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I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on [2/25/2010] by the
 Department of Revenue, Personal Tax and Compliance Division Date prior to or same as filing date
150
 Agency and Division Administrative Rules Chapter Number

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to become effective [March 19, 2010]. Rulemaking Notice was published in the [February 2010] Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Tax amnesty program; 25 percent penalty.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT: 150-305.100-(C)

AMEND:

REPEAL: 150-305.100-(C) Temp.

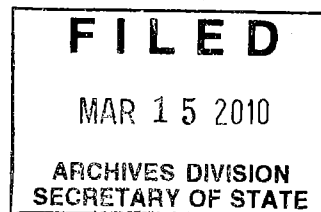
RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 305.100,

Other Auth.:

Stats. Implemented: ORS: 2009 Oregon Laws, chapter 710.



RULE SUMMARY

305.100 - (C) *QSB*

150-316-791, *Tax Amnesty*, clarifies the processes and procedures that apply to tax returns filed after the conclusion of the tax amnesty program established by 2009 Oregon Laws chapter 710.

Elizabeth Harchenko Elizabeth Harchenko 3/12/2010
 Authorized Signer Printed name Date
 *With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday. ARC 930-2005

REV 4-2010

150-305.100-(C)

Tax Amnesty

(1) Definitions. For purposes of Chapter 710, Oregon Laws 2009 (Senate Bill 880) and this rule:

(a) "Amnesty program" refers to the tax amnesty program created by Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) "Amnesty period" refers to the time in which the application is required to be filed (October 1 through November 19, 2009).

(c) "Amnesty return" refers to the Oregon original or amended qualified tax return filed in accordance with section (3) of this rule.

(d) "Amnesty liability" is a liability that is reported on an original amnesty return or additional liability that is reported on an amended amnesty return filed in conjunction with the amnesty program.

(d) "Application" is the department-produced form entitled "Amnesty Application" that is referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(e) "Participant" means the person, entity, or corporation taking part in the amnesty program.

(f) "Post amnesty penalty" means the 25 percent penalty established by Section 4, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(g) "Tax program" means a type of tax that is collected and administered by the Department of Revenue and that is eligible for amnesty. The following are tax programs eligible for amnesty:

(A) Personal Income Tax;

(B) Corporate Income or Excise Tax;

(C) Inheritance Tax;

(D) Fiduciary (trust/estate) Tax;

(E) Transit District (self-employment) Tax.

(2) Applications. To be eligible for amnesty, a participant must have filed an application within the amnesty period on a form prescribed by the department. Applications were due on or before November 19, 2009 and must be complete and signed by the participant(s). Applications that were not complete or that were received after November 19, 2009 will not be accepted and the participant will not qualify for the amnesty being sought on that application.

(3) Amnesty Returns. Amnesty returns must have been filed no later than January 19, 2010. Amnesty returns that were not complete or are received after January 19, 2010 will not qualify for the amnesty being sought and all amnesty-related waivers of penalty and interest will be disallowed. Disqualified amnesty returns will be processed as if there had been no amnesty program.

(4) Installment Payments.

(a) Amnesty participants may enter into an installment payment agreement with the department to satisfy an amnesty liability by making regular monthly, or more frequent, payments over a designated period of time.

(A) No agreement may extend beyond May 31, 2011 and participant(s) must satisfy all amnesty liabilities on or by May 31, 2011.

(B) If an amnesty participant fails to fully comply with the terms of an installment payment agreement, all amnesty-related waivers of penalty and interest will be disallowed. However, the participant may ask the department to find that the failure to fully comply with the terms of the installment payment agreement was due to "reasonable cause" as that term is defined in subsection (b) of this section. If the department makes such a finding, the installment payment agreement may resume, notwithstanding the failure to fully comply, subject to further conditions

satisfactory to the department and provided that full payment is received no later than May 31, 2011. Upon a department finding of "reasonable cause," the participant will remain eligible for the penalty and interest waivers referred to in Section 2, Chapter 710, Oregon Laws 2009 (Senate Bill 880).

(b) For purposes of this section, "reasonable cause" exists when the participant exercises ordinary care and prudence in abiding by the terms of the installment agreement but was unable to comply with the agreement due to circumstances beyond the participant's control. To determine if the participant used ordinary care and prudence, the department will consider the participant's reasons for not abiding by the terms of the installment plan, and;

(A) The length of time between the event cited as a reason for the noncompliance and the missed or reduced installment payment(s); and

(B) Whether or not the participant could have reasonably anticipated the event(s) causing the noncompliance and taken reasonable steps to avoid it.

