

## **TITLE VII**

### **FINANCE\***

Chapter	Title
7.01	Excise Taxes
7.02	Financing Powers (former Chapter 8.01)
7.03	Investment Policy (former Chapter 2.06)
7.04	Construction Excise Tax

\* Formerly Title VII, Excise Taxes. Ord. 02-976 renamed Title VII and incorporated Chapters 7.02 (formerly 8.01) and 7.03 (formerly 2.06).

## **CHAPTER 7.01**

### **EXCISE TAXES**

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### 7.01.010 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

**"Accrual basis accounting"** means revenues are recorded in the accounting period in which they are earned and become measurable whether received or not.

**"Cash basis accounting"** means revenues are recorded when cash is received.

**"Cleanup Material Contaminated By Hazardous Substances"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"Inert"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"Installment payments"** means the payment of any amount that is less than the full payment owed either by any user to Metro or to an operator or by an operator to Metro.

**"Metro ERC facility"** means any facility operated or managed by the Metropolitan Exposition-Recreation Commission.

**"Metro facility"** means any facility, equipment, system, function, service or improvement owned, operated, franchised or provided by Metro. Metro facility includes but is not limited to all services provided for compensation by employees, officers or agents of Metro, including but not limited to the Oregon Zoo, Metro ERC facilities, all solid waste system facilities, and any other facility, equipment, system, function, service or improvement owned, operated, franchised or provided by Metro.

**"Metro regional park"** means any park or park facility, equipment, system, function, service or improvement operated or managed by Metro, including but not limited to Oxbow Regional Park, Blue Lake Regional Park, Smith and Bybee Wetlands Natural Area, Howell Territorial Park, Chinook Landing Marine Park, M. James Gleason Memorial Boat Ramp, and Sauvie Island Boat Ramp. For purposes of this chapter, "Metro regional park" does not include Glendoveer Golf Course.

**"Operator"** means a person other than Metro who receives compensation from any source arising out of the use of a Metro facility. Where the operator performs his/her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as his/her principal. Compliance with the provisions of this chapter by either the principal or managing agent shall be considered to be compliance by both.

**"Payment"** means the consideration charged, whether or not received by Metro or an operator, for the use of a Metro facility, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction.

**"Person"** means any individual, firm, partnership, joint venture, association, governmental body, joint stock company, corporation, estate, trust, syndicate, or any other group or combination acting as a unit.

**"Processing residual"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"Recoverable solid waste"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"Regional Recovery Rate"** shall have the meaning assigned thereto in ORS 459A.010(4)(a).

**"Solid waste system facility"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"Source separate"** or **"source separated"** or **"source separation"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"Source-separated recyclable material"** or **"source-separated recyclables"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"Tax"** means the tax imposed in the amount established in Section 7.01.020, and includes both the tax payable by a user and the aggregate amount of taxes due from an operator during the period for which he/she is required to report and pay the tax.

**"Useful material"** shall have the meaning assigned thereto in Metro Code Section 5.00.010.

**"User"** means any person who pays compensation for the use of a Metro facility or receives a product or service from a Metro facility subject to the payment of compensation. [Ord. 90-333A, Sec. 2; Ord. 92-464, Sec. 1; Ord. 94-549B, Sec. 2; Ord. 00-857B, Sec. 1; Ord. 02-976, Sec. 1; Ord. 05-1091A, Sec. 1; Ord. 12-1277, Sec. 7; Ord 14-1331, Sec. 8.]

### **7.01.020 Tax Imposed**

- (a) For the privilege of the use of the facilities, equipment, systems, functions, services, or improvements owned, operated, certified, licensed, franchised, or provided by Metro, each user, except persons subject to the tax provided in subsection 7.01.020(c), shall pay a tax of 7.5 percent of the payment charged by the operator or Metro for such use unless a lower rate has been established as provided in subsection 7.01.020(b). The tax constitutes a debt owed by the user to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The user shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.
- (b) The Council may for any period commencing no sooner than July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) or in subsections 7.01.020(c)-(e) by so providing in an ordinance adopted by Metro. If the Council so establishes a lower rate of tax, the Chief Operating Officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the Council as provided for herein.

