Public Comment Report

Proposed Income Tax Administrative Rules for Supportive Housing Services Income Taxes

July 1, 2021

BACKGROUND

In May 2020 voters in greater Portland approved a measure to raise money for supportive housing services for people experiencing homelessness or at risk of experiencing homelessness. The program is funded by two separate taxes: a 1% personal income tax on taxable income above $125,000 for individuals and $200,000 for those filing jointly, and a 1% business income tax on net income for businesses with gross receipts above $5 million.

Development and delivery of new Metro Code rules that allow the agency to implement, collect and enforce personal and business income taxes were discussed and evaluated by a tax advisory table made up of experts in taxation. On December 17, 2020, the Metro Council adopted Ordinance 20-1454 to implement Metro Code Chapters 7.05 Income Tax Administration for Personal and Business Taxes, 7.06 Personal Income Tax and 7.07 Business Income Tax. After this adoption, administrative rules were developed to give direction and add clarity to the new Metro tax codes. These rules were discussed and evaluated by a subset of the tax advisory table before the public comment period.

From May 1 – 30, 2021 Metro conducted a public comment period for the proposed administrative rules for the new Supportive Housing Services income taxes. A public hearing was held on May 19, 2021 at 4 p.m. A list of interested residents, local business owners, tax professionals and other organizations was developed to notify via email about the opportunity to comment. In addition to this list, Metro published notice of the comment period in various professional publications and on the Metro website. Comments were received through an email address to Rachael Lembo, Metro Finance Manager, as well through a website form, via Wufoo, with a direct click to the linked form.

Comments were received from a resident, tax professionals, payroll service providers and a business coalition. The majority of the comments came from Moss Adams and other tax professionals.

COMMENT SUMMARY

At the close of the comment period, 17 total comments had been received. Of those, five comments were received about personal income taxes, nine comments were received about business income taxes and three were received about employer withholding. No comments were received at the public hearing.

All of the comments received and staff response are included with this report as Attachment A. Original comments in the format received are included as Attachment B.

AMENDMENTS TO RULES

All comments received during the comment period were reviewed by the Finance and Regulatory Services staff. Some comments resulted in changes to the administrative rules, including language changes to improve clarity and additional examples. One comment resulted in a change to the Metro Opt In/Out form, which allows employees the option of employer withholding of the personal income tax.

The revised draft of the Administrative Rules showing changes based on the comments received is included as Attachment C.

CONCLUSIONS

Metro valued all of the public comments, as they provided further insight to the challenges of implementing new taxes. Most of the comments received were issues that the tax advisory table discussed at length and in great detail.

It has been the position of Metro to not create new taxation rules but to follow already implemented taxation set by local jurisdictions and the State of Oregon. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules, and State of Oregon laws and regulations as guidance in developing the personal income tax code and rules. Metro's tax administrator, the City of Portland Revenue Division, has administered the MCBIT for years, and has staff available to assist businesses unfamiliar with the MCBIT rules. Metro anticipates future changes to the Metro business income tax administrative rules will be made in coordination with the City of Portland business tax administrative rules to maintain alignment.

Attachment A - Metro Supportive Housing Services Tax Administrative Rules Comments Log

Date	From	Comment	Response
5/4/2021	Tax professional	I would just to confirm/add clarity to what constitutes a 'non -District' employer and the potential tax requirements. If the following could be confirmed this would be very helpful: Part 1. If an employer has a location/head-quartered outside of the Metro area (i.e. the business/employer is actually located out of state) and only has remote employees that work from home and their home is in the Metro area - the employer is NOT considered a district employer. Part 2 - therefore, if the employer is determined to NOT be a district employer, the employer would not be required to withhold taxes AND would also not be required to offer employees to 'Opt in'.	Thank you for your input. Metro has added an example in Administrative Rule 7.06 - 1015 to clarify that a business with no physical location in the District but with employee(s) working remotely in the District is not a District employer. Metro also added language in that rule to clarify that an employer who is not a District employer is not required to withhold District tax, or offer to withhold District tax, from the wages of an employee.
5/17/2021	Resident	The oppression of successful couples filing jointly by the Marxist masses will drive me out of the metro region as soo. As my daughter can escape the never fails to fail PPS school system. This is taxing the mobile middle class and you will eventually get what you desire: undesirable property and culture at lower prices. Shame on you for proposing this redistribution of income. Everybody gains when everyone pays!	Thank you for your input.
5/18/2021	Payroll service provider	From Bob Higley, Tax Analyst at Vertex Inc., a leading supplier of payroll tax engine software. We are responsible for writing new payroll taxes, such as Metro's SHS Tax, into our program so that our payroll tax software developer customers may best implement the taxes for their clients in the Metro District. We recommend changing the Employee OPT IN/OUT form so the employee who opts in provides a per pay period amount to withhold rather than an annual withholding amount. Every other withholding form we are aware of, including the Federal W4 and OR W4, requires the employee to provide withholding per pay period. Your form should be consistent with those other popular forms. IRS and the State of Oregon work under the premise that the employer is to do exactly what the employee requests, without forcing the employer to do a further calculation (dividing the annual number by the number of pay periods), no matter how simple that might appear. Using the exact number the employee provides on the form makes it easier for the employer. No additional calculating by the employer is required. This is the employee's tax after all, not the employer's tax. Further, if it is left as an annual figure, the employer could theoretically be responsible for making sure the employee meets that annual number, forcing them to reconcile it annually. This would be onerous and difficult for the employer who is already being asked to bear a significant burden in administering these taxes. Leaving it an annual number would also cause us to perform additional programming and will cause our customers and their end-user employers to provide additional information to calculate these taxes. Please keep this as consistent with the practices of other taxes as much as possible. Thank you.	Thank you for your input. Metro has made the recommended change on the OPT IN/OUT form.

