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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

REV 10-2020
CHAPTER 150
DEPARTMENT OF REVENUE

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Corporate Activity Tax: Provides good faith effort standards for penalty waiver for estimated payments underpayment.

EFFECTIVE DATE: 06/05/2020 THROUGH 12/01/2020

AGENCY APPROVED DATE: 06/04/2020

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NEED FOR THE RULE(S):

ORS 317A.137(2) requires Corporate Activity Tax (CAT) taxpayers to make quarterly estimated payments on or before the last day of January, April, July, and October of each year for the previous calendar quarter. This rule establishes what circumstances constitute a good faith effort to comply with the required quarterly estimated payments for tax years beginning January 1, 2020 to avoid penalty on underpayment of estimated tax. On April 24, 2020, Governor Brown directed DOR to refrain from assessing underpayment charges against taxpayers who do not pay at least 80 percent of their quarterly payment based on their total annual liability, or fail to make a payment for the 2020 tax year, if the taxpayer can show they made a "good faith" effort to comply with ORS 317A.137(2). Further, the Governor directed DOR to consider certain factors specific to the COVID-19 pandemic when determining whether a taxpayer made a "good faith effort." The rule provides guidance specifically for the tax year beginning January 1, 2020 and ending before January 1, 2021. The rule provides that a penalty will not be imposed under ORS 317A.161(2) for nonpayment, underpayment, or underreporting of the estimated tax installment for any quarter of the tax year 2020 provided that the taxpayer was negatively impacted by the COVID-19 pandemic and made a good faith effort to accurately estimate and pay the quarterly installment as required under ORS 317A.137(2), OAR 150-317-1300, 150-317-1310, and 150-317-1320.

JUSTIFICATION OF TEMPORARY FILING:

1. The department needs to adopt a temporary administrative rule to establish that no penalty will be imposed under ORS 317A.161(2) provided that the taxpayer made a good faith effort to accurately estimate and pay the quarterly installment as required under ORS 317A.137(2), OAR 150-317-1300, 150-317-1310, and 150-317-1320. Adopting a temporary rule will provide the taxpayers with guidance on what constitutes a good faith effort before the second quarterly payment is due on July 31, 2020. In addition, adopting a temporary rule will reaffirm the Governor's directive to the department of revenue regarding penalties and the COVID-19 pandemic.

Without guidance, taxpayers may not be able to determine the factors that constitute a good faith effort before the

second quarterly estimated tax payment is due on July 31, 2020. In addition, taxpayers may not know that it is necessary to keep documentation to show that good faith effort were made, and taxpayers may not be aware that the department may require documentation to substantiate they made a good faith effort when calculating and making installments of estimated quarterly payments. The temporary rule provides the following:

--which circumstances constitute a good faith effort for all tax years beginning January 1, 2020;

--a good faith effort is shown if the taxpayer cannot reasonably determine, at the time the quarterly payment installment is due, whether the taxpayer will have a tax liability for the tax year beginning January 1, 2020 and ending before January 1, 2021, due to the negative impact of COVID-19;

--a good faith effort is shown if the taxpayer did not have sufficient funds to pay the required quarterly payment installment or annual tax liability for tax year 2020, due to the impact of the COVID-19 pandemic on the taxpayer's business;

--a good faith effort is shown if the taxpayer cannot reasonably calculate the required quarterly payment installment or annual tax liability for tax year 2020, due to the impact of the COVID-19 pandemic on the taxpayer's business;

--no penalty will be assessed for an installment of quarterly estimated payments if the taxpayer made a good faith effort to comply with the law;

--that the taxpayer must retain documentation showing the good faith effort that the department may request at a later date.

2. Taxpayers who are subject to the Corporate Activity Tax and are required to calculate and pay in quarterly installments of estimated payments will suffer the above consequences on account of lack of published guidance.

3. Without guidance, taxpayers may not be able to determine the factors that constitute a good faith effort before the second quarterly estimated tax payment due on July 31, 2020, taxpayers may not know that it is necessary to keep documentation to show that a good faith effort was made, and taxpayers may not be aware that the department may require documentation to substantiate they made a good faith effort when calculating and making estimated quarterly payments.

4. Promulgating a temporary rule effective June 1, 2020 will provide guidance for taxpayers before the second quarterly estimated payment deadline of July 31, 2020.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Revised Statutes, chapter 317A

https://www.oregonlegislature.gov/bills_laws/ors/ors317A.html

ADOPT: 150-317-1500

RULE SUMMARY: Establishes that no penalty will be assessed against taxpayers making a good faith effort to comply with ORS 317A.137(2) for tax year 2020. Provides factors that the department will consider when determining good faith effort.

CHANGES TO RULE:

150-317-1500

Good Faith Effort

(1) Good Faith Effort. A taxpayer's good faith effort to comply with ORS 317A.137(2) is demonstrated by the extent of the taxpayer's efforts to accurately estimate and pay the quarterly installment as required under ORS 317A, and OARs 150-317-1300, 150-317-1310, and 150-317-1320.¶

(a) For tax years beginning on or after January 1, 2020, the following circumstance demonstrates good faith: The taxpayer made a reasonable estimate of the quarterly installment based on information available to the taxpayer at the time the quarterly installment was due.¶

(b) For the tax year beginning January 1, 2020 and ending before January 1, 2021, the following circumstances demonstrate good faith:¶

(A) The taxpayer cannot reasonably determine, at the time the quarterly installment is due, whether the taxpayer will have CAT liability for the 2020 tax year, due to the negative impact of COVID-19, after taking into consideration the exclusions and subtractions provided in ORS 317A; ¶

(B) The taxpayer did not have sufficient funds to pay the required installment for the quarter, due to the impact of the COVID-19 pandemic on the taxpayer's business; or ¶

(C) The taxpayer cannot reasonably calculate the required quarterly installment or annual tax liability due to the impact of the COVID-19 pandemic on the taxpayer's business. ¶

(2) The department will not assess the penalty imposed under ORS 317A.161(2) for nonpayment, underpayment, or underreporting of the estimated tax installment for any quarter of tax year 2020 if the taxpayer demonstrates a good faith effort, as defined in Section 1 of this rule, to accurately estimate and pay the quarterly installment required under ORS 317A.137. ¶

(3) Documentation. The department may require documentary proof to substantiate assertions of good faith. Taxpayers must retain documentation showing good faith effort as defined in section (1). Taxpayers are not required to submit this documentation to the department, unless requested by the department.

Statutory/Other Authority: ORS 305.100, 317A.143

Statutes/Other Implemented: ORS 317A.137, 317A.161