



ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150-305-0068	
	Page Page 1 of 6	Last Revised Date October 21, 2016
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2016	Hearing Scheduled November 22, 2016

PURPOSE: Amend the rule to state that the new Working Family Household and Dependent Care penalty under ORS 315.264 is not eligible for a discretionary penalty waiver.

1 **150-305-0068**

2 **Discretionary Penalty Waivers**

3 (1) Taxpayers who believe a penalty was imposed improperly may contest the penalty as provided in
4 OAR 150-305-~~145~~0060.

5 (2) For rules governing the waiver of penalty imposed under ORS 314.402, 316.177 or 316.992 see OAR
6 150-314-~~402~~0205; ORS 316.177(4); OAR 150-316-~~177(2)~~0284, or 150-316-~~992~~9650.

7 (3)(a) The following penalties are eligible for waiver under this rule:

8 (A) The five percent penalty under ORS 314.400(1) or 321.560(2) for failure to file a report or return by
9 the due date (five percent failure-to-file penalty);

10 (B) The five percent penalty under ORS 314.400(1) or 321.560(2) for failure to pay a tax by the due date
11 (five percent failure-to-pay penalty);

12 (C) The additional 20 percent penalty under ORS 314.400(2)(a) or 321.560(3) for failure to file a report
13 or return within three months after the due date (25 percent failure-to-file penalty);

14 (D) The additional 25 percent penalty under ORS 314.400(2)(b) for failure to file a report or return more
15 than three months after the due date and the taxpayer receives a Notice of Determination and Assessment
16 (50 percent failure-to-file penalty); and

17 (E) The 100 percent penalty under ORS 305.992 for failure to file three consecutive reports or returns by
18 the due date of the third year (100 percent failure-to-file penalty).

19 (b) The following penalties are not eligible for waiver under this rule:

20 (A) The 100 percent penalty imposed under ORS 305.265(13), 314.400(6), or 321.560(4);

21 (B) Civil or criminal penalties imposed under ORS Chapter 323 (cigarette and other tobacco products);

22 ~~or~~

23 (C) Any penalty if the taxpayer was involved in an "abusive tax shelter" as defined in ORS 314.402(4)
24 for the year at issue or any penalty imposed under ORS 314.403, 314.404 or 314.406-; or

25 (D) The Working Family Household and Dependent Care Credit penalty under ORS 315.264.

26 (4) Taxpayers, or a taxpayer's representative authorized under ORS 305.230, may request that a failure-
27 to-file or failure-to-pay penalty listed in subsection (3)(a) of this rule be waived. A waiver request is



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- 1 timely filed if the department receives it any time before the tax, penalty, and interest are paid in full, or
2 up to one year after the tax, penalty, and interest are paid in full. The department's decision will be based
3 upon the facts and circumstances in each case. To qualify for waiver, the taxpayer must:
- 4 (a) Make a written request that explains the reason for the taxpayer's failure to file a return or failure to
5 pay the tax as required by law;
 - 6 (b) Pay the balance of the account (other than an amount equal to the penalty amount that may be waived
7 under this rule) for the tax period for which waiver is requested; and
 - 8 (c) Meet all filing requirements for the tax program that assessed the penalty. Filing requirements for the
9 tax program that assessed the penalty may be found in forms, instructions, or other forms of media
10 provided by the department.
- 11 (5) Penalty Waivers Due to Circumstance beyond Taxpayer Control. The department will waive all of
12 any penalty listed in subsection (3)(a) of this rule for any tax program if there are circumstances beyond
13 the taxpayer's control that caused the failure to file or pay. The circumstance must have existed at the
14 time the return or payment was due. The return must be filed and the tax must be paid within a
15 reasonable period of time depending on the facts and circumstances of each case.
- 16 (a) Circumstances that are accepted by the department as "circumstances beyond the taxpayer's control"
17 include, but are not limited to:
 - 18 (A) Death or serious illness of the taxpayer or a member of the taxpayer's immediate family;
 - 19 (B) Destruction by fire, a natural disaster, or other casualty of the taxpayer's home, place of business, or
20 records needed to prepare the returns.
 - 21 (C) Unavoidable and unforeseen absence of the taxpayer from the state that began before the due date of
22 the return;
 - 23 (D) A department employee provided erroneous written information to the taxpayer that caused the
24 taxpayer to incur the penalty if:
 - 25 (i) The taxpayer's reliance on the erroneous written information caused the failure of the taxpayer to pay
26 or file timely;



