

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 23-1503
CODE CHAPTERS 7.05 (INCOME TAX)	
ADMINISTRATION) AND 7.06 (PERSONAL)	Introduced by Chief Operating Officer
INCOME TAX) TO ADD CERTAIN)	Marissa Madrigal in concurrence with
CLARIFICATIONS AND MAKE)	Council President Lynn Peterson
HOUSEKEEPING UPDATES)	

WHEREAS, on December 17, 2020, the Metro Council adopted Ordinance 20-1454, which codified the personal and business income taxes approved by the voters for Metro’s Supportive Housing Services Ballot Measure into new code chapters 7.05 (Income Tax Administration), 7.06 (Personal Income Tax); and

WHEREAS, following codification of the personal and business income taxes, Metro staff consulted with stakeholders, Metro’s tax administrator, and tax experts to establish administrative rules to further implement the income taxes; and

WHEREAS, during the administrative rule adoption process, Metro staff determined that certain clarifications and housekeeping changes were needed to code chapters 7.05 and 7.06; and

WHEREAS, In December 2022, Metro Council adopted Resolution No. 22-5293, which recognizes that certain regulatory code chapters—primarily solid waste and income taxes—require “frequent housekeeping updates to reflect changes in state law and ongoing regulatory clarity,” with annual updates; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Certain sections of Metro Code Chapter 7.05 (INCOME TAX ADMINISTRATION) are amended as set forth in tracked changes in Exhibit A, with underlined text representing inserted text and strikethrough representing deleted text.
2. Certain sections of Metro Code Chapters 7.05 and 7.06 (PERSONAL INCOME TAX) are amended as set forth in tracked changes in Exhibit B, with underlined text representing inserted text and strikethrough representing deleted text.

3. Certain sections of Metro Code Chapter 7.06 (PERSONAL INCOME TAX) are amended as set forth in tracked changes in Exhibit C, with underlined text representing inserted text and strikethrough representing deleted text.

ADOPTED by the Metro Council this 9th day of November 2023.



Lynn Peterson, Council President

Attest:

Approved as to Form:



Connor Ayers, Recording Secretary



Carrie MacLaren, Metro Attorney

Chapter 7.05 Income Tax Administration for Personal and Business Taxes

1. Amend Section 7.05.170 Return Due Date; Extensions as follows, with underlined text representing inserted text and strikethrough representing deleted text:

(a) – (d) unchanged.

(e) Authority to require filing of returns by electronic means.

1. As used in this section:

A. “Electronic means” includes computer-generated electronic or magnetic media, Internet-based applications or similar computer-based methods or applications.

B. “Paid tax preparer” means a person who prepares a tax return for another or advises or assists in the preparation of a tax return for another, or who employs or authorizes another to do the same, for valuable consideration.

C. “Tax return” means a return filed under the Business Income Tax Law.

2. The Administrator may by rule require a paid tax preparer to file tax returns by electronic means if the paid tax preparer is required to file federal tax returns by electronic means.

3. The Administrator may by rule require that a business subject to the Business Income Tax Law file tax returns by electronic means if it is required to file, or voluntarily files, federal tax returns by electronic means.

4. The Administrator may by rule establish exceptions to the electronic filing requirements of this section.

CHAPTER 7.05
INCOME TAX ADMINISTRATION FOR PERSONAL AND BUSINESS TAXES

1. Amend Section 7.05.270 as follows, with red text representing inserted text and strikethrough representing deleted text:

7.05.270 Penalties for Violations of Personal Income Tax Law

The Administrator will assess the following penalties upon **employers or** personal income taxfilers:

(a) **Failure to File a Correct W-2.** If an employer fails to file a correct W-2 that, along with any other W-2 that must be filed, supports amounts reported on the annual withholding reconciliation return, or amended annual withholding reconciliation return, as required by code, administrative rule, written policy, or form instructions by the date specified, the Administrator will assess a penalty of \$50 for each missing or incomplete W-2.

The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the employer that there was reasonable cause for the failure to file a correct W-2 when due and that the employer acted in good faith. Before any penalty waiver or reduction, all withholding balances must be paid in full and reconciliations or other forms or reports must be submitted to the Administrator.