Date	From	Comment	Response
5/18/2021	Payroll service provider	From Bob Higley, Tax Analyst at Vertex Inc. In Section 7.06 – 1025 it is stated how the employer should withhold the tax in the absence of an OPT IN/OUT form and estimated earnings are > $200,000. For regular payments, the employer must use the published formula. For supplemental payments, the employer must apply a flat rate of 1% on the payment. Many employers combine regular and supplemental payments on the same check. How should an employer withhold this tax when they combine regular and supplemental payments? We recommend addressing this situation in Section 7.06 – 1025 and providing an example so it is clear how to handle it. Either use the regular or supplemental method when an employer combines regular/supplemental payments. That needs to be clear. Thank you.	Thank you for your input. The tax calculation would be the same whether these payments are separate checks or combined – the regular withholding would apply to regular payments, and the 1% supplemental withholding would apply to the supplemental payment. Metro has expanded the example in Administrative Rule 7.06 - 1025 to provide additional clarity.
5/28/2021	Tax professional	In order for taxpayers to be able to effectively comply with the Portland Metro Business Profit Tax, it is imperative that Portland Metro Council provides a comprehensive list of Zip+4 locations that are subject to the Portland Metro Business Profit Tax. It is unreasonable to expect taxpayers to utilize a map that does not contain Zip+4 location identification.	Thank you for your input. Zip codes are Postal Service delivery zones and routes, which can change, and do not have geographic boundaries. Metro's Research Department has worked with payroll software companies and businesses to find solutions for determining District boundaries. Please reach to HousingServices@oregonmetro.gov for assistance.
5/28/2021	Smart Growth Coalition	Metro should adopt a “golden rule” deferring to Oregon income tax laws and rules in areas not addressed by these rules. In the rules for the personal income tax, specifically, A.R. 7.06-1010, the language states that any term has the same meaning as Oregon law unless the word is defined otherwise in the administrative rules. We strongly recommend a similar provision for the business income tax because it allows taxpayers to refer to established tax law in situations that lack clarity. This connection to state tax law would simplify compliance and, ultimately, streamline the audit process.	Thank you for your input. This reference currently exists through Metro Code 7.05.030 (a) which states, "The Administrator will construe the Business Income Tax Law, when applicable, in conformity with the laws and regulations that govern the Multnomah County Business Income Tax (MCBIT) as those laws existed for that tax year" and the MCBIT, in Multnomah County Code 12.020, which states, "The Business Income Tax Law is construed in conformity with the laws and regulations of the state imposing taxes on or measured by net income as those laws existed for that particular tax year. The Administrator has the authority by written policy, to connect to or disconnect from any legislative enactment that deals with income or excise taxation or the definition of income. Should a question arise under the Business Income Tax Law on which this chapter is silent, the Administrator may look to the laws of the State of Oregon for guidance in resolving the questions, provided that the determination under state law in not in conflict with any provision of this chapter or the state law is otherwise inapplicable".

Date	From	Comment	Response
5/28/2021	Smart Growth Coalition	Metro should adopt a clearly defined nexus standard and apportionment regime or rely on Oregon's definitions. Currently, A.R. 7.07-1080 suggests that taxable nexus for tangible personal property is established within the Metro district if the taxpayer has a physical presence within the district. The physical presence standard appears to run contrary to the ordinance language in Metro Code ("M.C.") § 7.07.060, applying an economic presence nexus. Metro should move to clarify a single nexus standard in the ordinance and rule, especially if the intention is to rely on a different method than used for the Oregon income tax.	Thank you for your input. Administrative Rule 7.07 - 1080 states that "For sales of tangible personal property, taxable nexus is *generally* created by physical presence (through employees and/or property" (emphasis added). There are circumstances where physical presence is not required or physical presence may not create nexus. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules; administrative Rule 7.07 - 1080 is based on the MCBIT BTAR 610.93-2A. The City of Portland Revenue Division, which administers the MCBIT and Metro's Supportive Housing Services tax, has staff available to assist businesses unfamiliar with these nexus rules. They can be reached at SHS.Tax@portlandoregon.gov or 503-823-5157 (business income tax). Metro will share this comment with the City of Portland Revenue Division.
5/28/2021	Smart Growth Coalition	Metro should provide examples for taxpayers to understand the cost-of-performance sourcing regime. A.R. 7.07-1090 appears to require a modified cost-of-performance sourcing method materially different from most other taxing jurisdictions. We understand the proposed language intends to follow the method required by the City of Portland and Multnomah County for their taxes; however, the method is unusual and complicated for many taxpayers. Currently, businesses in Clackamas and Washington counties are familiar with the state's market-based sourcing regime and may experience confusion with the minority sourcing rule. Metro should make sure the rules clearly articulate the process taxpayers must go through to attribute income to the district. In particular, Metro should provide illustrative examples of applying the method in different situations. Notably, the second example is the only illustration of the rule's application and the other examples seem to serve as regulatory declarations.	Thank you for your input. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules; administrative Rule 7.07 - 1090 is based on the MCBIT BTAR 610.93-4A. The City of Portland Revenue Division, which administers the MCBIT and Metro's Supportive Housing Services tax, has staff available to assist businesses unfamiliar with these apportionment rules. They can be reached at SHS.Tax@portlandoregon.gov or 503-823-5157 (business income tax). Metro will share this comment with the City of Portland Revenue Division.

