



ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150-316-0359	
	Page Page 1 of 4	Last Revised Date October 21, 2016
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated November 2016	Hearing Scheduled November 22, 2016

PURPOSE: Amend rule to reflect change in W-2 filing due date to align with W-2 filing due date change in federal law per the Consolidated Appropriations Act (2016) and require electronic filing of annual reconciliation report (form WR) to coincide with Core Systems Replacement implementation of withholding tax program. Amend definition of “knowingly” penalty for W-2s to include assessment of “unknowingly” penalty before assessing “knowingly” penalty.

1 **150-316-0359**

2 **Withholding: Annual Report by Employer**

3 (1) Definitions. As used in this rule:

4 (a) “Employer” has the meaning given that term in ORS 316.162 and also includes lenders, sureties and
5 other persons subject to withholding and reporting requirements under ORS 316.169.

6 (b) “Payer” has the meaning given that term in ORS 316.189(1)(g).

7 (c) “Payroll service provider” is any person that prepares payroll tax returns on behalf of another person
8 for remuneration.

9 (d) “W-2” means the federal form W-2 required to be filed under 26 USC § 6051.

10 (2) Withholding Statements.

11 (a) Every employer or other payer must complete an individual withholding statement for each employee.
12 The Oregon withholding statement must contain the same information as is required to be reported on a
13 federal withholding statement including:

14 (A) Total state and local wages;

15 (B) State and local tax withheld during the calendar year; and

16 (C) The Oregon business identification number of the employer.

17 (b) The employer must use a federal withholding statement (W-2) for purposes of section (2) of this rule.

18 If the employer or other payer is withholding from certain periodic payments as described in ORS
19 316.189, the employer or payer must use federal Form 1099-R for purposes of section (2) of this rule.

20 (c) The employer must provide a copy of the withholding statement to the employee within ~~thirty-one~~³¹
21 days of the close of the calendar year. If an employee is terminated and requests a copy of the
22 withholding statement, the employer must provide the form to the employee within 30 days of either the
23 request or the final wage payment, whichever is later.

24 (d) The information in the withholding statement (W-2) must be filed electronically with the department.

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- 1 (e) Under ORS 314.385, the due date for electronic filing of W-2s for Oregon purposes is the same as the
 2 federal due date for electronically filed W-2s; ~~March 31 following the close of the calendar year.~~
- 3 (3) Reconciliation Reports (Form WR).
- 4 (a) Every employer must file a summary of total compensation paid and Oregon tax withheld for each
 5 employee. This report must include a reconciliation of tax remitted to the department by the employer for
 6 the calendar year to the total of tax withheld from employees’ pay for the calendar year.
- 7 (b) The reconciliation report must be filed electronically with the department.
- 8 ~~(b)~~ (c) If the reconciliation report is not filed within 30 days of the department’s notice to the employer of a
 9 failure to file, a \$100 failure-to-file penalty applies.
- 10 ~~(e)~~ (d) If there is a difference between the amount paid to the department by the employer and the amount
 11 withheld by the employer from the employees' wages, the employer must explain the difference on the
 12 report.
- 13 ~~(d)~~ (e) The report due date is the same as the due date of the corresponding federal report. If the employer
 14 ceases doing business, the report is due within 30 days of termination of business.
- 15 (f) Section (3)(b) of this rule is effective for tax years beginning on or after January 1, 2017.
- 16 (g) The department may grant an exception to the filing requirement in section (3) of this rule upon a
 17 showing of undue hardship. Undue hardship is based on the facts and circumstances specific to each
 18 payer and determined on a case-by-case basis.
- 19 (4) Penalties. The department will assess penalties, as described in ORS 316.202(5), if an employer or
 20 other payer fails to file W-2s by the due date as required under section (2)(e) of this rule or the employer
 21 or other payer files incorrect or incomplete W-2s.
- 22 (a) A W-2 is incorrect or incomplete if one or more of the following occur:
- 23 (A) Identifying employee information is missing, such as the first or last name or social security number.

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- 1 (B) The W-2 contains an incorrect statement of state income tax withheld, federal income, or state
 2 income amounts. Obvious math or clerical errors are not considered an incorrect statement for this
 3 purpose.
- 4 (C) Other information is missing or incorrect on the W-2.
- 5 (b) An employer or other payer knowingly fails to file a W-2 by the due date if:
- 6 (A) The W-2 was not received by the department on or before the due date of the corresponding federal
 7 form W-2 for the tax year under consideration;
- 8 (B) and The employer or other payer has been assessed the penalty under ORS 316.202(5)(a) for one or
 9 more filing periods preceding the period at issue; and
- 10 ~~(A) The employer or other payer has failed to file the W-2 for two consecutive years prior to the due date~~
 11 ~~required for the second consecutive year.~~
- 12 ~~(B) The employer or other payer has been assessed the penalty under ORS 316.202(5)(a) for one or more~~
 13 ~~filing periods preceding the period at issue.~~
- 14 ~~(C) The employer or other payer fails to file the W-2 upon written request to file by the department; or~~
- 15 (D) The department determines that the facts and circumstances in the particular case warrant penalty
 16 assessment.
- 17 (c) An employer or other payer knowingly files an incomplete, false or misleading W-2 if one or more of
 18 the following occur:
- 19 (A) The employer or other payer has a pattern of repeatedly filing incorrect W-2s;
- 20 (B) The employer or other payer failed to correct the W-2 upon discovering incorrect information;
- 21 (C) The employer or other payer issued a corrected W-2 upon written request of the department;
- 22 (D) The amount of the potential penalty is less than the cost of complying with the requirement to
 23 include correct information on the W-2;
- 24 (E) The department determines that the facts and circumstances in the particular case warrant penalty
 25 assessment.



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- 1 [\(d\) A penalty may be assessed under ORS 316.202\(5\)\(b\) even though a prior penalty assessed under ORS](#)
- 2 [316.202\(5\)\(a\) was waived under OAR 150-305-0062.](#)
- 3 (5) If the employer or other payer fails to produce documentation to support the information on the W-2
- 4 or the number of W-2s required to be filed, the department will use the best information available to
- 5 determine the appropriate penalty assessment amount.
- 6 **Stat. Auth.:** ORS 305.100
- 7 **Stats. Implemented:** ORS 316.202