



ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150-305-0130	Last Revised Date October 21, 2016
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Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2016	Hearing Scheduled November 22, 2016

PURPOSE: To remove a reference to federal filing requirements for information returns that must be filed with Oregon in order for a taxpayer to claim a deduction for compensation paid for personal services rendered, insert a reference to other administrative rules, and to change the word “employer” to “individual or entity” to align with terms used in ORS 305.217.

1 **150-305-0130**

2 **When Deduction for Amounts Paid as Wages or Remuneration Permitted**

3 (1) An ~~employer~~ individual or entity will not be allowed a deduction for wages or payments to
4 individuals for personal services rendered if:

5 (a) The ~~employer~~ individual or entity ~~does not~~ fails to file ~~any~~ information returns, such as 1099's or W-
6 2's, as required by ~~federal law~~, ORS 314.360 or 316.202 or by administrative rule; or

7 (b) The ~~employer~~ individual or entity files information returns for payments made to an individual as if
8 the individual was an independent contractor and upon examination the individual is determined to have
9 actually been an employee.

10 Example 1: Brian owns a convenience store. Brian hired Elmer to help stock shelves in the evenings.

11 Brian did not issue W-2's for Elmer. Brian's expense for payments made to Elmer for services rendered
12 are not deductible.

13 Example 2: Assume the same facts in Example 1, except that Brian issued a Form 1099 to Elmer. Upon
14 examination of Brian's return it was determined that Elmer was actually an employee, subject to
15 withholding. Brian's expense for the payments made to Elmer for services rendered are not deductible.

16 (2) In the case of a failure to file as described in subsection (1)(a) of this rule, the expense will be
17 allowed if the ~~employer~~ individual or entity can show there was a circumstance beyond the ~~employer's~~
18 individual or entity's control that caused the failure to file returns as required by law. Refer to OAR 150-
19 305.~~145(4)~~-0068 for examples of situations that are accepted by the department as a circumstance beyond
20 the ~~employer's~~ individual or entity's control.

21 (3) In the case of a misclassification as described under subsection (1)(b) of this rule, the expense will be
22 allowed if the ~~employer~~ individual or entity can show reasonable cause as to why the appropriate returns
23 were not filed. Reasonable cause will be considered if the ~~employer~~ individual or entity had relied on
24 information from:

25 (a) Judicial precedents;



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- 1 (b) Published rulings;
- 2 (c) Technical advice memorandums or letter rulings;
- 3 (d) Past [Internal Revenue Service](#) audits in which there were no assessments of employment tax for
- 4 amounts paid to other individuals who held a similar position;
- 5 (e) A recognized practice of the industry;
- 6 (f) Advice from someone who would be considered knowledgeable in tax matters; or
- 7 (g) Written advice from an employee of the Department of Revenue.
- 8 (4) The preceding are factors that would influence the department's decision regarding the existence of
- 9 reasonable cause. It is not intended to be an exclusive list.
- 10 Example 3: Martha owns a hair salon employing Sam as an independent contractor. She issues Sam a
- 11 Form 1099 at the end of each year showing the amount paid to Sam that year for services rendered. The
- 12 Internal Revenue Service had examined Martha's payroll in a prior year and no changes or assessments
- 13 were made to Martha's return regarding her wage expense. Martha produces the audit reports that show
- 14 the Internal Revenue Service accepted her characterization of Sam as an independent contractor.
- 15 Therefore, Martha had reasonable cause to classify Sam as an independent contractor.
- 16 (5) For the purposes of section (3) of this rule, the evidence of reasonable cause must be clear and
- 17 convincing.
- 18 **Stat. Auth.:** ORS 305.100
- 19 **Stats. Implemented:** ORS 305.217