(b) Failure to File a Return; Failure to Pay Tax When Due. If a taxfiler fails to file a return or fails to pay a tax by the date on which the filing or payment is due, the Administrator will add a delinquency penalty of:

1. Five percent of the amount of the unpaid tax.
2. An additional penalty of one hundred percent of the unpaid tax of all tax years if the failure to file is for three or more consecutive tax years.
3. For purposes of this section, unpaid tax is the taxfiler's tax liability reduced by payment of tax and any credit against tax that is claimed on the return.

The Administrator may for good cause waive all or any part of the penalty imposed under this subsection according to and consistent with written policies.

(bc) Underpayment of Tax. A penalty will be assessed if a person:

1. Fails to pay at least ninety percent of the total tax liability by the original due date; or
2. Fails to pay at least one hundred percent of the prior year's total tax liability by the original due date.
3. The penalty under subsection (b) is five percent of the tax underpayment, but not less than \$5.

The Administrator may for good cause waive all or any part of the penalty imposed under this subsection according to and consistent with written policies.

(ed) Intent to Evade. If a taxfiler fails to file a return with the intent to evade the tax imposed under this chapter or Chapter 7.06, or a taxfiler prepares or causes to be prepared a return and files that return with the intent to evade the tax imposed under this chapter or Chapter 7.06, the Administrator will impose a penalty in the amount of one hundred percent of any deficiency that the Administrator determines is due.

(de) Substantial Understatement of Tax. If the Administrator determines that there is a substantial understatement of tax due under this chapter or Chapter 7.06, the Administrator will add to the amount of tax required to be shown on the return a penalty equal to twenty percent of the amount of any underpayment of tax attributable to the understatement.

1. For purposes of this subsection, a substantial understatement of tax exists if the amount of the understatement exceeds \$1,000 of tax otherwise due.

2. In the case of any item attributable to an abusive tax shelter: no reduction of the amount of the understatement will be made with regard to that item regardless of the existence of substantial authority for the treatment of the item by the taxfiler; and, no reduction of the amount of the understatement will be made with regard to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition to the disclosure, the Administrator determines in the Administrator's sole discretion, that the taxfiler reasonably believed that the tax treatment of the item was more likely than not the proper treatment. This chapter expressly adopts the definitions contained in ORS 314.402 and the administrative rules thereunder.

3. The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the taxfiler that there was reasonable cause for the understatement or any portion thereof, and that the taxfiler acted in good faith.

(ef) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.06. For purposes of this subsection, a tax return position is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.

(fg) Failure of Administrative Compliance. The Administrator may impose a penalty of up to \$500 for the following violations of this chapter:

1. Failure to file any tax return within 60 days of the Administrator's original written notice to file;
2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment;
3. Failure to provide either documents or information as required by this chapter or Chapter 7.06 within 60 days of the Administrator's original written notice to provide the documents or information;
4. Failure to fully complete any form required under the Personal Income Tax Law; or

5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.06 unless the section has a separate penalty calculation.

The Administrator may impose a civil penalty under this subsection only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice. The Administrator may waive all or any part of the penalty imposed under this paragraph on a showing by the taxfiler that there was reasonable cause for the Failure of Administrative Compliance, and that the taxfiler acted in good faith.

(gh) Penalties cumulative. Each penalty imposed under this section is in addition to any other penalty imposed under this section.

(hi) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Personal Income Tax Law.

CHAPTER 7.06 PERSONAL INCOME TAX

2. Amend Section 7.06.130 as follows:

7.06.130 Withholding Reconciliation by Employer for Payment of Withheld Tax

(a) Quarterly Withholding Reconciliation. On or before the last day of the month following the quarter in which withholdings pursuant to 7.06.120(a) have been made, the employer must file a quarterly tax report. If the due date is on a weekend or federal holiday, the report is due the next business day.

(b) Annual Withholding Reconciliation. On or before the last day of January following any calendar year in which withholdings pursuant to 7.06.120(a) have been made, the employer must file with the Administrator a reconciliation of taxes withheld and taxes remitted. If the due date is on a weekend or federal holiday, the reconciliation is due the next business day.

