

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 24-1514
CODE CHAPTER 7.05 (INCOME TAX)	
ADMINISTRATION) REGARDING INCOME)	Introduced by Chief Operating Officer
TAX CONFIDENTIALITY PROVISIONS)	Marissa Madrigal in concurrence with
)	Council President Lynn Peterson

WHEREAS, on May 19, 2020, Metro area voters approved a personal and business income tax to fund Metro’s Supportive Housing Services Program; and

WHEREAS, Metro Code Chapter 7.05 (“Income Tax Administration for Personal Income and Business Taxes”) administers Metro’s Supportive Housing Services business and personal income taxes; and

WHEREAS, Metro Code Sections 7.05.090 (Confidentiality) and 7.05.100 (Persons to Whom Information May Be Furnished) impose confidentiality and disclosure restrictions on Metro’s income tax information. This includes describing which persons and entities have access to the information, how that information must be protected if shared or disclosed, and penalties for unlawful disclosure, and

WHEREAS, a 2023 public records request for local income tax information submitted to another local government jurisdiction highlighted the fact that local income tax information was perhaps not protected from public records requests under Oregon’s public records laws, even when a local government had confidentiality provisions in its code and even though state income tax information is exempt from public records disclosure under Oregon laws; and

WHEREAS, in response to concerns from local governments regarding the possible disconnect between the protection afforded to *local government* income tax information as compared to the protections afforded to *state* income tax information, in early 2024 the Oregon legislature passed HB 4031, and

WHEREAS, HB 4031 protects local government income tax information from disclosure in the same manner that state law already protects state income tax information from disclosure, and

WHEREAS, Metro now wishes to amend Metro Code Sections 7.05.090 and 7.05.100 to better align with state law regarding confidentiality protections and public records exemptions related to income tax information and to whom Metro may disclose that tax information; and

WHEREAS, to provide consistency and clarity to Metro area taxpayers, Metro finance staff worked closely with City of Portland and Multnomah County staff to ensure that code language regarding the confidentiality of income tax information is substantially identical among all three jurisdictions’ income tax laws, now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 7.05.090 (Confidentiality) is amended as set forth in the attached as Exhibit A, with inserted language in underlined text and deleted language in strikethrough text.

2. Metro Code Section 7.05.100 (Persons to Whom Information May Be Furnished) is repealed in its entirety and replaced with a new Section 7.05.100 (Disclosure of Information; Persons to Whom Information May Be Furnished) as set forth in Exhibit B.
3. If a court of competent jurisdiction finds that any portion of this ordinance is invalid or unenforceable as a matter of law, that finding does not invalidate or render unenforceable any other provisions of this ordinance.

ADOPTED by the Metro Council this 13th day of June 2024.



Lynn Peterson, Council President

Attest:

Approved as to Form:



Connor Ayers, Recording Secretary



Carrie MacLaren, Metro Attorney

Metro Code Section 7.05.090 (Confidentiality) is amended as follows, with double underlined text representing inserted text and ~~striketrough~~ representing deleted text:

7.05.090 Confidentiality; Public Records Exemption

~~(a) No Metro elected official, employee, or agent, nor any person who has acquired information pursuant to the Metro Income Tax Laws, may divulge, release, or make known in any manner any financial information, social security numbers or any other elements of a tax return or tax account, including fact of filing and collection activity submitted or disclosed to Metro or the Administrator under the provisions of this chapter, the Metro Income Tax Laws, and any applicable administrative rules, unless otherwise provided in this chapter or as required by law.~~

(a) Except as otherwise specifically provided by Oregon law or Metro Code, it is unlawful for the Administrator or any Metro officer, employee, or agent to divulge or make known in any manner the amount of income, expense, deduction, exclusion or credit or any particulars set forth or disclosed in any report or return required in the administration of the Metro Income Tax Laws.

