

CHAPTER 7.05
INCOME TAX ADMINISTRATION FOR PERSONAL AND BUSINESS TAXES

1. Amend Section 7.05.270 as follows, with red text representing inserted text and strikethrough representing deleted text:

7.05.270 Penalties for Violations of Personal Income Tax Law

The Administrator will assess the following penalties upon **employers or** personal income taxfilers:

(a) **Failure to File a Correct W-2.** If an employer fails to file a correct W-2 that, along with any other W-2 that must be filed, supports amounts reported on the annual withholding reconciliation return, or amended annual withholding reconciliation return, as required by code, administrative rule, written policy, or form instructions by the date specified, the Administrator will assess a penalty of \$50 for each missing or incomplete W-2.

The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the employer that there was reasonable cause for the failure to file a correct W-2 when due and that the employer acted in good faith. Before any penalty waiver or reduction, all withholding balances must be paid in full and reconciliations or other forms or reports must be submitted to the Administrator.

(b) Failure to File a Return; Failure to Pay Tax When Due. If a taxfiler fails to file a return or fails to pay a tax by the date on which the filing or payment is due, the Administrator will add a delinquency penalty of:

1. Five percent of the amount of the unpaid tax.
2. An additional penalty of one hundred percent of the unpaid tax of all tax years if the failure to file is for three or more consecutive tax years.
3. For purposes of this section, unpaid tax is the taxfiler's tax liability reduced by payment of tax and any credit against tax that is claimed on the return.

The Administrator may for good cause waive all or any part of the penalty imposed under this subsection according to and consistent with written policies.

(bc) Underpayment of Tax. A penalty will be assessed if a person:

1. Fails to pay at least ninety percent of the total tax liability by the original due date; or
2. Fails to pay at least one hundred percent of the prior year's total tax liability by the original due date.
3. The penalty under subsection (b) is five percent of the tax underpayment, but not less than \$5.

The Administrator may for good cause waive all or any part of the penalty imposed under this subsection according to and consistent with written policies.

(ed) Intent to Evade. If a taxfiler fails to file a return with the intent to evade the tax imposed under this chapter or Chapter 7.06, or a taxfiler prepares or causes to be prepared a return and files that return with the intent to evade the tax imposed under this chapter or Chapter 7.06, the Administrator will impose a penalty in the amount of one hundred percent of any deficiency that the Administrator determines is due.

(de) Substantial Understatement of Tax. If the Administrator determines that there is a substantial understatement of tax due under this chapter or Chapter 7.06, the Administrator will add to the amount of tax required to be shown on the return a penalty equal to twenty percent of the amount of any underpayment of tax attributable to the understatement.

1. For purposes of this subsection, a substantial understatement of tax exists if the amount of the understatement exceeds \$1,000 of tax otherwise due.

2. In the case of any item attributable to an abusive tax shelter: no reduction of the amount of the understatement will be made with regard to that item regardless of the existence of substantial authority for the treatment of the item by the taxfiler; and, no reduction of the amount of the understatement will be made with regard to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition to the disclosure, the Administrator determines in the Administrator's sole discretion, that the taxfiler reasonably believed that the tax treatment of the item was more likely than not the proper treatment. This chapter expressly adopts the definitions contained in ORS 314.402 and the administrative rules thereunder.

3. The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the taxfiler that there was reasonable cause for the understatement or any portion thereof, and that the taxfiler acted in good faith.

(ef) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.06. For purposes of this subsection, a tax return position is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.

(fg) Failure of Administrative Compliance. The Administrator may impose a penalty of up to \$500 for the following violations of this chapter:

1. Failure to file any tax return within 60 days of the Administrator's original written notice to file;
2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment;
3. Failure to provide either documents or information as required by this chapter or Chapter 7.06 within 60 days of the Administrator's original written notice to provide the documents or information;
4. Failure to fully complete any form required under the Personal Income Tax Law; or

5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.06 unless the section has a separate penalty calculation.

The Administrator may impose a civil penalty under this subsection only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice. The Administrator may waive all or any part of the penalty imposed under this paragraph on a showing by the taxfiler that there was reasonable cause for the Failure of Administrative Compliance, and that the taxfiler acted in good faith.

(gh) Penalties cumulative. Each penalty imposed under this section is in addition to any other penalty imposed under this section.

(hi) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Personal Income Tax Law.

CHAPTER 7.06 PERSONAL INCOME TAX

2. Amend Section 7.06.130 as follows:

7.06.130 Withholding Reconciliation by Employer for Payment of Withheld Tax

(a) Quarterly Withholding Reconciliation. On or before the last day of the month following the quarter in which withholdings pursuant to 7.06.120(a) have been made, the employer must file a quarterly tax report. If the due date is on a weekend or federal holiday, the report is due the next business day.

(b) Annual Withholding Reconciliation. On or before the last day of January following any calendar year in which withholdings pursuant to 7.06.120(a) have been made, the employer must file with the Administrator a reconciliation of taxes withheld and taxes remitted. If the due date is on a weekend or federal holiday, the reconciliation is due the next business day.

(c) The Administrator will determine by administrative rule, **written policy, or published guidelines** the required format and information necessary to comply with subsections (a) and (b) above.