- (c) Except as provided in Metro Code Section 7.01.050, each person who disposes of solid waste at a solid waste system facility shall pay a tax in the amount calculated under subsection (e)(1) for each ton of solid waste disposed exclusive of recoverable solid waste accepted at Metro Central or Metro South stations and source separated recyclable materials accepted at the solid waste system facilities. The tax constitutes a debt owed by the person to Metro which is extinguished only by payment of the tax directly to Metro or by the operator to Metro. The person shall pay the tax to Metro or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the person to the operator with each installment.
- (d) For the Metro fiscal year beginning July 1, 2010, the tax rate imposed and calculated under subsections (c) through (f) of this section shall be sufficient to generate net excise tax revenue of \$11,370,000 after allowing for any tax credit or tax rebate for which provision is made in this chapter. For each Metro fiscal year thereafter the tax rate imposed and calculated under this section shall be sufficient to generate net excise tax revenue equal to the net excise tax revenue authorization in the previous fiscal year as adjusted in accordance with Section 7.01.022.
- (e) (1) The excise tax rate for each ton of solid waste, exclusive of (i) source separate recyclable materials accepted at the solid waste system facilities, (ii) inert materials, (iii) Cleanup Materials Contaminated by Hazardous Substances, and (iv) recoverable solid waste delivered to Metro Central or Metro South stations, shall be the amount that results from dividing the net excise tax revenue amount set forth in subsection (d) by the amount of solid waste tonnage which the Chief Operating Officer reports to the Council under subsection (f)(2). Subject to the provisions of subsection 7.01.020(b), the rate so determined shall be Metro's excise tax rate on solid waste during the subsequent Metro fiscal year. Commencing with Metro fiscal year 2014-15, and each fiscal year thereafter, the rate determined by this subsection shall be effective on the first day of each fiscal year unless another effective date is adopted by the Metro Council.
- (2) The excise tax rate for each ton of solid waste constituting Cleanup Materials Contaminated by Hazardous Substances shall be \$1.00.
- (f) By March 1st of each year, the Chief Operating Officer shall provide a written report to the Metro Council stating the following:
- (1) For the twelve (12) month period ending the previous December 31, the amount of solid wastes, exclusive of inert materials, delivered for disposal to any Solid Waste System Facility that is not exempt pursuant to Section 7.01.050(a) of this chapter, and

- (2) The amount of such solid wastes that would have been delivered for disposal to any such non-exempt Solid Waste System Facility if a Regional Recovery Rate of 58 percent had been met.

The result of such calculation by the Chief Operating Officer shall be used to determine the excise tax rate under sub-section (e)(1). [Ord. 90-333A; Ord. 92-464, Sec. 1; Ord. 93-484A, Sec. 1; Ord. 94-549B, Sec. 2; Ord. 96-642A, Sec. 1; Ord. 97-681B, Sec. 10; Ord. 98-767, Sec. 7; Ord. 00-857B, Sec. 2; Ord. 00-876A, Sec. 4; Ord. 02-939A, Sec. 1; Ord. 02-950B, Sec. 1; Ord. 02-976, Sec. 1; Ord. 03-1020, Sec. 1; Ord. 06-1116, Sec. 1; Ord. 07-1147B, Sec. 12; Ord. 08-1187A, Sec. 1; Ord. 07-1147B, Secs. 12 and 15; Ord. 10-1239, Sec. 1; Ord. 12-1277, Sec. 8; Ord. 14-1323, Sec. 7.]

#### **7.01.022 Consumer Price Index Adjustment**

Commencing with the Metro fiscal year beginning July 1, 2003, and each year thereafter, the amount of revenue to be generated by the taxes imposed by Section 7.01.020(c) shall be the amount of tax revenue authorized in Section 7.01.020(d) for the previous fiscal year increased by a percentage equal to (a) the annualized rate of increase in the Consumer Price Index, All Items, for Portland–Salem (All Urban Consumers) reported for the first six (6) months of the federal reporting year as determined by the appropriate agency of the United States Government or (b) the most nearly equivalent index as determined by the Metro Council if the index described in (a) is discontinued, or such lesser amount as the Chief Operating Officer deems appropriate. [Ord. 00-857B, Secs. 3-4; Ord. 02-939A, Sec. 6; Ord. 02-976, Sec. 1.]