Date	From	Comment	Response
5/28/2021	Smart Growth Coalition	Metro should revisit the need and practicality of the special apportionment rules. A.R. 7.07-1095 through 1115 outlines special industry apportionment rules that are materially different than those provided for the Oregon income tax and pose a significant hardship for taxpayers trying to comply with both taxes. For example, the proposed special apportionment rule for "providers of electronic or telephonic services" uses an entirely different method than Oregon's "broadcaster" rule, which means that taxpayers may need to separately track sales of "digital information." Taxpayers are likely to experience challenges complying with this method because "digital information" can be difficult to define and source to a single location or jurisdiction, making the method difficult to audit. Notably, the rule may run afoul of the Permanent Internet Tax Freedom Act, which prohibits taxes that discriminate against electronic commerce. M.C. § 7.07.080(e) specifies that taxpayers use the state's special apportionment methods unless Metro adopts its own. To simplify tax administration and compliance, we recommend removing the Metro-specific special apportionment methods.	Thank you for your input. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules; administrative Rules 7.07 - 1095 through 1115 are based on the MCBIT BTARs 610.93-5A, 610.93-6A, 610.93-7, 610.93-8A and 610.99-1A. The City of Portland Revenue Division, which administers the MCBIT and Metro's Supportive Housing Services tax, has staff available to assist businesses unfamiliar with these apportionment rules. They can be reached at SHS.Tax@portlandoregon.gov or 503-823-5157 (business income tax). Metro will share this comment with the City of Portland Revenue Division.
5/27/2021	Moss Adams	7.06-1075 Estimated Tax Payments Proposed language: If there is no prior year tax filing requirement, there is no required annual payment amount. Suggestion: An example showing a taxpayer with taxable income for 2022 below the thresholds with income for 2023 above the thresholds, stating that the taxpayer is not subject to either withholding or estimated tax payments, would clarify the proposed rule. Discussion: Proposed 7.06-1075 1.a defines "required annual payment" as "the total amount of required installment payments and employer withholding for the tax year." The proposed rule language above indicates that a taxpayer has no required annual payment, and therefore is not subject to either employer withholding or estimated tax payments unless the taxpayer was required to file a return in the previous year. This appears to conflict with other provisions regarding employer withholding and estimated tax payments.	Thank you for your input. Administrative Rule 7.06 - 1075 was revised to more clearly state that estimated payments are not required if the taxpayer did not owe tax in the prior year. An example has also been added.

Date	From	Comment	Response
5/27/2021	Moss Adams	7.06-1075 Estimated Tax Payments Proposed language: The required annual payment is the lesser of: a. Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year); or b. One hundred percent of the tax shown on the prior year's return, if qualified. Quarterly payments must be made in equal amounts per 7.06-1075 1.b. Suggestion: Include an annualization exception such as that found in ORS 316.587 (8)(c). Discussion: Many taxpayers experience income fluctuations from year to year. Property sales, bonuses, and income/losses passed through from businesses can and do vary significantly. In these situations, it is quite possible that a taxpayer will realize income in the fourth quarter of a tax year. Both Oregon and Federal laws allow taxpayers to make estimated tax payments under an annualization method, which allows taxpayers to estimate their taxes based on income that has been earned for the period. Under an annualization method, a taxpayer that earns 20% of its taxable income in the first quarter, 5% in the second quarter, 25% in the third quarter, and 50% in the fourth quarter could make its estimated tax payments on this basis without being exposed to potential underpayment interest. This pattern of income recognition is not unusual. Retailers, and businesses closely associated with retailers such as transportation companies, often earn well over 50% of their annual income in the fourth quarter of the year. Owners of pass-through businesses operating in these industries will not know their taxable income until the end of the tax year. Including an annualization exception similar to that found in ORS 316.587 (8)(c) would allow these taxpayers to pay their estimated taxes based on actual year to date results, rather than be exposed to additional assessments for not being able to accurately predict full year results at the time the first quarter payment is due.	Thank you for your input. At this time, Metro has not elected to offer this option due to the complexity of forms and system requirements to implement. The City of Portland Revenue Division, which administers the tax, will develop a process for addressing underpayment interest due to income fluctuations.