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- 1 (ii) The taxpayer supplied the department with complete information connected with the erroneous
- 2 written information given; and
- 3 (iii) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with
- 4 the erroneous written information; or
- 5 (E) The taxpayer's reliance on incorrect advice from a professional the taxpayer could reasonably assume
- 6 was knowledgeable and experienced in the tax involved if:
- 7 (i) The taxpayer's reliance on the advice caused the failure of the taxpayer to pay or file timely;
- 8 (ii) The taxpayer supplied the professional with complete information connected with the advice given;
- 9 and
- 10 (iii) The taxpayer could not reasonably be expected to be knowledgeable in the tax matter connected with
- 11 the erroneous advice.
- 12 (b) Circumstances that are not accepted by the department as "circumstances beyond the taxpayer's
- 13 control" include, but are not limited to:
- 14 (A) Reliance on a professional to merely prepare a return on time;
- 15 (B) Reliance on an employee of the taxpayer to prepare a return on time;
- 16 (C) Inability of the taxpayer to pay the tax unless there is also a cause listed in subsection (5)(a) of this
- 17 rule.
- 18 (6) One-time penalty waiver.
- 19 (a) When a taxpayer does not qualify for relief under section (5) of this rule, the department will consider
- 20 for waiver all of the penalty imposed under ORS 314.400(1) (five percent failure to file or pay penalty),
- 21 314.400(2)(a)(A) (25 percent failure-to-file penalty), or 321.560 (five percent failure to file or pay
- 22 penalty or the 25 percent failure-to-file penalty) for one tax period if the taxpayer has not already
- 23 received relief under this section for any tax period in the tax program that assessed the penalty, or in a
- 24 "closely-related" tax program defined in subsection (6)(b) of this rule; and
- 25 (A) The taxpayer did not know that the taxpayer was subject to the tax program in which the penalty was
- 26 imposed; or
- 27 (B) Has a history of filing and paying on time.



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- 1 (b) "Closely-related" tax programs are:
- 2 (A) Transit payroll and withholding tax programs authorized under ORS 316.162 to 316.221;
- 3 (B) Forest Products Harvest Tax and Small Tract Forestland Severance Tax programs authorized under
- 4 ORS Chapter 321; or
- 5 (C) Cigarette tax and Other Tobacco Products tax programs authorized under ORS Chapter 323.
- 6 (7) Payroll Tax Penalty Waivers. Taxes due under ORS 316.162 to 316.221 are collected at the source of
- 7 payment and are held in trust for eventual payment to the State of Oregon. Because failure to remit trust
- 8 funds or timely file reports related to trust funds is considered a breach of fiduciary duty, the standards
- 9 for waiver of penalties imposed for such failures are higher than standards for waiver of penalties for
- 10 other tax programs. For penalties imposed on withholding or transit payroll taxes due under ORS
- 11 316.162 to 316.221 and that do not qualify for waiver under subsections (5) or (6) of this rule, the
- 12 department will provide waiver of penalties as follows:
- 13 (a) The department will waive the entire penalty imposed under ORS 314.400(1) (five percent failure to
- 14 file or pay penalty) or 314.400(2)(a)(A) (25 percent failure to file penalty) for the most recent quarter due
- 15 if the taxpayer has not received a penalty in the eight quarters preceding the most recent quarter.
- 16 (b) The department will waive half of the penalties imposed under ORS 314.400(1), 314.400(2)(a)(A),
- 17 and 314.400(2)(a)(B) (50 percent failure-to-file penalty) if a taxpayer files the tax return and pays the tax,
- 18 penalty, and interest as provided in section (4)(b) of this rule within six months of the date shown on the
- 19 Notice of Determination and Tax Assessment.
- 20 (c) The department will waive part of the 100 percent failure-to-file penalty imposed under ORS 305.992
- 21 as follows:
- 22 (A) The department will waive 70 percent of the 100 percent failure-to-file penalty if the taxpayer
- 23 (i) Files a withholding or transit district return before receiving a Request to File Notice, Notice and
- 24 Demand to File, Combined Failure-to-File Notice, or any combination of these notices from the
- 25 department that relates to the return the taxpayer filed; and
- 26 (ii) Pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of filing
- 27 the return.



