

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF HOUSEKEEPING)	ORDINANCE NO. 22-1485
AMENDMENTS TO METRO CODE CHAPTERS)	
7.05 AND 7.07 RELATED TO PERSONAL AND)	Introduced by Chief Operating Officer
BUSINESS INCOME TAX ADMINISTRATION)	Marissa Madrigal in concurrence with
)	Council President Lynn Peterson

WHEREAS, on May 19, 2020, the Metro area voters approved Metro’s Supportive Housing Services Ballot Measure (“Measure”); and

WHEREAS, on December 17, 2020, the Metro Council adopted Ordinance No. 20-1452, which established a new Metro Code Chapter 11.01 (“Supportive Housing Services Program”) that codified the Measure’s programmatic sections with title, chapter and section numbers; and

WHEREAS, in ongoing efforts to efficiently administer the personal and business income taxes associated with Metro’s Supportive Housing Services Program, Metro staff consulted with stakeholders, Metro’s tax administrator, and tax experts to establish administrative rules to further implement the income taxes; and

WHEREAS, the administration of income taxes often requires code and rule amendments to address issues such as federal and state law changes, and technology associated with tax filing and enforcement; and

WHEREAS, during the first year of collections of these taxes, Metro staff, in conjunction with tax administration partners at the City of Portland and Multnomah County, determined that certain clarifications and housekeeping changes were needed to code chapters 7.05 and 7.07; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Sections 7.05.020, 7.05.160, and 7.07.090 are amended as set forth in the attached Exhibit A. These changes take effect on January 1, 2023.

ADOPTED by the Metro Council this 27th day of October 2022.

Lynn Peterson, Council President

Attest:

Approved as to Form:

Connor Ayers

Carrie MacLaren

Connor Ayers, Recording Secretary

Carrie MacLaren, Metro Attorney

Chapter 7.05 Income Tax Administration for Personal and Business Taxes

New language for Chapter 7.05 is indicated by underlined text, and deleted language is indicated by ~~strikethrough~~ text.

1. *Amend Section 7.05.020 "Definitions" to add two new definitions and revise an existing definition as follows:*

Business Income has the same meaning as "apportionable income" defined in Oregon Revised Statutes 314.610.

Nonbusiness Income means ~~income not created in the course of a taxfiler's business activities~~ has the same meaning as "nonapportionable income" defined in Oregon Revised Statutes 314.610.

Notice means a written document mailed by first class by the Administrator or District to the last known address of a taxfiler as provided to the Administrator or District in the latest registration form or tax return on file with the Administrator. Alternatively, notice may be delivered in person, by facsimile, email, or other means with taxfiler consent.

2. *Amend Section 7.05.160 "Protests and Appeals; Penalty Waiver" as follows:*

(a) A taxfiler may protest any determination by the Administrator. The Administrator must receive written notice of the protest within 30 days after the Administrator mailed or delivered the initial notice of determination to the taxfiler. Failure to file such a written notice within the time permitted is deemed a waiver of any objections, and the Administrator will dismiss the appeal. The protest must state the name and address of the taxfiler and an explanation of the general grounds for the protest. The Administrator must respond within 30 days after the protest is filed with ~~either a revised determination or a~~ final determination. The Administrator's final determination must include the reasons for the determination and state the time and manner for appealing the final determination. The time to file a protest or the time for the Administrator's response may be extended by the Administrator for good cause. Requests for extensions of time must be received before the original 30-day protest deadline expires. The Administrator will give written notice to the taxfiler if the Administrator's deadline is extended.

(b) A taxfiler may appeal any final determination by the Administrator to the appeals board. The Administrator must receive written notice of the appeal within 30 days after the Administrator mailed or delivered the final determination to the appellant. The notice of appeal must state the name and address of the appellant and include a copy of the final determination.

(c) Within 90 days after the Administrator mails or delivers the final determination to the appellant, the appellant must file with the appeals board a written statement containing:

1. The reasons the Administrator's determination is incorrect; and

2. What the correct determination should be.

Failure to file this a written statement within the time permitted is a waiver of any objections, and the appeal will be dismissed.

- (d) Within 150 days after the Administrator mails or delivers the final determination to the appellant, the Administrator will file with the appeals board a written response to the appellant's statement. A copy of the Administrator's response must be mailed to the address provided by the appellant within 10 days after the Administrator files it with the appeals board.
- (e) The ~~Administrator~~ appeals board must provide the appellant written notice of the hearing date and location at least 14 days before the hearing. The appellant and the Administrator may present relevant testimony, evidence, and oral argument at the hearing. The appeals board may request additional written comment and documents as the board deems appropriate.
- (f) Decisions of the appeals board must be in writing, state the basis and legal authority for the decision and be signed by the appeals board chair.
- (g) The decision of the appeals board is final as of the issue date and no further administrative appeal will be provided.
- (h) The filing of an appeal with the appeals board temporarily suspends the obligation to pay any tax that is the subject of the appeal pending a final decision by the appeals board.
- (i) Penalty waiver or reduction requests are not subject to the protest/appeal process or timeline outlined in subsections 7.05.160(a) through 160(h). The taxfiler must file a written request with the Administrator detailing why a penalty should be waived within 30 days of receipt of a billing notice that assesses a penalty. The Administrator must respond to requests to reduce or waive penalties within 60 days from the date the written request is received. As provided in subsections 7.05.260(f) and 7.05.270(e), the Administrator may waive or reduce penalties in certain situations. If the taxfiler has requested that penalties be waived and the Administrator denies the taxfiler's request for this discretionary waiver of penalties, the taxfiler may request a conference with the Administrator (or Administrator's designee) within 30 days of the date of the Administrator's notice of denial. If the conference with the Administrator results in a denial of the penalty waiver request, that decision is final and may not be appealed to the Appeals Board.

