

NOTICE OF PROPOSED RULEMAKING

CHAPTER 414

OREGON DEPARTMENT OF EDUCATION, EARLY LEARNING DIVISION

FILING CAPTION: Administrative Rule revisions to Chapter 414, Division 700 Child Care Contribution Tax Credit Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/21/2017 5:00 PM

NEED FOR THE RULE(S):

During the 2015 and 2017 Legislative Session, the Oregon Legislature amended the Child Care Contribution Tax Credit program. HB 2171 (2015) and HB 3066 (2017) made several changes to the tax credit program. Administrative rules for the Child Care Contribution Tax Credit program need to be amended to reflect statutory changes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 2171 (2015): <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2171>

HB 3066, (2017): <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB3066>

FISCAL AND ECONOMIC IMPACT:

No fiscal impact due to these proposed administrative rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Amendments to these administrative rules will have no fiscal impact on state agencies, units of local government or the public.

(2)(a) Amendments to 414-700 will add no additional requirements to small businesses and industries with small businesses subject to the rule.

Small businesses will not be subject to these rules.

(2)(b) Amendments to 414-700 will add no additional record keeping or other administrative requirements.

(2)(c) No professional services, equipment, supplies, labor or increased administration required for compliance.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Child care providers, who in some cases are small businesses serve on the Early Learning Council's Rules Advisory Committee (Child Care and Education Committee).

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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RULES PROPOSED:

414-700-0000, 414-700-0010, 414-700-0020, 414-700-0030, 414-700-0040, 414-700-0050,
414-700-0060, 414-700-0070, 414-700-0080, 414-700-0090

AMEND: 414-700-0000

RULE TITLE: Purpose

RULE SUMMARY: Purpose statement

RULE TEXT:

(1) The purpose of these rules is provide guidance for administration of the child care contribution tax credit program as authorized in ORS 314.752, 315.213 and 318.031 and Section 10, chapter 682, Oregon Laws 1987, Section 87, chapter 625, Oregon Laws 1989, ORS Chapter 329A.700 to 329A.718 and Chapter 186, Oregon Laws 2017.

(2) The intent of the tax credit and use of the contributions are to :

(a) Encourage taxpayers to make contributions to the Office of Child Care by providing a financial return on qualified contributions and by soliciting other contributions.

(b) Achieve specific and measurable goals for targeted communities and populations.

(c) Strengthen the viability and improve the professional development of child care providers.

(d) Encourage child care providers or programs to increase the quality of child care.

STATUTORY/OTHER AUTHORITY: ORS 329A.706

STATUTES/OTHER IMPLEMENTED: ORS 329A.700-329A.718, Chapter 186, 2017 Oregon Laws

AMEND: 414-700-0010

RULE TITLE: Definitions

RULE SUMMARY: Defines terms used in Chapter 414, Division 700

RULE TEXT:

- (1) "Child care provider" means a provider, for compensation, of care, supervision or guidance to a child on a regular basis in a center or in a home other than the child's home. Child care provider does not include a person who is the child's parent, guardian or custodian.
- (2) "Division" or "ELD" means the Early Learning Division of the Oregon Department of Education.
- (3) "Office of Child Care" or "OCC" means the Office of Child Care of the Early Learning Division.
- (4) "Employment Related Day Care program" or "ERDC Program" means a subsidy program within the Oregon Department of Human Services which helps low-income families pay for child care while they are working.
- (5) "High quality child care" means child care that meets standards for high quality child care established or approved by the Early Learning Council.
- (6) "Qualified contribution" means a contribution made by a taxpayer to the Office of Child Care for the purpose of promoting high quality child care, and for which an application is submitted for a tax credit certificate.
- (7) "Tax credit certificate" means a certificate issued by the Office of Child Care to a taxpayer to qualify the taxpayer for a tax credit.

STATUTORY/OTHER AUTHORITY: ORS 329A.706

STATUTES/OTHER IMPLEMENTED: ORS 329A.700-329A.718, Chapter 186, 2017 Oregon Laws

REPEAL: 414-700-0020

RULE TITLE: Advisory Committee

RULE SUMMARY: Rule is proposed to be repealed due to statutory changes in 2017 (HB 3066) which repealed the advisory committee from statute.

RULE TEXT:

(1) The Early Learning Division shall guide and direct the implementation of this program in collaboration with an advisory committee established by the Office of Child Care.

(2) The advisory committee shall be comprised of representatives of state agencies, local organizations, advocates, and consumers with experience or interest in tax credit programs, high quality child care, or community development.

