, title, telephone number and email address of an individual designated by the Employer as the Program's point of contact; ¶

(E) Number of Employees; and ¶

(F) Any other information reasonably required by the Program for the purposes of administering the Program. ¶

(e) An Employer who received a notice of presumed exemption from the Program Administrator, as specified in OAR 170-080-0020, is not required to take any further action as long as it continues to offer a Qualified Plan to some or all of its Employees. ¶

(f) New Employers: the Registration Date for an Employer who first meets the definition of Employer after July 1, 2017, shall be the later of: ¶

(A) the date specified in subsection (1)(b) above, or ¶

(B) 90 days after the Employer first meets the definition of Employer. ¶

(fg) The Registration Date for an Exempt Employer that ceases to offer a Qualified Plan to some or all of its Employees shall be the later of: ¶

(A) the date specified in subsection (1)(b) above, or ¶

(B) 90 days after the Exempt Employer ceases to offer a Qualified Plan to some or all of its employees.

(h) A Facilitating Employer who lacks access to the internet may register with the Program by alternate means established by the Program Administrator.

(2) Employee Enrollment through a Facilitating Employer

(a) On or before the Initial Enrollment Date, and on or before the Enrollment Date for each subsequently hired Employee, a Facilitating Employer shall enroll its Employees using the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator. The Facilitating Employer shall provide the following information for each Employee no more than 30 days after the Registration Date (for Employees hired on or before the Registration Date) and no more than 30 days following the start of Employment (for Employees hired after the Registration Date):

(A) Full legal name;

(B) Social security number or taxpayer ID number;

(C) Date of birth;

(D) Mailing address;

(E) Employee's designated email address; and

(F) Any other information reasonably required by the Program for the purposes of administering the Program.

(b) In order to allow for Employees to establish an IRA through an automatic enrollment process, the Board shall establish procedures with the Program Administrator for the execution or adoption of such documents as are necessary or appropriate to establish an IRA for such Employee. If the Employee has not opted out after notice of the opportunity to opt out was sent to the Employee using the contact information on file with the Program, and the opt-out period has lapsed, then an IRA will be established for such Employee pursuant to directives and procedures established by the Board.

(c) Automatic Employee enrollment occurs 30 days after the Facilitating Employer provides the information in OAR 170-080-0015(2)(a), unless the Employee and Facilitating Employer agree to an earlier date.

Statutory/Other Authority: ORS 178.200-178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0020

RULE SUMMARY: Adds that the Program Administrator will look at federal Form 5500 filings and may send notice of presumed exemption to Employers identified as offering a Qualified Plan to some or all of their Employees. Clarifies the length of validity of the presumed exemption and clarifies what an Employer or Exempt Employer must do if they stop offering a Qualified Plan to some or all of their Employees.

CHANGES TO RULE:

170-080-0020

Employer Exemptions ¶¶

(1) An authorized representative of an Employer may file a Certificate of Exemption with the Program by certifying, through the Program Administrator's internet portal or other means of data transmittal specified and validated by the Program Administrator, that the Employer offers a Qualified Plan to some or all of its Employees.

¶

(2) A Certificate of Exemption is valid for three (3) years from the date the Employer files the Certificate with the Program Administrator, so long as the Employer continues to offer a Qualified Plan to some or all of its Employees. A Certificate of Exemption may be renewed by following a process of recertification to be established by the Board not later than December 31, 2019. ¶

(3) The Program Administrator shall, from time to time, compare Form 5500 (Annual Return/Report of Employee Benefit Plan) filings with the database of Employers and Exempt Employers. ¶

(a) For an Employer identified as offering a Qualified Plan to some or all of its Employees, or an Exempt Employer identified as continuing to offer a Qualified Plan to some or all of its Employees, the Program Administrator may send written notice of presumed exemption from the Program. ¶

(b) If the Program Administrator determines that the Employer or Exempt Employer no longer offers a Qualified Plan to some or all of its Employees, or is not identified as having a current Form 5500 on file with the U.S. Department of Labor, the Program Administrator may send written notice directing the Exempt Employer to either file a Certificate of Exemption or register with the Program. ¶

(4) The exemption of an Exempt Employer that received a notice of presumed exemption is valid so long as the Exempt Employer continues to offer a Qualified Plan to some or all of its Employees. If the Employer ceases to offer a Qualified Plan to some or all of its Employees, it is required to notify the Program Administrator and register with the Program on or before the Registration Date, as listed in this OAR 170-080-0015.

