

ADMINISTRATIVE RULE REVIEW

Amended Rule	Rule No. 150-305.100-(B)	
	Page Page 1 of 3	Last Revised Date 4/24/09
Permanent Rule	NOTICE OF INTENDED ACTION	
	Bulletin Dated	Hearing Scheduled

PURPOSE:

- 1) To establish a default standard that the department will not apply its administrative rules to tax years or periods prior to the date the rule is adopted.
- 2) To illustrate situations in which the department may apply rules retroactively. The situations described in the rule are:
  - a) To implement a court decision that specifies the correct interpretation of a statute.
  - b) If the legislature has adopted statutes that have retroactive effect.
  - c) To prevent or mitigate abuse of the tax system.
  - d) When the rule is intended to clarify statutes.
- 3) To state that the default standard applies to rules currently in effect and to later adopted rules.
- 4) To require that rules that are adopted after the effective date of this rule must contain a statement of the years or periods to which the rule applies if the rule is to be applied retroactively.

1 **150-305.100-(B)**

2 **Applicable Dates** Tax Years or Periods to which Administrative Rules Apply

3 ~~Administrative rules adopted by the department, unless specified otherwise by statute or by rule, shall be~~  
4 ~~applicable for all periods open to examination.~~

5 **(1) Generally, the department will apply administrative rules to tax years or periods that begin on**  
6 **or after the date the rule is formally adopted by the department.**

7 *Example 1:* ORS 314.280 authorizes the department to adopt rules prescribing apportionment  
8 methods for financial corporations. Assume that in 2000, the department adopted a rule that  
9 required financial corporations to exclude intangible assets from the numerator of the property  
10 factor for apportionment purposes. In 2007, the Oregon Tax Court ruled that Corporation A  
11 should include intangible assets in the property factor in order to clearly reflect income

12 attributable to doing business in Oregon. If the department amends its rule to adopt a new policy  
13 requiring that intangible assets must be included in the property factor, that amended rule will be  
14 applied only to tax years beginning on or after the date the department adopts the amended rule

15 **(2) The department may apply an administrative rule to tax years or periods beginning prior to the**  
16 **date the department adopts the rule if retroactive application is specified in the rule. Subsections**

17 **(2)(a) through (2)(d) illustrate situations in which adoption of retroactive rules will be considered.**

18 **(a) The department may adopt rules and apply them to earlier tax years or periods to implement a**  
19 **court decision that specifies the correct interpretation of a statute.**

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**Example 2:** Assume the department has interpreted an Oregon statute to require that a person's residency status on the last day of the tax year determines whether income from an S corporation is included in Oregon taxable income. The Oregon Tax Court, however, considers the question and decides that the correct interpretation of the statute is that income from an S corporation is prorated based on the period of residency. Based on that decision, the department may amend the administrative rule and apply the amended rule to all periods open to examination.

(b) The department may adopt and apply rules to earlier tax years or periods if the legislature has adopted statutes that have retroactive effect.

**Example 3:** In 2008, the Oregon legislature adopted HB 3618, which provided a credit against Oregon inheritance tax for certain estates. The law applied to estates of persons who died on or after January 1, 2007. Administrative rules adopted by the department under those statutes may be made applicable to deaths occurring January 1, 2007 and later regardless of the date the rules are adopted.

(c) The department may apply rules to earlier tax years or periods if it determines that action is needed to prevent or mitigate abuse of the tax system.

**Example 4:** In 2008, the department identifies a number of amended tax returns that reflect the use of a patented tax scheme. The department may adopt a rule providing that the interpretation reflected in the amended tax returns is not consistent with the statute. The rule may apply to all years open to examination.

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- 1 **(d) The department may apply a rule retroactively to all tax years open to examination when it**
  - 2 **clarifies or interprets statutes or its own rules.**
  - 3 ***Example 5:* In 2005, the legislature enacted a law to allow a reduced rate of tax when the taxpayer**
  - 4 **sells assets in the “substantially complete termination” of a farming business. In 2008, the**
  - 5 **department adopted rules to clarify the terms used in the statute. The rule may be applied to all**
  - 6 **open years.**
  - 7 **(3) Effective with the adoption of this rule, the department will not apply a legislative rule to tax**
  - 8 **years or periods that begin before the date the department adopted the legislative rule.**
  - 9 **(4) Rules adopted by the department after the effective dates of this rule that the department**
  - 10 **intends to apply to earlier tax years or periods must contain a statement indicating the tax years or**
  - 11 **periods to which the rule applies.**

12 Stat. Auth.: ORS 305.100

13 Stats. Implemented: ORS 305.100

14 Hist.: RD 10-1986, f. & cert. ef. 12-31-86