Date	From	Comment	Response
5/27/2021	Moss Adams	7.06 – 1110 Gross Income of Nonresidents: Personal Services Proposed language: An exception to this general rule occurs when the compensation is received for performance of services that, by their nature, have an objective or an effect that takes place within the District. In the case of corporate officers and executives who spend only a portion of their time within the District, but whose compensation paid by a corporation operating in the District is exclusively for managerial services performed by these officers and executives, the entire amount of compensation so earned is taxable without apportionment. Suggestion: This section appears to be unworkable for the reasons below, and we suggest it be eliminated. Discussion: This proposed rule introduces unnecessary ambiguity and the opportunity for significant distortion. The proposed rule is ambiguous. Metro has not defined the terms “by their nature,” “objective,” “effect,” “takes place,” “executives,” “operating,” or “managerial services.” Any person working for a company could be deemed by either Metro or the taxpayer to be an executive or non-executive; the roles and responsibilities of any person could be deemed to “by their nature” have an “objective” or “effect” that takes place either within the District or outside the District; or to have an objective or effect in the District but not “by their nature.” The proposed rule also introduces the opportunity for significant distortion. If the terms are defined so that a nonresident can determine clearly whether her compensation is subject to this rule, stating that all compensation “is taxable without apportionment” could significantly distort income assignable to Metro. An executive living in New York, for instance, could be responsible for managing a national retail operation, including a store in the District. Taxing her compensation “without apportionment” would distort income assigned to the District. It would also violate two rules generally applied in the business context. In general, a tax on a business must meet several standards to be constitutional under the United States Commerce Clause. The standards, described in a United States Supreme Court case, Complete Auto Transit, Inc. v. Brady, include fair apportionment, or taxation of only the apportionment of activity that transpires within the taxing jurisdiction, and fair relationship to services provided by the state. Another concept, also generally applied in the business context, is the concept of “internal consistency.” The United States Supreme Court has stated, most recently in Jerome F. Goldberg and Robert McTigue v. Roger D. Sweet, that “(t)o be internally consistent, a tax must be structured so that if every State were to impose an identical tax, no multiple taxation would result.” The proposed language would allow any local taxing authority to tax 100% of the executive’s compensation, exposing the compensation to tax many times over. While these cases evaluated state taxation of businesses operating within and without the state, the principles apply to taxation of individuals, particularly Oregon nonresidents. The United States Supreme Court has invalidated taxing schemes that place impermissible burdens on individuals with interstate activity, most recently in Comptroller of the Treasury of Maryland v. Wynne. Finally, it is impossible to determine whether given services “by their nature” have an “effect” that takes place within the District. An executive located anywhere in the world may be responsible for overseeing supply chain movements, human resources, product design, information technology, or any one of thousands of functions that “by their nature” have a global effect, as well as a potential effect within the District. This section of the rule appears to be unworkable in interpretation, application, compliance, or audit, and if enforced would likely lead to litigation involving significant expense and risk to Metro. We would propose that it be eliminated.	Thank you for your input. Metro used the State of Oregon laws and regulations as guidance in developing the personal income tax code and rules; administrative Rule 7.06 - 1110 is based on Oregon Administrative Rule 150-316-0165. The City of Portland Revenue Division, which administers the tax, has staff available to assist businesses unfamiliar with this rule. They can be reached at SHS.Tax@portlandoregon.gov or 503-865-4748 (personal income tax). Metro will share this comment with the City of Portland Revenue Division.

Date	From	Comment	Response
5/27/2021	Moss Adams	7.06-1125 Business Income Not Subject to Metro Business Income Tax Proposed language: If a business has income from business activity both within and without the District, the business may apportion its income. Businesses should look to ORS 314.605-695 to determine the applicable apportionment methodology based on their business. Suggestion: To resolve ambiguity and avoid potential negative consequences while minimizing the burdens on smaller businesses, we propose that Metro allow businesses with income not subject to the Metro Business Income Tax to elect to use either the Metro rules, or the provisions in ORS 314.605-695. Discussion: The proposed rule introduces ambiguity by stating that businesses “should” look to ORS 314.605-695. It is unclear whether a business may use ORS 314.605-695 or must use ORS 314.605-695 to apportion its income. More important, Metro rules for apportioning business income diverge from the requirements of ORS 314.605-695 in several important ways. This introduces the potential for inequitable treatment of owners of pass-through businesses operating in the same marketplace, based strictly on total gross receipts. Application of throwback and market sourcing are just two examples of significant differences. Application of throwback. As currently phrased, a business grossing $5 million through the sale of tangible personal property (Entity A) would be subject to the throwback provisions of ORS 314.665(2), while a business grossing $5.25 million from the same activity (Entity B) would not. This could lead to anomalous results. For example, assume Entities A and B each sell product at a Metro location and at a location outside Metro, and ship product to customers in other states in which neither entity is taxable. Owners of Entity A could pay significantly more in Metro tax, even with lower net income and lower Metro sales due to application of the throwback rule, as follows:	Thank you for your input. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules, and State of Oregon laws and regulations as guidance in developing the personal income tax code and rules. Administrative Rule 7.06 - 1125 applies to business income which is reported on the personal income tax return, and as such, we aligned this rule with the State of Oregon. The differences in apportionment rules between the State of Oregon and Multnomah County Business Income Tax do have an impact, sometimes positive and sometimes negative, on business net income. This was addressed by Metro Council in Ordinance 20-1454 which states, "Metro will initiate an evaluation of the apportionment methodology for gross business income under Chapter 7.07 no later than December 1, 2022. This evaluation may consider different apportionment methodologies, including but not limited to market-based apportionment and cost of performance apportionment, and the comparative impacts to tax revenue, businesses, and costs of collection. Metro will coordinate with regional governmental partners and engage with stakeholders, including businesses and tax specialists, in the evaluation process." Language in Administrative Rule 7.06 - 1125 has been changed to replace "should" with "must".