Statutory/Other Authority: ORS 178.200 to 178.245

Statutes/Other Implemented: ORS 178.200-178.245

AMEND: 170-080-0030

RULE SUMMARY: Instructs the Participating Employee to notify the Program Administrator to change contribution elections or cease contributions. Instructs an Employee not wishing to participate in the Program using the Standard Elections to notify the Program Administrator.

CHANGES TO RULE:

170-080-0030

Standard and Alternate Elections for Contributions; Automatic Increases; Ceasing Contributions; Requesting Participation ¶

(1) Standard Elections ¶

(a) An Employee who has not provided notice as specified in this section shall participate using the following Standard Elections:¶

(A) Contribution to the Program at an initial rate of 5% of Compensation;¶

(B) Auto-escalation at the rate of an additional 1% of Compensation each year until a maximum of 10% is reached;¶

(C) Investments:¶

(i) The first \$1,000 in contributions to be invested in a capital preservation investment as selected by the Board;¶

(ii) All subsequent contributions to be invested in a Target Date Fund; and¶

(D) The Program account will be a Roth IRA and contributions will occur on a post-tax basis.¶

(2) Alternate Elections¶

(a) An Employee who does not wish to participate using the Standard Elections shall notify the ~~Facilitating Employee~~ Program Administrator, in a form or format established by the Program, and within the 30 days prior to their Enrollment Date, that:¶

(A) The Employee wishes to participate in the Program: ¶

(i) at an initial contribution rate different from the Standard Elections, which shall be a percentage of available Compensation expressed as any whole number (i.e. three (3) percent but not three and one-half (3.5) percent). The minimum contribution rate is 1% and the maximum contribution rate is 100% of available Compensation, up to the IRS annual contribution limits; or¶

(ii) at an initial contribution rate different from the Standard Elections, expressed as a specific whole dollar amount. The Program Administrator will establish the minimum contribution. The maximum contribution rate is 100% of available Compensation, up to the IRS annual contribution limits; or ¶

(iii) at an initial contribution rate consistent with the Standard Elections but without auto-escalation; or ¶

(iv) at an initial contribution rate different from the Standard Elections and without auto-escalation.¶

(B) The Employee is opting out of the Program.¶

(b) A Participating Employee may change contribution elections by notifying the ~~Facilitating Employee~~ Program Administrator of the change request, in a form or format established by the Program. This change shall be effected on the Participating Employee's payroll as soon as administratively practicable, but within 30 days of receipt of a notice of change. Employers may limit the processing of contribution election changes to one change per month per Participating Employee.¶

(c) An Employee who wishes to select an investment option other than that provided by the Standard Elections shall notify the Program Administrator, in a form or format established by the Program, that the Employee wishes to participate in the Program by investing future contributions directly into another fund or funds offered by the Program, which selection shall be effected as soon as administratively practicable.¶

(d) A Participating Employee may change investment elections for any portion of the balance of the Program by notifying the Program Administrator of a requested change in investment elections, either in writing, electronically, or in any other form permitted by the IRS, to be effected as soon as administratively possible.¶

(e) An Employee who wishes to select a Traditional IRA shall notify the Program Administrator, in a form or format established by the Program, that the Employee wishes to participate using a Program Traditional IRA. ¶

(f) The Facilitating Employer will process Program Traditional IRA contributions on a post-tax basis.¶¶

(3) Ceasing Contributions or Requesting Participation¶¶

(a) A Participating Employee may cease contributions to the Program by notifying the ~~Facilitating Employe~~
Program Administrator of intent to cease making contributions and revoking the authorization of the Facilitating Employer to make contributions on their behalf. The Participating Employee will give notice of this revocation, in a form or format established by the Program, to the ~~Facilitating Employe~~Program Administrator at least 30 days before the effective date. ¶¶

(b) An Employee of a ~~Facilitating Employe~~Program Administrator who initially opted out of participation in the Program may become a Participating Employee by completing and delivering, in a form or format established by the Program, instructions to initiate participation to the Facilitating Employer. The request shall be effective on the Employee's payroll following notification as soon as administratively practicable, not to exceed 30 days.

Statutory/Other Authority: ORS 178.200 to 178.245

Statutes/Other Implemented: ORS 178.200-178.245