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Interstate Transportation Wages (Amtrak Act)

OAR 150-316.127-(E)

Nonresidents. Are you a nonresident of Oregon with regularly assigned duties in Oregon and at least one other state? If you meet the qualifications below, Oregon will not tax you on these wages. File Form 40N and show this income is exempt by entering a zero in the Oregon column for these wages. Write "Amtrak" at the top of your return in blue or black ink.

The Amtrak Reauthorization and Improvement Act of 1990, Public Law 101-322, prohibits states and local governments from taxing compensation of certain nonresident employees who have regularly assigned duties in more than one state.

If you are a federal, state, or local government employee, you may not exclude your income under the Amtrak Act. (U.S. Postal Service employees are considered employees of the federal government.)

Who qualifies?

To qualify, you must work for:

- An interstate railroad, or
- An interstate motor carrier, or
- An interstate motor private carrier.

In addition, you must:

- Be a nonresident of Oregon, and
- Have regularly assigned duties in more than one state. This means you perform duties in each state on a regular basis. Duties you perform on an "on-call" or "as-needed" basis or on a sporadic or intermittent basis during the year are not considered "regularly assigned duties," and
- Be subject to the jurisdiction of the U.S. Secretary of Transportation.

For employees of interstate motor carriers or motor private carriers, in the course of employment, you must:

- Directly affect the safety of a commercial motor vehicle. This means you are required by your regularly assigned routine and duties to work directly with a commercial motor vehicle or its contents. The duties must be direct and hands-on, requiring you to physically move, touch, or affect the vehicle or its contents. Supervisory, managerial, consulting, or other duties that indirectly affect the safety of a motor vehicle do not meet the definition of "directly affects," **and**
- Work as:
 - An operator of a commercial motor vehicle,
 - A mechanic,
 - A freight handler, or
 - Someone, other than an employer, who directly affects the safety of a motor vehicle.

A commercial motor vehicle is any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property if such vehicle:

- Has a gross vehicle weight rating of more than 10,000 pounds,
- Is designed or used to transport passengers for compensation, except for vehicles providing taxi cab service when the vehicle has a capacity of eight or fewer passengers and is not operated on a regular route or between specified places,
- Is designed to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation, or

- Is used and labeled for the transportation of hazardous materials.

Example 1: Adam is a nonresident who works for an Oregon interstate motor carrier as a commercial motor vehicle driver. He has a regular route from Idaho to Oregon, delivering products in Oregon. Because Adam is the driver of a commercial motor vehicle and has regularly assigned duties in more than one state, this income is exempt from Oregon tax. Adam must file Form 40N and show this income is exempt by entering a zero in the Oregon column for these wages.

Example 2: Brenda is a nonresident who works for an interstate motor carrier as a mechanic directly affecting the safety of commercial motor vehicles engaged in interstate commerce. She has regular duties in a Washington terminal and an Oregon terminal. She works one day a week in Washington and four days in Oregon.

Because Brenda directly affects the safety of a commercial motor vehicle in interstate commerce and performs regularly assigned duties in two states, she is exempt from Oregon tax. It does not matter that the majority of her work is performed in Oregon. Brenda must file a Form 40N and show this income is exempt by entering a zero in the Oregon column for these wages.

Example 3: Jorge is a nonresident who works as a mechanic for an interstate motor carrier, directly affecting the safety of commercial motor vehicles engaged in interstate commerce. He regularly works in Medford but is required to be on-call some weekends to perform minor repair work. Several times a year he may travel to California to repair a flat tire, do minor engine work, etc.

Jorge does not have **regularly assigned duties** in more than one state. Duties that are performed on an on-call or as-needed basis are not considered to be regularly assigned. Jorge's wages earned in Oregon are taxable by Oregon. He must file Form 40N and report his wages in the Oregon column.

Example 4: Carl is a nonresident who works for an interstate motor carrier as a driver. Carl picks up a lumber delivery truck every morning in Washington and receives delivery assignments for the day. Depending on where the lumber needs to be delivered, he may not come to Oregon on a daily basis. Carl may pick up and deliver lumber only within Washington or only within Oregon. Carl does drive to Oregon at least once a month. Carl's wages earned in Oregon are exempt from Oregon tax. Carl must file Form 40N and show this income is exempt by entering a zero in the Oregon column for these wages.

Due to the nature of the business, the company may not be able to assign regular duties to Carl. The company itself does not know what each day's delivery route will be until customers place orders. Although Carl may not have a regular route in Washington and Oregon, he does drive to Oregon at least once a month. Carl is considered to have **regularly assigned duties in two states, as long as all routes are assigned randomly among all drivers on a regular basis.**

Example 5: Ed is a nonresident who works for an Oregon wholesaler as a shipping clerk. The company has one terminal in Oregon and one terminal in Washington. Ed regularly works in both terminals. That is, he has regularly assigned duties in two states.

Ed is not considered exempt within the scope of the Amtrak Act. He is not a driver, mechanic, or freight handler. His duties do not directly affect the safety of the vehicle. Ed's wages earned in Oregon are taxable by Oregon. He must file Form 40N and include his income in the Oregon column.

Example 6: Frieda is a nonresident who works for an Oregon retail store as a freight handler. Her regularly assigned duties are to load and unload freight. Occasionally, Frieda is asked to fill in as a driver and, over the course of a year, may drive several routes in and out of Oregon. Frieda does not have "regularly assigned duties in more than one state" and she does not work for an interstate motor carrier. Her Oregon-source wages are taxable by Oregon. Frieda must file Form 40N and include her income in the Oregon column.

Example 7: Butch is a nonresident who works for an Oregon-based interstate trucking carrier as a supervisor. His regular duties within the state of Oregon include safety training. However, Butch frequently also drives to Washington to conduct safety training.

Supervisory duties do not qualify as exempt under the Amtrak Act. The employee must directly affect the safety of a commercial vehicle. Conducting safety training only indirectly affects the safety of a commercial motor vehicle. Butch's wages are taxable by Oregon. He must file Form 40N and include his income in the Oregon column.

Example 8: Connie Sue is a nonresident who works for an interstate trucking carrier at her company's Oregon and Washington yards. She has a variety of duties, including helping load trucks. Connie Sue is allowed overtime under the Fair Labor Standards Act.

Because she is covered under the Fair Labor Standards Act rather than being subject to the jurisdiction of the Secretary of Transportation, Connie Sue does not qualify for the Amtrak relief. Her wages are taxable by Oregon. She must file Form 40N and include her income in the Oregon column.

Example 9: Ken is a nonresident who works as a line repairman for a utility company. He uses a company truck with a gross vehicle weight of more than 10,000 pounds to make service calls in both

Oregon and Washington.

Ken is not exempt from Oregon taxation because he does not drive a "commercial motor vehicle" (a motor vehicle used to transport passengers or property). Ken's Oregon wages are taxable by Oregon. He must file Form 40N and include his income in the Oregon column.

Employer withholding

If you are exempt from Oregon taxation under the Amtrak Act, Oregon tax does not have to be withheld from your wages. You may claim exemption from withholding on the W-4 you file with your employer. On the W-4 write "For Oregon Only—Amtrak." Attach to Form W-4 an explanation of qualifying duties. You must still file an Oregon tax return even if you claim exemption from withholding under the Amtrak Act.

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