	ENTITY A	ENTITY B
Pre-apportionment net income	$1,000,000	$1,050,000
Sales at Metro location	$250,000	$1,000,000
Sales at non-Metro location	$250,000	$250,000
Sales of property shipped from Metro location to other states, not subject to tax	$4,500,000	$4,000,000
Total sales (apportionment denominator)	$5,000,000	$5,250,000
Apportionment numerator	$4,750,000	$1,000,000
Apportionment factor	95%	19%
Apportioned income	$950,000	$199,500
Metro tax (1%)	$9,500	$1,995
Sales at non-Metro location	$250,000	$250,000

Date	From	Comment	Response
		Additionally, 7.06-1010 directs taxpayers to apply Oregon Administrative Rules when the Metro code and its applicable administrative rules do not address a specific situation. For sales of tangible property, if a purchaser takes physical title by picking up the property (or directing another to do so), Metro code 7.07-1080 considers "delivery" of tangible personal property to occur at the point of pickup. "Delivered or shipped to" may not include activities of the purchaser. In contrast, under Oregon Administrative Rule (OAR) 150-314-0429(2)(a), property may be transported by the purchaser, as well as by the seller or by common carrier. Application of the rule as proposed could add a significant burden to taxpayers that hold interests in pass-through businesses with $5 million or less in total receipts, as a given delivery could be considered to be in Oregon but not Metro, or even Metro but not Oregon, with differing applications of throwback. Application of market sourcing. If Entities A and B earned receipts from providing services rather than selling tangible personal property, Entity A would be required to use Oregon's market sourcing principles while Entity B would use Metro's rules in 7.07-1090, which are modeled on the longstanding rules employed by Portland for the Business License Tax and Multnomah County for the Business Income Tax. Metro 7.07-1090 sources receipts from income such as service income to the location where the taxpayer is performing the income-producing activity. ORS, in contrast, sources these receipts to Oregon if the taxpayer's market for the services is in the state. Here again there could be anomalous results for taxpayers owning the pass-through entities:	

	ENTITY A	ENTITY B
Pre-apportionment net income	$1,000,000	$1,050,000
Receipts from services performed at a Metro location for a Metro customer	$500,000	$500,000
Receipts from services performed at a non-Metro location for a Metro customer	$4,500,000	$4,750,000
Total sales (apportionment denominator)	$5,000,000	$5,250,000
Apportionment numerator	$5,000,000	$500,000
Apportionment factor	100%	9.5%
Apportioned income	$1,000,000	$99,750
Metro tax (1%)	$10,000	$998

It appears Metro's intent may have been to reduce the administrative burden on smaller businesses by allowing them to use the Oregon apportionment provisions they already employ rather than imposing a new apportionment regime. However, this could introduce additional unanticipated complexity and inequitable results.

Date	From	Comment	Response
5/27/2021	Moss Adams	7.07 – 1040 Seasonal Businesses and Payment of Estimated Taxes Proposed language: A seasonal business is one which earns 70% or more of its gross income in a period of six successive months or less. A business that is required to make payments under Metro Code 7.05.190 and qualifies as a seasonal business may make quarterly payments timed with the season in which income is generated. To use the seasonal business quarterly payment method, the business must petition and receive approval in advance from the Administrator. A business requesting use of the seasonal business quarterly payment method must petition the Administrator no later than the due date of the 1st quarterly estimated payment required by the codes. Suggestion: We suggest Including an annualization exception similar to that found in ORS 314.525(4). Discussion: Many businesses earn income unpredictably and may realize income from a discrete event late in the year, which was not foreseen before the due date of the first quarterly estimated payment. Both Oregon and Federal laws allow taxpayers to make estimated tax payments under an "annualization" method, which allows taxpayers to estimate their taxes based on income that has actually been earned for year. Under an annualization method, a taxpayer that earns 20% of its taxable income in the first quarter, 5% in the second quarter, 10% in the third quarter, and 65% in the fourth quarter due to a significant transaction could make its estimated tax payments on this basis without being exposed to potential underpayment interest. Including an annualization exception similar to that found in ORS 314.525(4) would allow these businesses to pay their estimated taxes based on actual year to date results, rather than be exposed to additional assessments for not being able to accurately predict full year results at the time the first quarter payment is due.	Thank you for your input. At this time, Metro has not elected to offer this option due to the complexity of forms and system requirements to implement. The City of Portland Revenue Division, which administers the tax, will develop a process for addressing underpayment interest due to income fluctuations.
5/27/2021	Moss Adams	7.07 – 1080 Business Activity and Apportionment of Sales of Tangible Personal Property Proposed language: "Delivered or shipped to" may not be defined as activities of the purchaser of tangible personal property. If the purchaser takes physical title by picking up the tangible personal property or directing the pick up of tangible personal property (i.e., will-call or other such pick up by the purchaser or purchaser's agent), the property is considered "delivered" at the point of pick up. Any further sale or delivery on the part of the purchaser to any secondary purchaser is not considered as delivery from the original seller to such secondary purchaser. Suggestion: We suggest revising the rule to conform with OAR 150-314-0429(2)(a). Discussion: 7.07-1080 conflicts with OAR 150-314-0429(2)(a), which states that property may be transported by the purchaser, as well as by the seller or by common carrier. There will be several situations where a purchaser picks up property at the seller's dock, either itself, or through directing a common carrier to pick up the freight. In this situation, a sale may be a Metro sale but not an Oregon sale. The proposed rule requires businesses to maintain databases of their customer sales based on different standards for determining the location of a delivery. Taxpayers will need to configure their accounting systems to distinguish sales to Oregon customers that pick up in Metro from those that do not pick up in Metro. This introduces additional complexity for compliance with the Metro Business Income Tax as well as future auditing. We would propose that the rule be revised to conform with OAR 150-314-0429(2)(a). This will allow taxpayers to calculate Metro and Oregon apportionment factors using one standard for sourcing sales.	Thank you for your input. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules; administrative Rule 7.07 - 1080 is based on the MCBIT BTAR 610.93-2A. The City of Portland Revenue Division, which administers the MCBIT and Metro's Supportive Housing Services tax, has staff available to assist businesses unfamiliar with these apportionment rules. They can be reached at SHS.Tax@portlandoregon.gov or 503-823-5157 (business income tax). Metro will share this comment with the City of Portland Revenue Division.