#### **7.01.025 Collection of Tax by Metro**

- (a) Metro shall allocate from all payments made directly to Metro by any user the amount of the tax provided for in Section 7.01.020.
- (b) Unless stated separately on any request for payment or charge imposed or established by Metro the excise tax shall be presumed to be included in the amount imposed or established by Metro so that the excise tax shall be computed in such amount that the total charged shall equal the amount of compensation owed to Metro plus the excise tax at the rate established herein. To the extent necessary to give effect to this provision, all rates and charges established by Metro and in effect on the effective date of this chapter shall be deemed decreased by such percentage amount so that after such date the amount of the rate or charge together with the amount of the excise tax provided for in Section 7.01.020 shall be equal to the previously established rate or charge. Thereafter rates and charges shall be subject to amendment as provided by law.
- (c) In the case of installment payments paid by the user to Metro a proportionate share of the tax shall be deemed paid by the user with each installment. [Ord. 90-333A, Sec. 2; Ord. 02-976, Sec. 1.]

#### **7.01.030 Collection of Tax by Operator; Rules for Collection**

- (a) Every operator, unless specifically exempted under the terms of this chapter, shall collect a tax from users as provided for in Section 7.01.020.

- (b) The operator shall report the tax to Metro consistent with the operator's basis of accounting, cash or accrual, except in the case of an operator of a solid waste facility. Solid waste facility operators shall report accrued revenue and excise tax calculated based upon loads or tons deposited at the site at the time of receipt of waste.
- (c) For the purpose of reporting the tax owed to Metro and notwithstanding the provisions of Section 7.01.040, the tax shall be presumed to be included in the amount imposed by the operator so that the excise tax shall be computed in such amount that the total charged shall equal the amount of compensation owed to the operator plus the excise tax owed to Metro at the rate established herein.
- (d) Metro shall provide the operator with a blank return and instructions that shall be used by the operator to report the excise tax owing to Metro. The amount of excise tax due shall be paid when the return is filed as provided for in Section 7.01.070.
- (e) There is no liability for excise taxes on charge accounts that are worthless and charged off as uncollectible, provided that an affidavit is filed with Metro stating the name and amount of each uncollectible charge account and documenting good faith efforts that have been made to collect the accounts. Excise taxes may not be deemed uncollectible unless the underlying account is also uncollectible. If the taxes have previously been paid, a deduction may be taken from the next payment due to Metro for the amount found worthless and charged off. If any such account is thereafter collected, in whole or in part, the amount so collected shall be included in the first return filed after such collection, and the taxes shall be paid with the return.
- (f) Installment payments of tax paid by the operator to Metro shall be applied first to finance charges and penalties and then to the oldest delinquent taxes.
- (g) The Chief Operating Officer shall enforce provisions of this chapter and shall have the power to adopt rules and regulations not inconsistent with this chapter as may be necessary to aid in the enforcement. Prior to the adoption of rules and regulations, the Chief Operating Officer shall give public notice of intent to adopt rules and regulations, provide copies of the proposed rules and regulations to interested parties, and conduct a public hearing on the proposed rules and regulations. Public notice shall be given when rules and regulations have been finally adopted. Copies of current rules and regulations shall be made available to the public upon request. It is a violation of this Code to violate rules and regulations duly adopted by the Chief Operating Officer. [Ord. 90-333A, Sec. 2; Ord. 92-464; Sec. 1; Ord. 93-509, Sec. 4; Ord. 02-976, Sec. 1.]

#### **7.01.040 Operator's Duties**

- (a) Each operator shall collect the tax imposed by this chapter at the same time as payment is collected from every user. The amount of tax shall be separately stated upon the operator's records, and any receipt or invoice rendered by the operator.
- (b) Each operator shall file a return in accordance with the terms provided for in Section 7.01.070. [Ord. 90-333A, Sec. 2; Ord. 92-464, Sec. 1.]

