

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO	)	ORDINANCE NO. 24-1521
CODE CHAPTER 7.05 (INCOME TAX	)	
ADMINISTRATION) REGARDING RESPONSE	)	Introduced by Chief Operating Officer
DEADLINES FOR PROTESTS AND APPEALS	)	Marissa Madrigal in concurrence with
	)	Council President Lynn Peterson

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, in 2022, Metro (along with Multnomah County and the City of Portland) amended its Income Tax Laws to change how income is sourced for purposes of Metro's Business Income Tax Law; and

WHEREAS, as part of the income sourcing changes and in anticipation of increased appeals resulting from those changes, Metro also intended to extend the Tax Administrator's deadline in which to respond to tax protests from 30 days to 180 days, and to also extend the Tax Administrator's response deadline for penalty reduction and waiver requests from 60 days to 180 days; and

WHEREAS, these deadline response times were inadvertently omitted from the 2022 Income Tax Law updates; and

WHEREAS, Metro now wishes to change those response deadlines as previously intended, and to further allow the Tax Administrator to grant extended protest and appeal deadlines to taxpayers when good cause to do so exists; and

WHEREAS, pursuant to the Metro Council's direction in Resolution No. 22-5293, the Office of Metro Attorney reviewed Metro Code Section 7.05.160 and made minor code amendments to incorporate plain language and code structure best practices that do not otherwise alter Council policy; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Section 7.05.160 (Protests and Appeals; Penalty Waiver) is amended as set forth in the attached as Exhibit A, with inserted language in underlined text and deleted language in strikethrough text.
2. 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 \_\_\_\_ day of November 2024



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Lynn Peterson, Council President

Attest:



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Georgia Langer, Interim Recording Secretary

Approved as to Form:



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Carrie MacLaren, Metro Attorney

IN CONSIDERATION OF ORDINANCE 24-1521, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.05 (INCOME TAX ADMINISTRATION) REGARDING RESPONSE DEADLINES TO PROTESTS AND APPEALS

Date: October 21, 2024  
Department: Finance & Reg. Services  
Meeting Date: November 7, 2024

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

Prepared by: Justin Laubscher

## **ISSUE STATEMENT**

In 2022, the Metro Council changed how SHS business income is sourced and, therefore, taxed. At the time, Metro and its tax Administrator anticipated increased workload due to possible increased tax appeals and protests regarding the income sourcing changes.

Accordingly, during those 2022 Metro Code changes, Metro had intended to also change the response deadlines for protests and appeals from 30 days to 180 days to address anticipated increased workload issues. Unfortunately, those response deadline changes were inadvertently omitted from the Code change package.

The City of Portland and Multnomah County made those changes to their codes at that time. Thus, Metro's Code does not currently align with the City and County income tax codes, which creates uncertainty for taxpayers and inconsistency for the Tax Administrator. Metro should correct its earlier omission by changing response deadlines for protests and appeals from 30 days to 180 days.

## **ACTION REQUESTED**

Staff requests that Metro Council adopt Ordinance No. 24-1521.

## **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 the other jurisdictions' response time for income tax protest and appeals.

## **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

- Adopt this ordinance. This results in better alignment with our partner jurisdictions regarding protests and appeals response time.
- Adopt this ordinance with revisions or modifications as set forth by Council.
- Reject this ordinance with other direction to staff. The existing income tax code would remain in place regarding protests and appeals provisions.

## **STAFF RECOMMENDATIONS**

Staff recommend that Metro Council adopt Ordinance No. 24-1521.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

In the fall of 2022, Metro, Multnomah County, and the City of Portland adopted several code changes. The major thrust was the change to market-based sourcing for apportionment of business income. In addition, minor housekeeping updates were adopted at the same time to the protests and appeals code sections.

As part of the income sourcing code changes and in anticipation of increased appeals resulting from those changes, Metro also intended to extend the Tax Administrator's deadline in which to respond to tax protests from 30 days to 180 days, and to also extend the Tax Administrator's response deadline for penalty reduction and waiver requests from 60 days to 180 days. However, these deadline response times were inadvertently omitted from the 2022 Income Tax Law updates.

Although Metro's code still retains a 30-day deadline instead of 180 days, the City and County changed their deadlines as originally intended. For administration efficiency and consistency, Metro's code deadlines should match the City and County's. (For reference, the State Department of Revenue's response time is one year).

A response to a taxpayer's appeal of an audit adjustment may be difficult to achieve within 30 days due to the complexity and volume of workload. The Administrator determined that 180 days is a more reasonable deadline for how long it may take to respond during peak demand. Updating Metro Code Section 7.05.160 allows clarity in discussing (1) how and the timeline for the taxpayer to file a protest to an initial determination, and (2) the timeline for the Administrator to respond.

If the Administrator misses the response deadline, the deficiency is not automatically canceled. However, the Administrator would not impose penalty and interest if the Administrator determines that the deficiency is otherwise valid. It is appropriate to have some consequence for the Administrator's failure to meet a required deadline. Metro's proposed treatment mirrors the State's practice. (Note: Other interest or penalties not related to the deficiency will remain in place.)

Metro Code Subsections 7.05.160(a) and (i) (Protests and Appeals; Penalty Waiver) are amended as follows, with underlined text representing inserted text and ~~striktthrough~~ representing deleted text.

All other subsections in 7.05.160 remain the same and are unchanged by this Ordinance.

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### **7.05.160 Protests and Appeals; Penalty Waiver**

(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 explain an explanation ~~of~~ the general grounds for the protest. The Administrator for good cause may extend the time to file a protest. The Administrator must receive requests for extension of time before the original 30-day protest deadline ends. Failure to file a written notice within the time permitted is deemed a waiver of any objections and the Administrator will dismiss the appeal.

The Administrator must respond with a final determination within ~~30~~ 180 days after the taxpayer files the ~~protest is filed with 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 Administrator may for good cause extend 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. Failure to issue a final determination within the time permitted does not invalidate any deficiency but will invalidate the imposition of interest and penalties attributable to the deficiency.

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(i) Penalty waiver or reduction requests are not subject to the protest/appeal process or timeline outlined in subsections 7.05.160(a) through 7.05.160(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~~ 180 days from the date the written request is received. 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.