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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

MCTD 4-2019

CHAPTER 740
DEPARTMENT OF TRANSPORTATION
MOTOR CARRIER TRANSPORTATION DIVISION

FILED

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Elimination of the Department of Transportation's Oregon Weight Receipt & Tax Identifier and associated fee

EFFECTIVE DATE: 10/22/2019 THROUGH 04/17/2020

AGENCY APPROVED DATE: 10/18/2019

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NEED FOR THE RULE(S):

The 2019 Oregon Legislature passed House Bill 2592 which amends ORS 825.450. The amendment eliminates the Oregon Weight Receipt and Tax Identifier previously issued by the Department of Transportation along with the attendant \$8 fee and replaces it with an electronic weight identifier. These amendments are needed to implement this statutory change.

This chapter 740 filing is part three of three. There are additional rules being amended in chapters 734 and 735. Taken together, the 10 rules being amended represent one rulemaking action to implement HB 2592.

JUSTIFICATION OF TEMPORARY FILING:

The Oregon Legislature made House Bill 2592 effective on the 91st day after sine die, which is September 29. The temporary rules reflecting the statutory change are necessary because permanent rulemaking cannot be completed by September 29, when the law becomes effective.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None

RULES:

740-010-0010, 740-020-0010, 740-045-0010, 740-045-0025, 740-045-0120, 740-045-0150, 740-055-0110, 740-300-0040

AMEND: 740-010-0010

RULE TITLE: Agency Representation at Contested Case Hearings

RULE SUMMARY: Amendment provides for an officer or employee of the Dept. of Transportation to represent the

agency in a contested case involving the cancellation of vehicle enrollment in the weight-mile tax program.

RULE TEXT:

(1) The Attorney General has given written consent as required by ORS 183.452 for an officer or employee of the Department of Transportation to appear on behalf of the agency in the following types of contested case hearings conducted by ODOT:

- (a) Assessment of civil monetary penalties for violation(s) of ORS Chapter 818, 823, 825 and 826 or related rules;
- (b) Suspension or cancellation of motor carrier operating authority;
- (c) Cancellation of registration or vehicle enrollment in the weight-mile tax program;
- (d) Surety bond increase;
- (e) Tariff docket; and
- (f) Reassessment cases involving weight-mile tax, commercial or prorated registration fees, road use assessment fees, or fuel taxes pursuant to ORS Chapter 818, 825 and 826 or related rules.

(2) The agency representative may present evidence, ask questions of witnesses and present factual arguments.

(3) The agency representative may not make legal argument on behalf of the agency.

(a) "Legal argument" includes arguments on:

- (A) The jurisdiction of the agency to hear the contested case;
 - (B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency; and
 - (C) The application of court precedent to the facts of the particular contested case proceeding.
- (b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

- (A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;
- (B) Comparison of prior actions of the agency in handling similar situations;
- (C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and
- (D) The admissibility of evidence or the correctness of procedures being followed.

(4) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

STATUTORY/OTHER AUTHORITY: ORS 814.619, 823.011

STATUTES/OTHER IMPLEMENTED: ORS 183.450, 823.031, 823.033

AMEND: 740-020-0010

RULE TITLE: Scope Defined

RULE SUMMARY: Amendment clarifies that motor carriers now need only enroll vehicles for purposes of highway use taxes rather than register which previously involved obtaining an Oregon Weight Receipt Tax Identifier after paying an \$8 fee.

RULE TEXT:

(1) ORS 823.007(1) requires each employee of the department who performs a function concerning the economic regulation of motor carriers to file with the department an employee statement of pecuniary interests in motor carriers. Division 20 rules establish when a statement is required, defines terms associated with the statement and describes the circumstances under which disciplinary action may occur for failure to comply with ORS 823.007(1).