(c) The following nonexclusive list describes circumstances when reasonable cause may exist:

(A) Death or serious illness of the participant or a member of the participant's immediate family;

(B) Destruction by fire, a natural disaster, or other casualty of the participant's home, or place of business;

(C) Unavoidable and unforeseen absence of the participant from the state immediately prior to the due date of the missed or reduced installment payment;

(D) An unplanned and significant change in the participant's financial circumstances, through no fault of the participant, such that the participant demonstrates to the department's satisfaction that they are unable to meet reasonably necessary living expenses and also comply with the terms of the agreement; or

(E) Erroneous written information from the department, which caused the failure of the participant to timely pay.

(d) The following nonexclusive list describes circumstances that do not, in isolation, result in a determination of reasonable cause:

(A) Reliance on an employee or tax professional to pay on time; or

(B) Inability of, or failure of oversight by, the participant to pay the amnesty liability.

(5) The department will waive penalty and interest under Chapter 710, Oregon Laws 2009 (Senate Bill 880) only after the participant has paid all of the tax and one-half of the interest due.

(6) Closing Agreements.

(a) Policy. To assure that the amnesty program is administered efficiently and equitably, the department may waive penalties and interest for taxpayers entering into a closing agreement, under subsections (b) and (c) of this section, for the period of time immediately prior to, or during, the amnesty period. Or, if the taxpayer has filed a timely and complete application, a closing agreement may be executed through January 19, 2010.

(b) Interest waiver. Consistent with its authority under ORS 305.145(3) and notwithstanding OAR 150-305.145(3), the department may, when it determines that "good and sufficient cause" exists, based on the facts and circumstances of each case, waive up to 50% of the interest normally imposed. For purposes of this paragraph, "good and sufficient cause" exists when the department determines that entering into a closing agreement will result in an equity or efficiency by providing a streamlined alternative filing mechanism for taxpayers.

(c) Penalty waiver. Consistent with its authority under ORS 305.145(4) the department may, based on the facts and circumstances of each case and when it determines that entering into a

closing agreement under this section will enhance the long-term effectiveness, efficiency or administration of the tax system, waive all, or a portion of, penalties otherwise imposed.

(7) Post amnesty penalty.

(a) The department will impose the post amnesty penalty on the total amount of unpaid tax for any tax year or reporting period for which the taxpayer meets any one of the conditions described in subparagraph (A) and either subparagraph (B) or (C):

(A) The taxpayer:

(i) Failed to file an application and amnesty return;

(ii) Filed an original or amended amnesty return that either failed to report or underreported tax liability;

(iii) Failed to file an original return where the department assesses a tax under ORS 305.265(10) or ORS 314.400.

(B) The taxpayer could be subject to a penalty for one or more of the following (whether or not the penalty is actually imposed):

(i) ORS 314.402 (substantial understatement of income);

(ii) ORS 305.265(10) (failure to file a report or return with intent to evade the tax);

(iii) ORS 314.403, 314.404 or 314.406 (abusive tax avoidance transaction);

(iv) ORS 314.075 (evasion of any requirement of any law imposing income taxes);

(v) ORS 305.815 (false return, statement, or document);

(vi) ORS 305.265(13) (return falsely prepared and filed with intent to evade tax);

(vii) ORS 118.260, 305.992, or 314.400(2) or (3) (failure to file).

(C) The taxpayer claimed a credit on the return for which there was no reasonable basis in fact or law. "No reasonable basis in fact or law" means that the taxpayer knows or should have known that the department would disallow the credit being claimed because:

(i) The department adjusted a credit on a return previously filed by the taxpayer based on a substantially similar set of facts;

(ii) The credit being claimed is based on fraudulent substantiation;

(iii) The credit cannot be confirmed with a certifying agency, if applicable; or

(iv) The taxpayer takes a position in claiming the credit for which there is or was no substantial authority for such treatment.

(b) Exception. The post amnesty penalty will not be imposed when based upon a corresponding adjustment made to an Oregon tax return as a result of change or correction by the Internal Revenue Service (IRS) unless the IRS has also finally imposed a penalty under sections 6662, 6662A, 6663 or 7201 of the Internal Revenue Code upon the change. Nothing in this subsection precludes the department from assessing the post amnesty penalty if an adjustment is made on a return that is unrelated to an IRS change or correction.

(c) The post amnesty penalty will only be imposed on deficiencies or assessments that apply to tax years 2007 or earlier. The post amnesty penalty will not be imposed after January 1, 2014.

(d) Waiver. The department may waive the post amnesty penalty if the taxpayer demonstrates, to the department's satisfaction, that the failure to participate in the amnesty program was due to circumstances beyond their control.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]

Stat. Auth.: ORS 305.100, 305.145, 305.229

Stats. Implemented: Chapter 710, 2009 Oregon Laws, (Senate Bill 880)