Date	From	Comment	Response
5/27/2021	Moss Adams	7.07 – 1090 Apportionment of Gross Income from Business Activities Other than Sales of Tangible Personal Property Proposed language: Example 4: Gross income from interest, dividends, and other portfolio income items are apportioned to the Metro district if the administrative activities to select, record, and/or reconcile the portfolio investments are performed in the Metro district. Generally, portfolio activity is attributable to the commercial domicile of the business. Portfolio income may not be apportioned to the location of third party administrators or to any other jurisdictions in which the income would not be taxable because neither the business nor owners of the business have established a taxable domicile in such jurisdiction. Suggestion: We suggest modifying the example to clearly define “taxable domicile” and incorporate the fact that a taxpayer may be taxable in the other jurisdiction under that jurisdiction’s apportionment rules; replacing the phrase “may not be apportioned” with “may not be attributed” (or an equivalent), and clarifying the treatment of portfolio receipts that the taxpayer cannot attribute to a specific location. Discussion: In our view, this example introduces potential ambiguity. First, the phrase “taxable domicile” does not appear to be defined in the Metro code or rules. Proposed rule 7.07—1090 indicates that “a business taxpayer is domiciled within the Metro district” when it has established “physical presence within the Metro district.” However, a taxpayer may be taxable in another jurisdiction without any physical presence in that jurisdiction. Under the market sourcing rules employed by many states, including Oregon, a taxpayer that provides services to a customer in another state may be taxed by that state. This usage also conflicts with the usage of “domicile” in proposed rule 7.07-1070, Apportionment of Gains and Incomes due to Sale of a Business, which equates “domiciled” with “headquartered.” Second, stating that portfolio income may not be apportioned to certain locations is slightly inconsistent as a business apportions its entire net income based on its apportionment factor, which includes a numerator comprising receipts attributed, assigned, or sourced to the jurisdiction. Portfolio income, assuming that it is apportionable business income, is not apportioned as a standalone item. Receipts from portfolio investments are attributed, assigned, or sourced to a numerator which is used to apportion business income. Third, it is unclear whether the rule would assign the portfolio receipts described in Example 4 to the commercial domicile of the taxpayer, or simply exclude them from the apportionment factor altogether. To resolve the ambiguity, we would propose that the example be modified to clearly define “taxable domicile” and incorporate the fact that a taxpayer may be taxable in the other jurisdiction under that jurisdiction’s apportionment rules; replace the phrase “may not be apportioned” with “may not be attributed” (or an equivalent), and clarify the treatment of portfolio receipts that the taxpayer cannot attribute to a specific location.	Thank you for your input. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules; administrative Rule 7.07 - 1090 is based on the MCBIT BTAR 610.93-4A. The City of Portland Revenue Division, which administers the MCBIT and Metro's Supportive Housing Services tax, has staff available to assist businesses unfamiliar with these apportionment rules. They can be reached at SHS.Tax@portlandoregon.gov or 503-823-5157 (business income tax). Metro will share this comment with the City of Portland Revenue Division.

Date	From	Comment	Response
5/27/2021	Moss Adams	7.07 – 1105 Apportionment for Freight Carriers Proposed language: In those cases where either a pick-up or a delivery occurs within the Metro district with a corresponding pick-up or delivery outside the Metro district, 50% of the income is apportioned to the Metro district. Interstate carriers of freight (long-haul trucking) may also partially offset the income received from pick- up or delivery within the Metro district (such offset not to exceed 50% of Metro district income determined in #2 above) by a reasonable methodology… Suggestion: We would propose that Metro identify the 50% inbound/50% outbound method as a default, with the option to substitute actual miles operated in Metro. Using actual miles is consistent with Oregon and other state apportionment for freight carriers. Discussion: This method may be reasonable for many freight carriers that operate in close proximity to the Metro region. It also provides a workable method for carriers that do not maintain detailed local mileage records. However, it likely distorts income earned by many interstate carriers with an average length of haul of hundreds of miles. These carriers also may have highly sophisticated mileage tracking systems that allow them to determine the actual miles operated within a jurisdiction. Requiring such a carrier to assign at minimum 25% of the revenue from a shipment with a Metro origin and Florida destination risks distorting the income apportioned to Metro. It also subjects the income of this carrier to double taxation, as nearly every state in which the carrier operates will assign income based at least in part on miles operated within the state.	Thank you for your input. Metro used the Multnomah County Business Income Tax (MCBIT) as guidance in developing the business income tax code and rules; administrative Rule 7.07 - 1090 is based on the MCBIT BTAR 610.93-7. The City of Portland Revenue Division, which administers the MCBIT and Metro's Supportive Housing Services tax, has staff available to assist businesses unfamiliar with these apportionment rules. They can be reached at SHS.Tax@portlandoregon.gov or 503-823-5157 (business income tax). Metro will share this comment with the City of Portland Revenue Division.