(2) For the purposes of ORS 823.007(2), "a function concerning economic regulation of motor carriers" means any action or transaction that affects or potentially affects the financial status of a motor carrier. Such functions include, but may not be limited to:

- (a) Entry, including issuance of operating authority;
- (b) Regulation and establishment of rates of household goods carriers described in ORS 825.202;
- (c) Enrollment of commercial motor vehicles for highway use tax purposes;
- (d) Registration or apportioned registration of commercial motor vehicles;
- (e) Receiving, collecting and accounting for money received from motor carriers;
- (f) Enforcement of motor carrier regulations, including audit, inspection and investigation for compliance with tax, safety and other regulations;
- (g) Issuance of variance permits under ORS Chapter 818;
- (h) Weighing commercial vehicles and enforcing highway size and weight standards;
- (i) Authorization of farm registration under ORS Chapter 805;
- (j) Processing insurance and surety deposit filings; and
- (k) Processing refunds.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 823.011, 825.232

STATUTES/OTHER IMPLEMENTED: ORS 805.300, 818.200, 823.007, 825.100, 825.202, 825.224

AMEND: 740-045-0010

RULE TITLE: Commercial Vehicle Operating Credentials

RULE SUMMARY: Amendment removes all reference to the previous Oregon Weight Receipt and Tax Identifier and now just requires carriers to be enrolled in the weight-mile tax program.

RULE TEXT:

(1) The Department will authorize operation in one or more of the following forms for each self-propelled vehicle for which registration fees have been paid and which may be listed or added to a certificate or permit:

- (a) Oregon commercial or apportioned vehicle registration plates, registration cards and stickers set forth in ORS Chapter 826;
- (b) Enrollment of vehicles in the weight-mile tax program set forth in ORS Chapter 825;
- (c) Temporary credentials issued pursuant to ORS Chapters 825 and 826, including temporary enrollment documents to vehicles for which base jurisdiction license plate information has not been provided; and
- (d) Identification plates and enrollment weight identifier for vehicles that are not subject to vehicle registration requirements, but are subject to weight-mile tax requirements.

(2) Oregon commercial or apportioned registration plates or temporary credentials must be fastened to, carried in, or identified on the self-propelled vehicle for which it is issued as provided in these rules.

(3) Valid Oregon commercial or apportioned vehicle registration plates, enrollment of vehicles in the weight-mile tax program, or temporary credentials must not be removed from the vehicle or transferred to any other vehicle under any circumstances not provided for in these rules.

(4) A vehicle's enrollment in the weight-mile tax program shall be considered invalid if:

- (a) The vehicle is for any reason retired from service or removed from the carrier's list of vehicles under the permit or certificate upon which it is listed;
- (b) The certificate or permit is for any reason suspended or canceled;
- (c) The base jurisdiction license information for the vehicle changes; or
- (d) There has been a failure to provide insurance or bond as required by ORS Chapter 825.

(5) Oregon commercial or apportioned vehicle registration plates shall be considered cancelled and must immediately be removed from the vehicle if:

- (a) Registration fees are not paid;
- (b) The vehicle is for any reason retired from service or removed from the carrier's list of vehicles;
- (c) There has been a failure to provide insurance or bond as required by ORS Chapters 825 and 826; or
- (d) The vehicle is removed from a fleet by the end of the calendar year for which apportioned fees have been paid.

Returned plates must be received in a Department office by January 10 of the year following the registration year.

(6) A vehicle's enrollment in the weight-mile tax program shall be considered valid until cancelled or when identification plates for vehicles subject to weight-mile tax requirements are not renewed.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 823.011, 825.232, 826.031

STATUTES/OTHER IMPLEMENTED: ORS 825.454, 825.470, 826.023

AMEND: 740-045-0025

RULE TITLE: Vehicle Registration Plate — Transfer

RULE SUMMARY: Amendment removes reference to the previous Oregon Weight Receipt and Tax Identifier and clarifies that a vehicle's enrollment in the weight-mile tax program remains assigned to that vehicle upon sale as would an Oregon vehicle registration plate assigned to that vehicle.

RULE TEXT:

- (1) In the case of lease or sale of a vehicle enrolled in the weight-mile tax program or assigned an Oregon vehicle registration plate, the Department may allow either enrollment in the weight-mile tax program or an Oregon vehicle registration plate to remain assigned to the vehicle and be continued in use, provided the purchaser or lessee:
- (a) Makes application, on forms approved by the Department, to continue the credentials in use under a certificate or permit issued to purchaser or lessee;
 - (b) Remits the fee specified in ORS 826.023 for registration plates; and
 - (c) Remits registration fees if the vehicle is registered under apportioned registration.
- (2) The original certificate or permit holder shall be deemed, under section (1) of this rule, to be conducting all operations of the vehicle and shall remain responsible for all the operations of the vehicle until the credential has been transferred to the certificate or permit of the purchaser or lessee.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 823.011, 826.031

STATUTES/OTHER IMPLEMENTED: ORS 826.035

AMEND: 740-045-0120

RULE TITLE: Registration and Identification

RULE SUMMARY: Amendment removes reference to the former Oregon Weight Receipt and Tax identifier and clarifies that a leased vehicle over 26,000 pounds must be enrolled in the weight-mile tax program unless the lease runs for less than ten days in which case a temporary pass will suffice for registration purposes.