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- 1 (B) The department will waive 50 percent of the 100 percent failure-to-file penalty if a taxpayer:
- 2 (i) Files a withholding or transit payroll return after receiving a notice listed in section (7)(c)(A)(i) of this
- 3 rule; and
- 4 (ii) Pays the tax, penalty, and interest as provided in section (4)(b) of this rule within six months of the
- 5 date on the most recent notice.
- 6 (C) The department will waive 25 percent of the 100 percent failure-to-file penalty if the taxpayer, after
- 7 receiving a Notice of Determination and Assessment, files the tax return and pays the tax, penalty, and
- 8 interest as provided in section (4)(b) of this rule within six months of the date of the notice.
- 9 (8) Additional Penalty Waivers. For penalties imposed on taxes other than withholding or transit payroll
- 10 taxes due under ORS 316.162 to 316.221 and that do not qualify for waiver under subsections (5) or (6)
- 11 of this rule, the department will provide waiver of penalties as follows:
- 12 (a) The department will waive half of the penalties imposed under ORS 314.400(1), 314.400(2)(a)(A),
- 13 and 314.400(2)(a)(B) (50 percent failure-to-file penalty) if a taxpayer files the tax return within 30 days
- 14 of the date shown on the Notice of Determination and Tax Assessment. The department will not waive
- 15 this penalty for the tax program or "closely-related" tax program (as defined in subsection (6)(b) of this
- 16 rule) that assessed the penalty if the taxpayer:
- 17 (A) Has not filed as required by the due date of the return (including extensions) for any three of the most
- 18 recent six filing periods; or
- 19 (B) Has received the 100 percent failure-to-file penalty under ORS 305.992.
- 20 (b) The department will waive part of the 100 percent failure-to-file penalty imposed under ORS 305.992
- 21 as follows:
- 22 (A) The department will waive 70 percent of the 100 percent failure-to-file penalty if the taxpayer files a
- 23 return before receiving a Request to File Notice, Notice and Demand to File, Combined Failure-to-File
- 24 Notice, or any combination of these notices from the department that relates to the return the taxpayer
- 25 filed.
- 26 (B) The department will waive 50 percent of the 100 percent failure-to-file penalty if the taxpayer files a
- 27 return after receiving a notice listed in section (8)(b)(A) of this rule.



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- 1 (C) The department will waive 25 percent of the 100 percent failure-to-file penalty if the taxpayer:
- 2 (i) Received a Notice of Determination and Assessment; and
- 3 (ii) Files the return (other than transit district or withholding returns) related to the Notice of
- 4 Determination and Assessment.
- 5 (9) Late payments made in connection with electronic filing. The department will waive the entire five
- 6 percent failure-to-pay penalty imposed under ORS 314.400(1) if the taxpayer:
- 7 (a) Files an Oregon tax return on or before the due date of the return, excluding extensions;
- 8 (b) Submits the Oregon tax return in the same transmission as a federal tax return, using a department-
- 9 approved alternative to filing a paper return;
- 10 (c) Pays any federal tax shown as due on the transmitted federal return on or before the due date using an
- 11 electronic form of payment such as a credit card, debit card, or electronic funds transfer (ACH Debit);
- 12 (d) Pays any tax shown as due on the Oregon return within 30 days of the date shown on the Notice of
- 13 Tax Assessment sent to the taxpayer;
- 14 (e) Proves to the department that failure to pay Oregon tax was due to a good faith, mistaken belief of the
- 15 taxpayer that the state tax had been paid; and
- 16 (f) Has not received relief under this section before.
- 17 (10) The provisions of this rule apply to discretionary waiver requests received on or after July 31, 2007.
- 18 Stat. Auth.: ORS 305.100, 305.145
- 19 Stats. Implemented: ORS 305.145