### **7.01.050 Exemptions**

- (a) The following persons, users and operators are exempt from the requirements of this chapter:
  - (1) Persons, users and operators whom Metro is prohibited from imposing an excise tax upon under the Constitution or Laws of the United States or the Constitution or Laws of the state of Oregon.
  - (2) Persons who are users and operators of the Portland Center for the Performing Arts.
  - (3) Persons whose payments to Metro or to an operator constitute a donation, gift or bequest for the receipt of which neither Metro nor any operator is under any contractual obligation related thereto.
  - (4) Any persons making payment to Metro for a business license pursuant to ORS 701.015.
  - (5) Any person which is a state, a state agency or a municipal corporation to the extent of any payment made directly to Metro for any purpose other than solid waste disposal, use of a Metropolitan Exposition and Recreation Commission (Metro ERC) facility, or use of the Oregon Zoo.
  - (6) Users of the following facilities:
    - (A) Facilities that are licensed, franchised or exempt from regulation under Metro Code Chapter 5.01 other than disposal sites or transfer stations that are not subject to the requirements of Metro Code Section 5.01.260(a).
    - (B) Facilities that treat to applicable DEQ standards Cleanup Material Contaminated by Hazardous Substances.
    - (C) Tire processing facilities that sort, classify or process used tires into fuel or other products and thereafter produce a Processing Residual that is regulated under Metro Code Chapter 5.01 and that conforms to standards established pursuant to ORS 459.710(2) by the Oregon Environmental Quality Commission.
  - (7) Persons making payments to Metro for the following purposes:
    - (A) Individual or corporate sponsorship or naming rights contracts. A naming rights contract is any contract under which a Metro or Metro ERC facility or part of a facility (as authorized by Metro Code Chapter 2.16) will be named for the sponsor in exchange for payment from the sponsor. A sponsorship contract is a contract under which the sponsor's name or logo will be used in connection with a district facility's goods, buildings, parts of buildings, services, systems, or functions in exchange for payment from the sponsor. This exemption applies to any payments pursuant to sponsorship or naming rights contracts, including



payments of money, goods, services, labor, credits, property, or other consideration.

- (B) Payments for advertising at Metro facilities and Metro ERC facilities.
  - (C) Contributions, bequests, and grants received from charitable trusts, estates, nonprofit corporations, or individuals regardless of whether Metro agrees to utilize the payment for a specific purpose including all payments to the Oregon Zoo Parents program.
  - (D) Corporate sponsorships or co-promotional efforts for events that are open to the general public, or for specific capital improvements, educational programs, publications, or research projects.
  - (E) Payments that entitle a person to admission to a fundraising event benefiting the Oregon Zoo that is not held on the grounds of the Oregon Zoo.
  - (F) Payments that entitle a person to admission to a special fundraising event held at the Oregon Zoo where the event is sponsored and conducted by a nonprofit organization approved by the Council and the primary purpose of which is to support the Oregon Zoo and the proceeds of the event are contributed to the Oregon Zoo.
- (8) Users and operators paying compensation to any person who is operating and lease property at the Glendoveer Golf Course pursuant to a long-term agreement entered into with Multnomah County prior to January 1, 1994.
  - (9) A tire processor which is regulated pursuant to Metro Code Chapter 5.01 and which sorts, classifies or processes used tires into fuel or other products, shall be exempt from payment of excise tax on disposal of residual material produced directly as a result of such process, provided said residual conforms to Environmental Quality Commission standards established pursuant to ORS 459.710(2). This exemption is only granted to the extent, and under the terms, specified in the Metro certificate, license or franchise.
  - (10) Persons who deliver useful material to disposal sites, provided that such sites are listed as a Metro Designated Facility under Metro Code Chapter 5.05 or are named in a Metro Non-System License and provided further that the Useful Material: (A) is intended to be used, and is in fact used, productively in the operation of such site for purposes including roadbeds and alternative daily cover; and (B) is accepted at such site at no charge.
  - (11) Persons making the following payments:
    - (A) Payments that entitle a person to admission to an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator.
    - (B) Payments to an operator that entitle a person to purchase booth space or exhibit space, or utilities or services associated with such booth or

exhibit space, at an event that is held in a Metro ERC facility pursuant to a license agreement between Metro ERC and an operator.

- (C) Payments to a user or operator that entitle a person to purchase goods, services, food, or beverages from a user or operator selling such goods, services, food, or beverages at a Metro ERC facility.
  - (D) All payments made to any operator authorized by a management agreement or services agreement with Metro ERC to provide catering services, to provide food and beverage concessions services, or to operate parking lots at Metro ERC facilities.
  - (E) All payments made to Metro ERC, for use of the facility, for charges to provide food and beverage, or for event based revenue.
- (12) Persons making the following payments:
- (A) Payments to a person or entity other than Metro that entitle a person to admission to an event that is held at a Metro regional park.
  - (B) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food or beverages at an event being held at a Metro regional park pursuant to the terms of a special use permit issued by Metro.
  - (C) Payments to an operator that entitle a person to buy goods, services, food or beverages from an operator selling such goods, services, food, or beverages at an event that is being sponsored and conducted by Metro at a Metro regional park.
  - (D) Notwithstanding the provisions of subsections (A) through (C) above, all payments made to an operator authorized by Metro to sell goods, food or beverages or to provide services at a Metro regional park shall be subject to tax.
- (13) Persons, users or operators making payments received by Metro for admission to the Oregon Zoo, or which entitle individuals to receipt of food, beverages, goods, or rides on the Oregon Zoo train shall not be subject to tax regardless of whether payment is received from an individual or otherwise on behalf of special groups including but not limited to employee and family member picnics, corporate or family parties, or similar events.
- (14) Persons, users or operators making payments received by Metro from any use, parking or other revenue generator at a Metro regional park.
- (15) Persons, users or operators making payments received by Metro for any use, lease, parking or any other revenue generator at the Metro Regional Center and its adjacent parking structure.
- (16) Persons, users or operators making payments received by Metro for any service, product or other revenue generator by the Research Center.