~~(b) Nothing in this section prohibits:~~

- ~~1. The disclosure of general statistics in a form that would prevent the identification of financial information or social security numbers regarding an individual taxfiler;~~
- ~~2. The filing of any legal action by or on behalf of the Administrator or Metro to obtain payment on unpaid accounts or the disclosure of information necessary to do so; or~~
- ~~3. The assignment to an outside collection agency of any unpaid account balance receivable provided that the Administrator notifies the taxfiler of the unpaid balance at least 60 days before the assignment of the claim.~~

(b) It is unlawful for any person or entity to whom Metro or the Administrator has given information pursuant to 7.05.100 to divulge or use that information for any purpose other than that specified in Metro Code.

(c) As set forth in ORS 314.835, neither Metro nor the Administrator are required to comply with a subpoena or judicial order seeking Metro income tax information unless the court issuing the subpoena or judicial order is the court adjudicating the taxpayer's liability for income tax.

(d) The confidentiality rules and requirements in this section apply for the purposes of public records disclosure in ORS 192.311 to 192.478.

(e) As used in this section:

1. "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or any former officer, employee or person, or an authorized representative of the former officer, employee or person.
2. "Particulars" includes, but is not limited to, a taxfiler's name, address, telephone number, Social Security number, employer identification number or other taxpayer identification number, the amount of refund claimed by or granted to a taxpayer, and whether a report or return has been filed.

(f) Metro will construe this section's provisions in conformity with the intent of ORS 314.835 as applicable.

~~(g)~~ Any person that violates this section may be subject to criminal penalties as set forth in Section 7.05.240.

Metro Code Section 7.05.100 (Persons to Whom information May Be Furnished) is repealed in its entirety and replaced with the language below in double underlined text.

For context, the original code language in ~~strikethrough~~ text follows the new language.

7.05.100 Disclosure of Information; Persons to Whom Information May Be Furnished

(a) The Administrator or Metro Chief Operating Officer may:

1. Furnish any taxfiler or authorized taxfiler representative, upon request of the taxfiler or representative, with a copy of the taxfiler's tax return filed with the Administrator for any year, or with a copy of any report filed by the taxfiler in connection with the return, or with any other information the Administrator considers necessary.
2. Publish lists of taxfilers who are entitled to unclaimed tax refunds.
3. Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.
4. Disclose a taxfiler's name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or other taxfiler identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report or return required in the administration of Metro Tax Laws.

(b) The Administrator or Metro Chief Operating Officer may disclose and give access to information described in Section 7.05.090 to:

1. The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.
2. The Oregon Department of Revenue or authorized representative, for tax administration and compliance purposes only.
3. For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:
 - A. A state,
 - B. A city, county or other political subdivision of a state,
 - C. The District of Columbia, or
 - D. An association established exclusively to provide services to federal, state or local taxing authorities.

4. The Metro Attorney, the Attorney's assistants and employees, or other legal representatives of Metro, to the extent access is necessary to advise or represent the Administrator or Metro, including but not limited to instituting legal actions on unpaid accounts.

5. The Administrator's attorney, the attorney's assistants and employees, or other legal representatives of the Administrator, to the extent the Administrator deems disclosure or access necessary for the performance of the duties of advising or representing the Administrator, including but not limited to instituting legal actions on unpaid accounts.

6. The proper officer or authorized representative of a city, county, or other subdivision of this state, to the extent the Administrator or Chief Operating Officer deems disclosure or access necessary for purposes of mutual tax administration of city, county, or other subdivision taxes. Any disclosure under this paragraph may be made only pursuant to a written agreement between Metro and the city, county, or other subdivision that ensures the confidentiality of the information disclosed.

7. Other employees, agents and officials of the Administrator or Metro, to the extent the Administrator or the Chief Operating Officer deems disclosure or access necessary for such employees, agents, or officials to:

A. Aid in any legal collection effort on unpaid accounts,

B. Perform their duties under contracts or agreements between the Administrator or Metro and any other department, bureau, agency or subdivision of the Administrator or Metro relating to the administration of the Metro Income Tax Laws, or

C. Aid in determining whether a taxfiler complies with all Metro, City of Portland, Multnomah County, State and Federal laws or policies.

8. Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the Administrator deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the Administrator and such legal entities, in the Administrator's administration of the tax laws.

9. The Administrator's appeals board, per Section 7.05.160, is authorized to receive relevant tax information for the purpose of considering and issuing decisions with respect to appeals of taxfilers to the Administrator's actions.

(c) Prior to the performance of duties involving access to financial information submitted to Metro or the Administrator under the terms of the Personal Income Tax Law or Business Income Tax Law, all employees and agents specified in subsections (b)(4)-(b)(9) above must be advised in writing of Section 7.05.240 relating to penalties for the violation of Sections 7.05.090 and 7.05.100. Those employees and agents must execute a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of Sections 7.05.090 and 7.05.100.

(d) No person described in subsection (b)(1)-(b)(3) to whom disclosure or access to financial information has been given may make a disclosure under this section unless that person:

1. Is advised in writing of Section 7.05.240 relating to penalties for the violation of Section 7.05.090; and
2. Executes a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating these provisions of law have been reviewed and that person is aware of the penalties for the violation of Section 7.05.090. The Chief Operating Officer's or Administrator's signature on the certificate, required by this subsection, constitutes consent to disclosure to the persons executing the certificate.

[For context, below is former Metro Code Section 7.05.100 language that Ordinance No. 24-1514 repeals and replaces.]

7.05.100 Persons to Whom Information May Be Furnished

(a) ~~The Administrator and Metro Chief Operating Officer may disclose and give access to information described in Section 7.05.090 to an authorized representative of the Department of Revenue, State of Oregon, or of any local government of the State imposing taxes upon or measured by gross receipts or net income, for the following purposes:~~

- ~~1. To inspect the tax return of any taxfiler;~~
- ~~2. To obtain an abstract or copy of the tax return;~~
- ~~3. To obtain information concerning any item contained in any return;~~
- ~~4. To obtain information of any financial audit of the tax returns of any taxfiler; or~~
- ~~5. To maintain compliance with State or Federal Law (such as providing social security numbers to the Internal Revenue Service with 1099G filings for refunds issued).~~

~~Disclosure and access will be granted only if the laws, regulations or practices of the other jurisdiction maintain the confidentiality of this information at least to the extent provided by the Business Income Tax Law or Personal Income Tax Law, as applicable.~~

(b) ~~Upon request of a taxfiler, or authorized representative, the Administrator will provide copies of any tax return information filed by the taxfiler in the Administrator's possession to the taxfiler or authorized representative.~~

(c) ~~If a court of competent jurisdiction issues a court order requiring the disclosure of a taxfiler's tax return information, the Administrator will comply with the terms of that court order after providing written notice to the taxfiler at taxfiler's last known address.~~

(d) ~~The Administrator may also disclose and give access to information described in Section 7.05.090 to:~~

- ~~1. The Metro Attorney, the Attorney's assistants and employees, or other legal representatives of Metro, to the extent disclosure or access is necessary for the performance of the duties of advising or representing Metro.~~

~~2. The Administrator's Attorney, the Attorney's assistants and employees, or other legal representatives of the Administrator, to the extent the Administrator deems disclosure or access necessary for the performance of the duties of advising or representing the Administrator, including but not limited to instituting legal actions on unpaid accounts.~~

~~3. Other Metro employees and agents, to the extent disclosure or access is necessary for such employees or agents to perform their duties regarding or under contracts or agreements between Metro and the Administrator.~~

~~4. The Administrator's employees, agents and officials, to the extent the Administrator deems disclosure or access necessary for such employees, agents or officials to:~~

~~A. Aid in any legal collection effort on unpaid accounts;~~

~~B. Perform their duties under contracts or agreements between the Administrator and Metro or between the Administrator and any other department, bureau, agency or subdivision of the Administrator relating to the administration of the Metro Income Tax Laws; or~~

~~C. Aid in determining whether a Metro Income Tax Law account is in compliance with all City, County, State and Federal laws or policies.~~