STATUTORY/OTHER AUTHORITY: ORS 657A.706

STATUTES/OTHER IMPLEMENTED: ORS 657A.700 - 657A.718

AMEND: 414-700-0030

RULE TITLE: Distribution of Funds

RULE SUMMARY: This rule directs applicants for state funds and describes the purpose of the funds.

RULE TEXT:

(1) Child Care providers may apply to receive funds using the application form available from the Division.

(2) The Division or its designated entity shall disburse funds to support the professional development activities of eligible child care providers in the state.

STATUTORY/OTHER AUTHORITY: ORS 329A.706

STATUTES/OTHER IMPLEMENTED: ORS 329A.700-329A.718, Chapter 186, 2017 Oregon Laws

REPEAL: 414-700-0040

RULE TITLE: Application and Renewal Process for Community Agencies

RULE SUMMARY: This rule is proposed to be repealed due to statutory changes in 2017 (HB 3066) which removed "community agencies" from statute.

RULE TEXT:

(1) A community agency desiring to represent a community described in OAR 414-700-0030 shall submit an application to the Office of Child Care, in a form prescribed and provided by the Office of Child Care. The application will demonstrate and describe the agency's experience and abilities in the following areas:

(a) Financial soundness, net worth, cash flow, and accounting capacity to manage a tax credit program.

(b) Demonstrated ability to serve low- and moderate- income families.

(c) A governing board that is stable, has experience with financial matters, is representative of the community, and has a history of collaboration with other agencies in the community.

(d) An executive officer and staff with skill and experience in child care business management and small business development.

(2) The Office of Child Care, in collaboration with the advisory committee established in OAR 414-700-0020, shall select a community agency to represent a community.

(3) A selected community agency shall enter into a written agreement with the Child Care Division that specifies the duties and performance expectations required of the agency.

STATUTORY/OTHER AUTHORITY: ORS 329A.706

STATUTES/OTHER IMPLEMENTED: ORS 329A.700-329A.718

REPEAL: 414-700-0050

RULE TITLE: Distribution of Funds to Community Agencies

RULE SUMMARY: Rule is proposed to be repealed due to statutory changes from 2017 (HB 3066) which removed "community agencies" from statute.

RULE TEXT:

(1) The Office of Child Care shall determine the total value of moneys to be available to each selected community agency to distribute to providers based on goals established for the program by the Office of Child Care , in collaboration with the advisory committee established in OAR 414-700-0020 and transmit those determinations to the selected community agencies of each year.

(2) The Office of Child Care shall distribute moneys to the community agencies in a manner that will facilitate timely implementation of the program in that community.

(3) The total value of moneys available to all selected community agencies may not exceed the amount of contributions received from taxpayers during the tax year, minus any reasonable administrative costs incurred by the Office of Child Care and the selected community agencies.

(4) Distributions shall be made to selected community agencies in the proportion that the Office of Child Care determines best promotes the provision of child care in the state.

STATUTORY/OTHER AUTHORITY: ORS 657A.706

STATUTES/OTHER IMPLEMENTED: ORS 657A.700 - 657A.718

AMEND: 414-700-0060

RULE TITLE: Participating Provider Eligibility Requirements

RULE SUMMARY: This rule describes participating provider eligibility requirements to receive fund disbursements.

RULE TEXT:

To be eligible for disbursements, child care providers shall:

- (1) Be an individual or supervisor providing direct care to children under the age of 13 for at least 20 hours a week;
- (2) Achieve a step 3 or higher on the Oregon Registry; and
- (3) Be regulated by the Office of Child Care; or
- (4) Meet the requirements of the Oregon Department of Human Services to provide care to families under the ERDC program; and
- (5) Accept children for whom child care is paid for through Oregon Department of Human Services' ERDC program.

STATUTORY/OTHER AUTHORITY: ORS 329A.706

STATUTES/OTHER IMPLEMENTED: ORS 329A.700 - 329A.718, Chapter 186, 2017 Oregon Laws

REPEAL: 414-700-0070

RULE TITLE: Distribution of Funds to Participating Providers

RULE SUMMARY: Rule is proposed to be repealed due to statutory changes in 2017 (HB 3066) which deleted "community agencies" from statute.