RULE TEXT:

- (1) No vehicle leased by a motor carrier shall be used in Oregon intrastate commerce unless the lease is presented to the Department and the vehicle is registered for use under the lessee's operating authority.
- (2) Except as provided in section (3) of this rule relating to short-term leases, no vehicle with a combined weight in excess of 26,000 pounds shall operate under lease in Oregon intrastate commerce, unless the lessee has enrolled the vehicle in the weight-mile tax program.
- (3) If the vehicle with a combined weight in excess of 26,000 pounds is to be operated under lease for less than 10 days, the carrier must apply for and receive a temporary pass in lieu of enrolling the vehicle in the weight-mile tax program, and pay such fees as are required by the Department, and the lessee must agree to pay highway use taxes for extreme miles of travel in Oregon, both loaded and empty, on a declared combined weight basis.
- (4) Vehicles operated under lease shall at all times be externally identified with the lessee's name, in the manner prescribed by OAR 740-100-0010.
- (5) A copy of the lease must be carried on the vehicle during operation under lease and must be maintained at the carrier's principal place of business for a period of three years after the termination of the lease.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 823.011, 825.232

STATUTES/OTHER IMPLEMENTED: 825.210, ORS 825.100, 825.104

AMEND: 740-045-0150

RULE TITLE: Highway Use Taxes on Leased Equipment

RULE SUMMARY: Amendment replaces reference to Mileage Fees with Highway Use Taxes for vehicles enrolled in the weight-mile tax program.

RULE TEXT:

- (1) The lessee of vehicles being operated under OAR 740-045-0110 to 740-045-0130 is responsible for highway use taxes due for all operations of those vehicles in Oregon during the term of the lease.
- (2) The lessee may be relieved of responsibility for highway use taxes on vehicles with valid enrollment in the weight-mile tax program operating under OAR 740-045-0110 only following written notification to the Department that the lease has been terminated.
- (3) The lessee may enter into fee pay agreements authorizing the owner or lessor to report and pay highway use taxes for vehicles enrolled in the weight-mile tax program in the owner's or lessor's name provided:
 - (a) The fee pay agreement is signed by both the lessee and the owner or lessor; and
 - (b) The agreement is filed with and approved by the Department. Such fee pay agreements shall not relieve the lessee of its obligation for payment of highway use taxes accruing during the term of the lease and prior to written notification of the termination of the lease.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 823.011, 825.230

STATUTES/OTHER IMPLEMENTED: 825.210, ORS 825.100, 825.104

AMEND: 740-055-0110

RULE TITLE: Fuel Purchase Records and Refunds

RULE SUMMARY: Amendment removes requirement that fuel receipts disclose the former Oregon Weight Receipt Tax Identifier number and replaces it with direction that such receipts must now include the base jurisdiction and license plate numbers of vehicles enrolled in the weight-mile program.

RULE TEXT:

(1) All motor carriers must obtain an invoice covering every purchase of motor vehicle fuel and preserve the same for a period of three (3) years subject to inspection by the Department or its representatives at all reasonable times. Fuel Card statements reflecting purchases from retail stations must clearly separate and identify retail and cardlock purchases. Purchases from retail stations require an invoice or receipt from the original seller to be accepted.

(2) Such invoice or statement must disclose:

(a) Date and location of purchase;

(b) From whom purchased;

(c) Kind of fuel and number of gallons purchased;

(d) Base jurisdiction, license plate number of vehicle enrolled in the weight-mile tax program, temporary pass number, or Special Transportation Permit of the vehicle if fuel is delivered directly into such vehicle; and

(e) Amount of fuel tax paid.