From: Wufoo
To: Rachael Lembo
Subject: [External sender]Comment on proposed income tax rules [#1]
Date: Tuesday, May 4, 2021 11:07:35 AM

CAUTION: This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Comment on the proposed rules

I would just to confirm/add clarity to what constitutes a 'non -District' employer and the potential tax requirements. If the following could be confirmed this would be very helpful: Part 1. If an employer has a location/head-quartered outside of the Metro area (i.e. the business/employer is actually located out of state) and only has remote employees that work from home and their home is in the Metro area - the employer is NOT considered a district employer. Part 2 - therefore, if the employer is determined to NOT be a district employer, the employer would not be required to withhold taxes AND would also not be required to offer employees to 'Opt in'.

Thank you

Email samantha_sciarrone@yaskawa.com

From:	Wufoo
To:	Rachael Lembo
Subject:	[External sender]Comment on proposed income tax rules [#2]
Date:	Monday, May 17, 2021 4:26:55 PM

CAUTION: This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Comment on the proposed rules	The oppression of successful couples filing jointly by the Marxist masses will drive me out of the metro region as soo. As my daughter can escape the never fails to fail PPS school system. This is taxing the mobile middle class and you will eventually get what you desire: undesirable property and culture at lower prices. Shame on you for proposing this redistribution of income. Everybody gains when everyone pays!
Email	tbaschoff@me.com

From: Wufoo
To: Rachael Lembo
Subject: [External sender]Comment on proposed income tax rules [#3]
Date: Tuesday, May 18, 2021 9:55:03 AM

CAUTION: This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Comment on the proposed rules

From Bob Higley, Tax Analyst at Vertex Inc., a leading supplier of payroll tax engine software. We are responsible for writing new payroll taxes, such as Metro's SHS Tax, into our program so that our payroll tax software developer customers may best implement the taxes for their clients in the Metro District.

We recommend changing the Employee OPT IN/OUT form so the employee who opts in provides a per pay period amount to withhold rather than an annual withholding amount. Every other withholding form we are aware of, including the Federal W4 and OR W4, requires the employee to provide withholding per pay period. Your form should be consistent with those other popular forms. IRS and the State of Oregon work under the premise that the employer is to do exactly what the employee requests, without forcing the employer to do a further calculation (dividing the annual number by the number of pay periods), no matter how simple that might appear. Using the exact number the employee provides on the form makes it easier for the employer. No additional calculating by the employer is required. This is the employee's tax after all, not the employer's tax. Further, if it is left as an annual figure, the employer could theoretically be responsible for making sure the employee meets that annual number, forcing them to reconcile it annually. This would be onerous and difficult for the employer who is already being asked to bear a significant burden in administering these taxes. Leaving it an annual number would also cause us to perform additional programming and will cause our customers and their end-user employers to provide additional information to calculate these taxes. Please keep this as consistent with the practices of other taxes as much as possible. Thank you.

Email	bob.higley@vertexinc.com

Attachment B - Original comments

From: Wufoo
To: Rachael Lembo
Subject: [External sender]Comment on proposed income tax rules [#4]
Date: Tuesday, May 18, 2021 10:54:07 AM

CAUTION: This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Comment on the proposed rules

From Bob Higley, Tax Analyst at Vertex Inc.
In Section 7.06 - 1025 it is stated how the employer should withhold the tax in the absence of an OPT IN/OUT form and estimated earnings are > $200,000. For regular payments, the employer must use the published formula. For supplemental payments, the employer must apply a flat rate of 1% on the payment. Many employers combine regular and supplemental payments on the same check. How should an employer withhold this tax when they combine regular and supplemental payments?
We recommend addressing this situation in Section 7.06 - 1025 and providing an example so it is clear how to handle it. Either use the regular or supplemental method when an employer combines regular/supplemental payments. That needs to be clear. Thank you.

Email bob.higley@vertexinc.com

From: Wufoo
To: Rachael Lembo
Subject: [External sender]Comment on proposed income tax rules [#5]
Date: Friday, May 28, 2021 9:27:07 AM

CAUTION: This email originated from an **External source**. Do not open links or attachments unless you know the content is safe.

Comment on the proposed rules	In order for taxpayers to be able to effectively comply with the Portland Metro Business Profit Tax, it is imperative that Portland Metro Council provides a comprehensive list of Zip+4 locations that are subject to the Portland Metro Business Profit Tax. It is unreasonable to expect taxpayers to utilize a map that does not contain Zip+4 location identification.
Email	ashley.roman@rexelusa.com

SMART GROWTH COALITION

May 28, 2021

Marissa Madrigal
Chief Operating Officer
Oregon Metro
Metro Regional Center
600 NE Grand Ave.
Portland, OR 97232-2736

Sent electronically

RE: Proposed Administrative Rules for Oregon Metro's Business Income Tax

Dear Ms. Madrigal,

Thank you for the opportunity to submit these comments on behalf of the Smart Growth Coalition regarding the proposed administrative rules for Oregon Metro's ("Metro") business income tax in Administrative Rule (A.R.) 7.07-1000 through 1115. We offer these comments to raise concerns regarding technical ambiguities and areas needing further attention.