- (17) The state of Oregon or any state agency provided that it is disposing of yard debris and soil generated from within an emergency eradication quarantine area for the purpose of addressing a government-declared public health, agricultural or environmental emergency.
- (b) Any person, user or operator that is exempt for the payment of an excise tax pursuant to this section shall nonetheless be liable for compliance with this chapter and the payment of all taxes due pursuant to any activity engaged in by such person which is subject to this chapter and not specifically exempted from the requirements hereof. Any operator whose entire compensation from others for use of a Metro facility is exempt from the provisions of this chapter shall be deemed to be a user and not an operator. [Ord. 90-333A; Ord. 90-355, Sec. 2; Ord. 95-590, Sec. 1; Ord. 96-634, Sec. 3; Ord. 98-767, Sec. 8; Ord. 00-857B, Sec. 7; Ord. 02-976, Sec. 1; Ord. 03-994A, Sec. 3; Ord. 03-1020, Sec. 2; Ord. 05-1091A, Sec. 2; Ord. 06-1127, Sec. 1; Ord. 08-1187A, Sec. 4; Ord. 16-1372, Sec. 3; Ord. 17-1402; Ord. 18-1420.]

#### **7.01.060 Registration of Operator; Form and Contents; Execution; Certification of Authority**

- (a) Every person engaging or about to engage in business as an operator in Metro shall register with the Chief Operating Officer on a form provided by the Chief Operating Officer. Operators starting business must register within 15 calendar days after commencing business. The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax regardless of registration. Registration shall set forth the name under which an operator transacts or intends to transact business, the location of his/her place of business and such other information to facilitate the collection of the tax as the Chief Operating Officer may require. The registration shall be signed by the operator.
- (b) The Chief Operating Officer shall, within 10 days after registration, issue without charge a certificate of authority to each registrant to collect the tax from users, together with a duplicate thereof for each additional place of business of each registrant. Certificates shall be nonassignable and nontransferable and shall be surrendered immediately to the Chief Operating Officer upon the cessation of business at the location named or upon the business sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed thereon so as to be seen and come to notice readily of all users.
- (c) Said certificate shall, among other things, state the following:
- (1) The name of the operator;
  - (2) The address of the facility;
  - (3) The date upon which the certificate was issued; and
  - (4) "This Excise Tax Registration Certificate signifies that the person named has fulfilled the requirements of the Excise Tax Chapter of the Code of Metro for the purpose of collecting and remitting the excise tax. This certificate does not

authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a facility without strictly complying with all local applicable laws. This certificate does not constitute a permit or a franchise." [Ord. 90-333A, Sec. 2; Ord. 02-976, Sec. 1.]

#### **7.01.070 Due Date; Returns and Payments**

- (a) The tax shall be collected from the operator by Metro as provided for in Section 7.01.030. All amounts of such taxes reported by any operator are due and payable to Metro on the 15th day of each month for the preceding month, and are delinquent if not received by Metro as specified in subsection (d) of this section by the due date. If the due date falls on a holiday or weekend, amounts are delinquent at the end of the first business day that follows. The initial return under this chapter may be for less than a full month preceding the due date. Thereafter, returns shall be made for the applicable monthly period.
- (b) On or before the 15th day of the month following each month of operation of a Metro facility, a return for the preceding month's tax shall be filed with the Chief Operating Officer. The return shall be filed in such form as the Chief Operating Officer may prescribe by every operator liable for payment of tax.
- (c) Returns shall show the amount of tax due for the related period. The Chief Operating Officer may require returns to show the total receipts upon which tax was collected or otherwise due, gross receipts of the operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of receipts exempt, if any.
- (d) The person required to file the return shall deliver the return, together with the tax due, to the Metro Administration Services Department of Finance and Management Information. Payment is considered to be delinquent if not received by Metro on or before the due date, by personal delivery to the Metro Administration Services Department of Finance and Management Information during business hours or, if delivered by mail, by receipt in Metro's mail room.
- (e) The Chief Operating Officer, if deemed necessary in order to ensure payment or facilitate collection by Metro of the amount of taxes in any individual case, may require returns and payment of the amount of taxes more frequently than monthly periods. [Ord. 90-333A, Sec. 2; Ord. 92-464, Sec. 1; Ord. 93-509, Sec. 5; Ord. 02-976, Sec. 1.]