(3) Motor carriers purchasing fuel in Oregon may claim a credit for Oregon state fuel tax paid at the pump. Carriers shall deduct the amount of fuel tax paid from the highway use tax due on the highway use tax report for the period in which the fuel was purchased. Motor carriers taking a deduction on the highway use tax report for fuel tax paid shall attach a copy of all fuel invoices for which credit is claimed. Carriers who purchase fuel in bulk shall attach to the highway use tax report for the period in which the fuel was dispensed into a motor vehicle copies of invoices from fuel suppliers indicating Oregon state fuel tax paid and fueling records showing fuel dispensed for each motor vehicle.

(4) Motor carriers may submit a written request for refund of Oregon state fuel tax paid up to three years after purchase. A written request for refund may be granted for any Oregon fuel tax paid but not deducted from the highway use tax report for the period in which the fuel was purchased. Motor carriers requesting refund must attach copies of all invoices. No such refund will be issued until an audit has been performed.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 823.011

STATUTES/OTHER IMPLEMENTED: ORS 825.476, 825.480, 825.484, 825.486

AMEND: 740-300-0040

RULE TITLE: Violation of ORS Chapter 825 and 826 Not Otherwise Provided For — General Penalties

RULE SUMMARY: Amendment removes penalties for not possessing the previous Oregon Weight Receipt and Tax Identifier. Penalties will now apply when vehicles are not enrolled in the Oregon weight-mile tax program.

RULE TEXT:

(1) Except as otherwise ordered by the Department in a particular case, any person who violates any provision of ORS Chapter 825 or 826, or any rule or order of the Department related thereto which has not otherwise been provided for in the Department's rules, shall be subject to the penalties in sections (3), (4) and (5) of this rule.

(2) As used in this rule, "similar violation" means a violation which is similar to the violation alleged in the notice of proposed civil penalty. For the purpose of determining similarity under this rule, violations shall be classified as those relating to:

- (a) Registration of vehicles;
- (b) Weight-mile tax credentials, temporary pass, enrollment in Oregon's weight-mile tax program or other authorized identification devices;
- (c) Economic regulation of transportation of household goods, except rates;
- (d) Rates for the transportation of household goods; or
- (e) Violations of a statute or rule not included in subsections (a) through (d) of this section.

(3) Level I finding of violation(s) apply if no penalty order, cease and desist order or finding of violation(s) has been entered against the defendant within the preceding five years for similar violations of statutes and rules described in this section and no other notice of proposed civil penalty or notice of proposed finding of violation(s) is pending against the defendant for similar violations. If such violations have been found within the last five years, or a notice of proposed penalty or notice of proposed finding of violation(s) is pending against the defendant for violations described in this rule, penalties will be assessed at Level II. Upon a finding of violation(s) at Level I, the Department will issue an order finding such violation(s).

(4) Level II penalties, except as provided in section (5) of this rule, apply to a defendant who does not meet the criteria in section (3) of this rule. The penalties shall include:

- (a) \$100 for each new violation committed; and
- (b) Suspension of operating authority for five working days.

(5) Level III penalties apply to a defendant who has been penalized for similar violations at Level II within 12 months preceding the violation. The penalties shall include:

- (a) \$100 for each new violation committed;
- (b) Imposition of penalties suspended under prior orders for similar violations, unless suspensions have become permanent; and
- (c) Suspension of operating authority for five working days, or cancellation of authority if warranted by the circumstances of the particular case, for violation of ORS Chapter 825 or 826.

(6) Unregistered Vehicles: For the purpose of assessing penalties for violations of ORS 826.031, a defendant will be deemed to have committed one violation for each unregistered vehicle operated in a given month.

(7) Vehicles Operated Without Enrollment in the Weight-mile Tax Program or other Authorized Identification: For the purpose of assessing penalties for violations of ORS 825.470, a defendant will be deemed to have committed:

- (a) One violation per day for each vehicle operated without first enrolling in the weight-mile tax program or obtaining a valid temporary pass; or
- (b) One violation per vehicle for each vehicle operated without valid enrollment in the weight-mile tax program.

STATUTORY/OTHER AUTHORITY: ORS 184.619, 823.011, 825.232

STATUTES/OTHER IMPLEMENTED: ORS 818.210, 818.230, 825.104, 825.110, 825.160, 825.166, 825.202, 825.204, 825.206, 825.224, 825.234, 825.320, 825.470, 825.950, 826.031