~~(e) All employees and agents specified in Section 7.05.100(d) above, prior to the performance of duties involving access to financial information submitted to Metro or the Administrator under the terms of the Personal Income Tax Law or Business Income Tax Law, must be advised in writing of Section 7.05.240 relating to penalties for the violation of Sections 7.05.090 and 7.05.100. Such employees and agents must execute a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of Sections 7.05.090 and 7.05.100.~~

~~(f) No person described in subsection (a) to whom disclosure or access to financial information has been given may make a disclosure under this section unless that person:~~

~~1. Is advised in writing of Section 7.05.240 relating to penalties for the violation of Section 7.05.090; and~~

~~2. Executes a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating these provisions of law have been reviewed and that person is aware of the penalties for the violation of Section 7.05.090. The Chief Operating Officer's or Administrator's signature on the certificate, required by this subsection, constitutes consent to disclosure to the persons executing the certificate.~~

~~(g) Any person that violates this section may be subject to criminal penalties as set forth in Section 7.05.240.~~

IN CONSIDERATION OF ORDINANCE 24-1514, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.05 (INCOME TAX ADMINISTRATION) REGARDING INCOME TAX CONFIDENTIALITY PROVISIONS

Date: May 21, 2024
Department: Finance & Reg. Services
Meeting Date: June 6, 2024

Presenter(s), (if applicable): Justin Laubscher, Tax Compliance Program Manager
Length: 10 minutes

Prepared by: Justin Laubscher

ISSUE STATEMENT

In 2023, a district attorney ruled that *local* income tax information was subject to disclosure pursuant to Oregon’s public records laws, even though local law prohibited its disclosure and even though state law protects *state* income tax information from public records requests.

Local governments expressed concerns regarding this ruling. In response, the state legislature recently passed HB 4031, which exempts local income tax information from public records requests. Metro staff seek to amend Metro’s Income Tax Laws (Chapter 7.05) to better align with state statutory language regarding income tax information confidentiality and to whom tax information may be provided. Ordinance No. 24-1514 will provide consistency, clarity and ease to taxpayers and tax representatives regarding what kinds of tax information Metro may disclose and who can receive that information. Metro staff has been working closely with the City of Portland and Multnomah County to implement these requirements uniformly with all three jurisdiction codes..

ACTION REQUESTED

Staff requests that Metro Council adopt Ordinance No. 24-1514.

IDENTIFIED POLICY OUTCOMES

The Metro Income Tax Laws (Chapters 7.05, 7.06, and 7.07 collectively) codify certain provisions of the Supportive Housing Services Measure approved by the voters. The policy outcome of the proposed ordinance would align Metro Code language with state law language regarding the confidentiality and exemption from public records requests with respect to income tax information.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- Adopt this ordinance. This results in better alignment with state income tax law regarding confidentiality of income tax information and exemptions of public records requests for this information.

- 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 and Metro Code language regarding confidentiality of tax information and who can receive that information would not align with state law..

STAFF RECOMMENDATIONS

Staff recommend that Metro Council adopt Ordinance No. 24-1514.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

The passage of HB 4031 in the 2024 short legislative session applies income tax information confidentiality requirements to local government agencies that collect, administer, or manage certain local taxes in the same manner the requirements apply to the Oregon Department of Revenue for public records disclosure or other reasons.

This new legislation makes it illegal for Metro officers, employees, or agents to divulge personal taxpayer information. By design and to ensure consistency and confidentiality intent, the proposed code language closely mirrors Oregon statutes on this issue. The major reason for mirroring state statutory language is to signal that Metro will adhere to the intent of HB 4031, which was that ORS 314.835 be applied to local income tax information in the same manner as to state income tax information. Synchronizing the Metro code with State law will minimize the potential for future public records requests battles and at the same time assure the taxpayer community we're doing no more and no less than what the State of Oregon does. The overall intent remains the same. Staff suggests a repeal and replace of Section 7.05.100 (Persons to Whom Information May Be Furnished) because the redline changes are somewhat messy and difficult to follow given the inclusion of state statutory language. However, the overall policy regarding confidentiality or to whom Metro may disclose this information remains the same.