#### **7.01.080 Penalties and Finance Charges**

- (a) Fraud. If the Chief Operating Officer determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (a) and (b) of this section.
- (b) Finance Charges. In addition to any penalties imposed, a finance charge of 1.5 percent shall be assessed on all delinquent taxes required to be remitted by an operator under this chapter. Finance charges shall be assessed on the 15th day of

the month following the month in which taxes are due, and on the 15th day of each month thereafter, until paid. Finance charges will be assessed only on unpaid delinquent balances and penalties, and not on previously assessed finance charges, and will continue to be assessed on negotiated repayment schedules.

- (c) Petition for Waiver. Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties and finance charges herein stated, provided, however, the operator may petition the Chief Operating Officer for waiver and refund of the penalties and finance charges or any portion thereof and the Chief Operating Officer may, if a good and sufficient reason is shown, waive and direct a refund of the penalties or finance charges or any portion thereof. [Ord. 90-333A, Sec. 2; Ord. 93-509, Sec. 6; Ord. 94-533, Sec. 2; Ord. 02-976, Sec. 1.]

#### **7.01.090 Deficiency Determination; Fraud, Evasion, Operator Delay**

- (a) Deficiency Determinations. If the Chief Operating Officer determines that the results are incorrect, it may compute and determine the amount required to be paid on the basis of the facts contained in the return or returns, or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount due for one, or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties or deficiencies shall be applied as set forth in Section 7.01.080.
- (1) In making a determination the Chief Operating Officer may offset overpayment, if any, which may have been previously made for a period or periods against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth in Section 7.01.080.
  - (2) The Chief Operating Officer shall give to the operator a written notice of its determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his/her address as it appears on the records of the Chief Operating Officer. In case of service by mail or any notice required by this chapter, the service is complete at the time of deposit in the United States Post Office.
  - (3) Except in the case of fraud or intent to evade this chapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three (3) years after the last day of the month following the close of the period for which the amount is proposed to be determined or within three (3) years after the return is filed, whichever period expires the later.
  - (4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the Chief Operating Officer has given notice thereof, provided, however, the operator may petition for

redemption and refund if the petition is filed before the determination becomes final as herein provided.

- (b) Fraud, Refusal to Collect, Evasion. If any operator shall fail or refuse to collect said tax or to make within the time provided in this chapter any report and remittance of said tax or any portion thereof required by this chapter, or makes a fraudulent return or otherwise willfully attempts to evade this chapter, the Chief Operating Officer shall proceed in such manner as deemed best to obtain facts and information on which to base an estimate of the tax due. As soon as the Chief Operating Officer has determined the tax due that is imposed by this chapter from any operator who has failed or refused to collect the same and to report and remit said tax, it shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this chapter. In case such determination is made, the Chief Operating Officer shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three (3) years after discovery by the Chief Operating Officer of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable immediately upon receipt of notice and shall become final within 10 days after the Chief Operating Officer has given notice thereof, provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.
- (c) Operator Delay. If the Chief Operating Officer believes that the collection of any tax or any amount of tax required to be collected and paid to Metro will be jeopardized by delay, or if any determination will be jeopardized by delay, the Chief Operating Officer shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay such determination to the Chief Operating Officer after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 10 days from the date of service of notice by the Chief Operating Officer. [Ord. 90-333A, Sec. 2; Ord. 02-976, Sec. 1.]

#### **7.01.100 Hearings, Contested Cases**

- (a) Any person against whom a determination is made under Section 7.01.090 or any person directly interested may request a hearing on the matter in contest and request redemption and refund within the time required in Section 7.01.090. The determination becomes final at the expiration of the allowable time and no hearing may be requested thereafter. Hearings shall be conducted as provided for in Chapter 2.05 except that the deadline for requesting a hearing shall be as provided for herein.
- (b) No request for a hearing and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof. [Ord. 90-333A, Sec. 2.]