Chapter 7.07 Business Income Tax

New language for Chapter 7.07 is indicated by underlined text, and deleted language is indicated by ~~strikethrough~~ text.

1. Amend Section 7.07.090 "Presumptive Tax" to remove the current subsection (c) as follows:

(a) If a person fails to file a return, a rebuttable presumption exists that the tax payable amounts to \$500 for every tax year for which a return has not been filed.

(b) Nothing in this section prevents the Administrator from assessing a tax due that is less than or greater than \$500 per tax year.

~~(c) If the taxfiler filed a tax return the previous tax year, then presumptive taxes assessed under this section will be considered a tax return. Presumptive taxes assessed under this section are considered filed documents and subject to the time limitations for deficiencies and refunds as described in Metro Code Section 7.05.150.~~

(c)~~(d)~~ Taxes determined under this section are subject to penalties and interest from the date the taxes should have been paid as provided in Section 7.05.170 in accordance with Sections 7.05.260 and 7.05.280. The Administrator will send notice of the determination and assessment to the taxfiler.

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 22-1485, FOR THE PURPOSE OF HOUSEKEEPING AMENDMENTS TO METRO CODE CHAPTERS 7.05 AND 7.07 RELATED TO PERSONAL AND BUSINESS INCOME TAX ADMINISTRATION

Date: October 3, 2022
Department: Finance & Regulatory Services
Meeting Date: October 20, 2022

Prepared by: Josh Harwood
(503) 797-1626
Josh.Harwood@oregonmetro.gov
Presenter: Josh Harwood
Length: 15 minutes (in conjunction with Ordinance No. 22-1484)

ISSUE STATEMENT

In December 2020, the Metro Council adopted Metro Code Chapters 7.05, “Income Tax Administration for Personal and Business Taxes”, 7.06 “Personal Income Tax”, and 7.07 “Business Income Tax”. These chapters codified certain provisions of the Supportive Housing Services Measure approved by the voters, and established code to implement the taxes imposed by the measure in an effective and efficient manner.

After adoption of the income tax code, Metro has continued to work on implementation and ongoing administration of the tax collection system with our tax administrator, the City of Portland Revenue Division. Through these efforts, Metro will be required to occasionally amend code or administrative rules in order to maintain consistency with current practices and/or any related law changes that may happen at the state and/or federal level.

The proposed amendments do not change the intent of the code as adopted by Council, but make changes to support the collection of these taxes through the City of Portland’s Revenue Division.

ACTION REQUESTED

Staff requests adoption of Ordinance No. 22-1485.

IDENTIFIED POLICY OUTCOMES

The proposed amendments to Metro income tax codes clarify the code originally adopted in December 2020 in order to maintain consistency in administrative practices for tax collections done by the City of Portland, including Metro’s SHS taxes. These codes establish rules to ensure the taxes imposed by the measure are administered in an effective and efficient manner.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- *Adoption of this ordinance.* This results in more clarity in the income tax codes, while reinforcing actions already completed by the City of Portland and Multnomah County which guide the tax collection system for all three entities.
- *Adoption of this ordinance with revisions or modifications as described by Council.* This may require additional action to ensure that changes do not conflict with other local government income tax codes.
- *Rejection of this ordinance with other direction to staff.* The existing income tax code would remain in place, but proposed amendments would not be made. This may require additional action to ensure that changes do not conflict with other local government income tax codes.

STAFF RECOMMENDATIONS

Staff recommends that Metro Council adopt Ordinance No. 22-1485.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Metro staff formed a tax implementation advisory table in June 2020 to advise on technical aspects of tax implementation, technical issues, and provide recommendations to ensure a smooth, legal and easy tax collection process. Members included experts in taxation, tax policy, tax implementation and business stakeholders. The table met with staff multiple times and provided input on development of the tax codes.

Council provided direction on code development at a November 2020 work session, and three Council meetings in December 2020. The code was adopted on December 17, 2020. Tax collection began in April 2021. Collections began slowly, as is normal for a new income tax. However, by the end of FY 2021-22, the taxes collected nearly \$240 million in revenue and over \$200 million was distributed to our local implementation partners.

In the context of this ordinance, Metro is providing additional clarity and codifying actions taken by the City of Portland and Multnomah County, with whom Metro has agreed to partner with for purposes of income tax administration.

BACKGROUND

In May 2020 Metro voters approved a measure to raise money for supportive housing services for people experiencing homelessness or at risk of experiencing homelessness. Multnomah County, in November 2020, subsequently passed a personal income tax to fund early childhood education. The tax is similar – though with a slightly different structure – to

the personal income tax component of Metro's SHS taxes and is also now administered by the City of Portland's Revenue Division.

The program is funded by two separate taxes: a 1% personal income tax on taxable income above \$125,000 for individuals and \$200,000 for those filing jointly, and a 1% business income tax on net income for businesses with gross receipts above \$5 million. Other Metro programs and projects are funded through bond measures or property tax levies. This is the first program at Metro that uses personal and business income taxes, and it is the first local personal income tax in the region since Multnomah County's personal income tax ended in 2006.