(c) The Administrator will determine by administrative rule, **written policy, or published guidelines** the required format and information necessary to comply with subsections (a) and (b) above.

CHAPTER 7.06 PERSONAL INCOME TAX

1. Amend Section 7.06.090 as follows, with red text representing inserted text and ~~strikethrough~~ representing deleted text.
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7.06.090 Deduction for Pass-through Income

(a) A taxfiler is allowed a deduction from taxable income for pass-through income subject to tax under Metro Chapter 7.07 Business Income Tax. Pass-through income comes from a business whose net income is taxed on the owners' or partners' personal tax returns. This includes, but is not limited to, entities taxed as partnerships and S corporations.

(b) The deduction amount allowed in subsection (a) is the individual owners' or partners' distributive share of income **apportionable to Metro** on the **pass-through entity's** Metro Business Income Tax return, as calculated and reported to the owner or partner by the business. **The administrator will provide guidance in calculating this amount. If the Metro Business Income Tax return has not been filed for the relevant tax year, then no deduction is allowed.**

(c) If the taxable income per the Metro Business Income Tax return is zero, **or a net operating loss**, the taxfiler is not allowed a deduction **under subsection (a)**. **The amount of the deduction cannot exceed the amount determined under subsection (b).**

(d) A taxfiler is allowed a deduction for a pass-through net operating loss from a business subject to tax under Metro Code Chapter 7.07, Business Income Tax.

(e) The deduction amount allowed in subsection (d) is limited to the current year's pass-through net operating loss included in Oregon taxable income for a resident or Metro sourced income for a nonresident. This net operating loss can only be used in the current year and cannot be carried to any other year to be used as a deduction. Any carryover deduction of this net operating loss included in federal or Oregon taxable income in another tax year must be added back to the extent it is included in federal or Oregon taxable income.

(f) A taxfiler is allowed a deduction for a pass-through net operating loss or net operating loss deductions from businesses not subject to tax under Metro Code Chapter 7.07, Business Income Tax.

(g) The deduction amount allowed in subsection (f) is limited to the pass-through net operating loss or net operating loss deduction included in Oregon taxable income for a resident or Multnomah County sourced income for a nonresident.

(h) Passive activity losses that are not from a pass-through entity will be treated similarly to Oregon for personal income tax purposes to the extent they are included in Oregon taxable income or, for a nonresident, included in County sourced income.

IN CONSIDERATION OF ORDINANCE 23-1503, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTERS 7.05 (INCOME TAX ADMINISTRATION) AND 7.06 (PERSONAL INCOME TAX) TO ADD CERTAIN CLARIFICATIONS AND MAKE HOUSEKEEPING UPDATES.

Date: October 9, 2023
Department: Finance & Reg. Services
Meeting Date: October 26, 2023

Presenter(s), (if applicable): Justin Laubscher, Tax Compliance Program Manager; Josh Harwood, Fiscal & Tax Policy Director
Length: 20 minutes

Prepared by: Justin Laubscher

ISSUE STATEMENT

Through the course of 2022 and 2023 Metro has continued work on implementation of the Supportive Housing Services tax collection system with the tax administrator, the City of Portland. As part of the ongoing maintenance of the income tax system, staff works to identify portions of the tax code and administrative rules that could be clarified or to help more efficiently collect the taxes. Because the current code does not explicitly address these issues or provide guidance to tax practitioners, staff is proposing code amendments to codify these items. Three sections of the tax code have prompted discussions and comments.

- **E-Filing Mandate.** Metro would like to increase the number of tax returns filed electronically by implementing a mandate for electronic filing to expedite processing of tax returns, reduce data entry errors, and allows issuance of refunds sooner. This ordinance will authorize Metro to implement a mandate by administrative rule. The administrative rules would allow the Administrator to phase-in in a manageable manner that accommodates taxpayers, tax preparers, tax software vendors, and City of Portland resources. This aligns with how the State implemented its electronic filing mandate. Metro has been working closely with the City of Portland and Multnomah County with the intent to implement this mandate uniformly with all three tax entities. It is Metro's intent to implement these requirements beginning with the 2024 tax year (tax returns generally due in April of 2025).
- **Employer Penalties for Incorrect Withholding.** Currently, neither Metro's withholding tax code nor administrative rules specify that employers must submit accurate annual wage and tax statements (Form W-2s). Without specifying that employers may be penalized for submitting incorrect information, the administrator lacks a tool to enforce requests made to employers to provide accurate and/or corrected wage statements (Form W-2Cs).