#### **7.01.110 Security for Collection of Tax**

The Chief Operating Officer, whenever deemed necessary to ensure compliance with this chapter, may require any operator subject thereto to deposit with it such security in the form of cash, bond, or other security as the Chief Operating Officer may determine. The amount of the security shall be fixed by the Chief Operating Officer but shall not be greater than twice the operator's estimated average liability for the period for which he/she files returns, determined in such manner as the Chief Operating Officer deems proper. The amount of the security may be increased or decreased by the Chief Operating Officer subject to the limitation herein provided. [Ord. 90-333A, Sec. 2; Ord. 02-976, Sec. 1.]

#### **7.01.120 Refunds**

- (a) Refunds by District to Operator. Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously collected or received by the Chief Operating Officer under this chapter, it may be refunded, provided a verified claim in writing therefore, stating the specific reason upon which the claim is founded, is filed with the Chief Operating Officer within three (3) years from the date of payment. The claim shall be made on forms provided by the Chief Operating Officer. If the claim is approved by the Chief Operating Officer, the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the operator from whom it was collected or by whom paid and the balance may be refunded to such operator, his/her administrators, executors, or assignees.
- (b) Refunds by Metro to Users. Whenever the tax required by this chapter has been collected by Metro or by an operator, and deposited by the operator with the Chief Operating Officer, and it is later determined that the tax was erroneously collected or received by the Chief Operating Officer, it may be refunded by the Chief Operating Officer to the user, provided a verified claim in writing therefore, stating the specific reason on which the claim is founded, is filed with the Chief Operating Officer within three (3) years from the date of payment. [Ord. 90-333A, Sec. 2; Ord. 02-976, Sec. 1.]

#### **7.01.130 Administration**

- (a) Records Required From Operator, et cetera; Form. Every operator shall keep records of all sales and transactions. All records shall be retained by the operator for a period of three (3) years and six (6) months after they come into being.
- (b) Examination of Records; Investigations. The Chief Operating Officer, or any person authorized in writing by the Chief Operating Officer, may examine during normal business hours the books, papers and accounting records relating to any operator, after notification to the operator liable for the collection and payment of the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

- (c) At any time within three (3) years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three (3) years after any determination becomes final, the Chief Operating Officer may cause the Metro Attorney to bring an action in the courts of this state, or any other state, or of the United States in the name of Metro to collect the amount delinquent together with penalties and interest.
- (d) Confidential Financial Information. Except as otherwise required by law, it shall be unlawful for the Chief Operating Officer, or any officer, employee, or agent, to divulge, release, or make known in any manner any financial information submitted or disclosed to the Chief Operating Officer under the terms of this chapter. Nothing in this subsection shall be construed to prohibit:
  - (1) The disclosure to, or the examination of, financial records by Metro officials, employees or agents for the purpose of administering or enforcing the terms of this chapter, or collecting taxes imposed under the terms of this chapter; or
  - (2) The disclosure to the taxpayer or his/her authorized representative of financial information, including amounts of excise taxes, penalties, or interest, after filing of a written request by the taxpayer or his/her authorized representative and approval of the request by the Chief Operating Officer; or
  - (3) The disclosure of the names and addresses of any persons to whom excise tax registration certificates have been issued; or
  - (4) The disclosure of general statistics in a form which would prevent the identification of financial information regarding any particular taxpayer's return or application; or
  - (5) The disclosure of financial information to the office of the Metro Attorney, to the extent the Chief Operating Officer deems disclosure or access necessary for the performance of the duties of advising or representing the Chief Operating Officer. [Ord. 90-333A, Sec. 2; Ord. 02-976, Sec. 1.]

#### **7.01.150 Violations**

It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the Chief Operating Officer or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this chapter. The Chief Operating Officer may impose a civil penalty of up to \$500 for each violation of this chapter. A violation includes, but is not limited to:

- (a) Failure to file any required tax payment and report, including any penalties and interest, within 60 days of the due date;
- (b) Filing a false or fraudulent report;



- (c) Failure to register a facility with the Chief Operating Officer as described in Section 7.01.060;
- (d) Failure to maintain a separate account for the excise tax collected. [Ord. 90-333A, Sec. 2; Ord. 02-976, Sec. 1.]