RULE TEXT:

- (1) The selected community agency shall identify providers in the community that meet the requirements of OAR 414-700-0060 for the purpose of distribution of moneys. The selected community agency shall develop a process by which child care providers apply to receive distributions of moneys from contributions made by taxpayers.
- (2) By the end of each calendar year, the selected community agency must distribute to participating child care providers all moneys available to the community as a result of this program. Distributions shall be based on:
 - (a) The actual costs of providing quality, affordable child care in the community for which distributions are being made, including training costs, operating expenses and wages.
 - (b) The incomes of the families the provider serves and the child care fees the provider charges.
- (3) The selected community agency shall, through a process approved by the Child Care Division, determine the amount of moneys each eligible provider receives.
- (4) A substantial portion of the moneys shall be distributed to providers who operate home-based child care businesses.

STATUTORY/OTHER AUTHORITY: ORS 657A.706

STATUTES/OTHER IMPLEMENTED: ORS 657A.700 - 657A.718

REPEAL: 414-700-0080

RULE TITLE: Allocation of Certificates

RULE SUMMARY: Rule is proposed to be repealed due to statutory changes in 2017 (HB 3066).

RULE TEXT:

(1) Tax credit certificates shall be available to taxpayers on a statewide basis. The Office of Child Care shall allocate tax credit certificates to taxpayers that make qualified contributions to the Child Care Fund.

(2) If a taxpayer makes a contribution to the Office of Child Care for the purpose of receiving a tax credit under this program, the taxpayer shall submit an application for a tax credit certificate with the contribution. The applications shall:

(a) Be available to taxpayers from the Office of Child Care; and

(b) Be submitted by December 31 of each year.

(3) Contributions made under this subsection shall be deposited in the Child Care Fund.

(4) The Office of Child Care shall consider applications for tax credit certificates in the chronological order in which the applications are received by the Office of Child Care. The division shall issue tax credit certificates to applicants until the total credit value of all certificates issued by the division for the calendar year equals \$500,000. Each issued certificate shall state the value of the contribution being certified as eligible for the tax credit allowed under ORS 315.213.

(5) The Office of Child Care may not issue a tax credit certificate to a taxpayer to the extent the claim for credit in the application, when added to the total credit value previously certified by the Office of Child Care exceeds the \$500,000 tax credit value available for the calendar year requested.

(6) A taxpayer who receives a notice of denial of a tax credit certificate or that receives a tax credit certificate issued for an amount that is less than the amount contributed may request a refund for the amount contributed within 90 days of the Office of Child Care's denial or issuance of the certificate.

(a) The Office of Child Care shall send notice of a denial or changed amount and refund the amount for which a tax credit will not be granted within 30 days after receiving the request.

(b) The refund shall be made from the Child Care Fund.

(7) The Office of Child Care shall send a copy of all tax credit certificates issued to the Department of Revenue.

STATUTORY/OTHER AUTHORITY: ORS 657A.706

STATUTES/OTHER IMPLEMENTED: ORS 657A.700 - 657A.718

REPEAL: 414-700-0090

RULE TITLE: Taxpayer Requirements

RULE SUMMARY: Rule is proposed to be repealed. Current rule language is repetitive of statute.

RULE TEXT:

- (1) A credit against the taxes otherwise due under ORS Chapter 316 or, if the taxpayer is a corporation, under ORS Chapter 317 or 318, is allowed to a taxpayer for certified contributions made to the Office of Child Care under OAR 414-700-0080.
 - (a) The amount of a tax credit available to a taxpayer for a tax year shall equal the amount stated in the tax credit certificate.
 - (b) The tax credit may not exceed the tax liability of the taxpayer for the tax year in which the credit is claimed.
- (2) Any tax credit not used by the taxpayer in a particular tax year may be carried forward and offset the taxpayer's tax liability in any of the four succeeding tax years. The credit cannot be carried forward for any tax year thereafter.
 - (a) A taxpayer shall retain the tax credit certificate received under OAR 414-700-0080 with their copy of their tax return filed with the state Department of Revenue for the tax year in which the tax credit certificate applies.
 - (b) A credit under this section may be claimed by a non-resident or part-year resident without proration.
- (3) The credit allowed under this section is in addition to, and not in lieu of, any credit or deduction allowable under ORS chapters 316, 317, or 318 for charitable contributions and contributions made in relation to child care.
- (4) If a taxpayer makes a contribution to the Office of Child Care but does not want to receive a tax credit, the taxpayer may receive only deductions and credits otherwise allowed for a charitable contribution.
- (5) Contributions made under this program shall be deposited in the Child Care Fund established under ORS 329A.010.

STATUTORY/OTHER AUTHORITY: ORS 657A.706

STATUTES/OTHER IMPLEMENTED: ORS 657A.700 - 657A.718