- **Pass-Through Entity Deduction.** Metro and Multnomah County personal income tax programs allow a deduction for previously taxed income from pass-through entities (PTEs). However, the code and rules do not provide clear and complete guidance for all tax situations. The proposed amendment will provide further clarification for both tax preparers and tax filers.

ACTION REQUESTED

Staff requests that Metro Council adopt Ordinance No. 23-1503.

IDENTIFIED POLICY OUTCOMES

The Metro income tax codes (Chapters 7.05, 7.06, and 7.07 collectively) codify certain provisions of the Supportive Housing Services Measure approved by the voters. The proposed amendments to the Metro income tax codes will further clarify the intent of the code adopted in December 2020. These chapters established code requirements to implement the taxes imposed by the measure in an effective and efficient manner.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- Adopt this ordinance. This results in more clarity in the income tax codes, which guide the tax collection system.
- Adopt this ordinance with revisions or modifications as described by Council.
- Reject this ordinance with other direction to staff. The existing income tax code would remain in place, but proposed amendments would not be made.

STAFF RECOMMENDATIONS

Staff recommend that Metro Council adopt Ordinance No. 23-1503.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

E-Filing. Most federal and Oregon tax returns are prepared electronically as it facilitates the ease of tax return preparation and filing. An e-file mandate will encourage tax software developers to write software that accommodates the electronic filing of Metro tax returns which in turn will provide taxpayers with the same ease of tax return preparation and filing.

Not all Metro tax returns are available from software providers to tax filers and tax preparers which impacts the ability to file electronic tax returns. The federal government and the State of Oregon (State) both experienced this issue when they began accepting electronically filed tax returns. They implemented mandates requiring that certain taxpayers and tax preparers file tax returns electronically. Over time, this resulted in more federal and state tax returns and forms being filed electronically.

Employer Penalties for Incorrect Withholding. The Administrator reports seeing employers submit W-2s along with their annual reconciliation withholding return (AWR) reporting the number of W-2s issued. Later in the following year, the business will amend their prior year quarterly return and AWR but will not include the updated form W-2Cs. Without supplying the Form W-2Cs, there is no precise way to determine the accuracy of the

withholding claims. Requiring accurate and complete W-2s to be filed when the annual reconciliation is due and additionally when the return is amended addresses this concern. These proposed withholding enforcement penalties would not have a material impact on Metro collections revenue or expenses.

Pass-through entity deduction. Unlike the federal government and Oregon's tax treatment of pass-through entities, Metro, Multnomah County, and the City of Portland impose their business income taxes on pass-through entities doing business within our jurisdictions. Metro and Multnomah County adopted personal income taxes by tying to Oregon's personal income tax law as the starting point. This tie means that pass-through entity income is initially included in income reported on these returns. Adjustments are allowed to avoid double taxation.

While developing rules for the personal income tax programs Metro, Multnomah County, and the City of Portland determined that for pass-through entities (PTEs) that were subject to the business income taxes, net operating losses (NOL) incurred remained with the business entity. Since the PTE carries over and uses the loss the individual owner is not entitled to use the same loss. To the extent a PTE's loss is reported on the federal and state personal income tax returns, it must be added back to zero out the loss. It is not allowed to reduce any other income of the individual.

Prior to, and throughout the tax filing season, tax professionals inquired about the proper treatment. Some have suggested not allowing the use of NOLs and NOL deductions by the owner results in double taxation. Others have expressed concern that they receive no benefit of an NOL or the NOL deductions use. The latter reflects what actually occurs.

Data to determine PTE deduction revenue collection impacts is not available because the deduction occurs on the state return and then "flows through" to the Metro return as part of Metro taxable income. Staff considered options and determined that the best course of action was codifying the allowance of a deduction with adjustments to avoid double taxation when multiple tiers of PTEs are involved. Staff also ensured that the deduction should not exceed the individual taxpayer's share of distributive income from the PTE included in the return.