About the Smart Growth Coalition

The Smart Growth Coalition is a consortium of traded sector businesses with significant operations in Oregon. Our coalition was formed in 1999 to add technical expertise to state legislative proceedings regarding proposed reforms to state tax law affecting businesses who have made investments in jobs and capital projects in the state. Our members are unified in their commitment to sound tax policies that encourage investment in Oregon and provide technical simplicity and clarity to the state tax code.

Business Income Tax Rules Lack Clarity Taxpayers Need to Comply

The administrative rules lay out the technical framework for the administrator to implement and taxpayers to comply with the business income tax. We understand the Multnomah County Circuit Court is considering a validation proceeding to determine if Metro must comply with the statutory parameters governing such taxes. Although we subscribe to the respondent's position in that proceeding, these comments respond to the rules relative to the implementation ordinance (the "ordinance") adopted by the Metro Council on December 17, 2020.

One of the benefits of income taxes, generally, is their stability. As a state and local tax mechanism, the income tax has existed as a revenue instrument for nearly a century and inherits decades of evolving legal and policy context. As a practical matter, with or without a statutory requirement to follow Oregon income tax laws and rules, Metro should align its administrative rules to universal definitions used by Oregon and most other states. This alignment ensures that a tax regime is administratively simple for tax agencies and taxpayers and significantly reduces the opportunities for ambiguities or unnecessarily complicated audits.

Considering this viewpoint, we offer the following suggestions to provide clarity to the administrative rules:

- **Metro should adopt a "golden rule" deferring to Oregon income tax laws and rules in areas not addressed by these rules.** In the rules for the personal income tax, specifically, A.R. 7.06-1010, the language states that any term has the same meaning as Oregon law unless the word is defined otherwise in the administrative rules. We strongly recommend a similar provision for the business income tax because it allows taxpayers to refer to established tax law in situations that lack clarity. This connection to state tax law would simplify compliance and, ultimately, streamline the audit process.

- **Metro should adopt a clearly defined nexus standard and apportionment regime or rely on Oregon's definitions.** Currently, A.R. 7.07-1080 suggests that taxable nexus for tangible personal property is established within the Metro district if the taxpayer has a physical presence within the district. The physical presence standard appears to run contrary to the ordinance language in Metro Code ("M.C.") § 7.07.060, applying an economic presence nexus. Metro should move to clarify a single nexus standard in the ordinance and rule, especially if the intention is to rely on a different method than used for the Oregon income tax.

- **Metro should provide examples for taxpayers to understand the cost-of-performance sourcing regime.** A.R. 7.07-1090 appears to require a modified cost-of-performance sourcing method materially different from most other taxing jurisdictions. We understand the proposed language intends to follow the method required by the City of Portland and Multnomah County for their taxes; however, the method is unusual and complicated for many taxpayers. Currently, businesses in Clackamas and Washington counties are familiar with the state's market-based sourcing regime and may experience confusion with the minority sourcing rule. Metro should make sure the rules clearly articulate the process taxpayers must go

through to attribute income to the district. In particular, Metro should provide illustrative examples of applying the method in different situations. Notably, the second example is the only illustration of the rule's application and the other examples seem to serve as regulatory declarations.

- **Metro should revisit the need and practicality of the special apportionment rules.** A.R. 7.07-1095 through 1115 outlines special industry apportionment rules that are materially different than those provided for the Oregon income tax and pose a significant hardship for taxpayers trying to comply with both taxes. For example, the proposed special apportionment rule for "providers of electronic or telephonic services" uses an entirely different method than Oregon's "broadcaster" rule, which means that taxpayers may need to separately track sales of "digital information." Taxpayers are likely to experience challenges complying with this method because "digital information" can be difficult to define and source to a single location or jurisdiction, making the method difficult to audit. Notably, the rule may run afoul of the Permanent Internet Tax Freedom Act, which prohibits taxes that discriminate against electronic commerce. M.C. § 7.07.080(e) specifies that taxpayers use the state's special apportionment methods unless Metro adopts its own. To simplify tax administration and compliance, we recommend removing the Metro-specific special apportionment methods.

Thank you for the opportunity to submit these comments for your consideration. If you have any questions or wish to discuss our feedback, please do not hesitate to contact me directly by email at jeff@peakpolicy.com or phone at 503-784-1274.

Sincerely,

Jeff Newgard
Smart Growth Coalition

CC: Rachael Lembo, Finance Manager

T (503) 242-1447
F (503) 274-2789

805 SW Broadway
Suite 1200
Portland, OR 97205

May 27, 2021

Metro Regional Center
600 NE Grand Ave.
Portland, OR 97232

Attn: Metro Council

Sent via email to Rachael.Lembo@oregonmetro.gov

Re: Metro business income tax administrative rules
Metro personal income tax administrative rules

President and Council members,

Thank you for the opportunity to provide comments on the proposed Metro business income tax administrative rules and Metro personal income tax administrative rules. We have comments on both the personal and business income tax proposed rules.

METRO PERSONAL INCOME TAX ADMINISTRATIVE RULES

7.06-1075 Estimated Tax Payments

Proposed language: *If there is no prior year tax filing requirement, there is no required annual payment amount*.

Suggestion: An example showing a taxpayer with taxable income for 2022 below the thresholds with income for 2023 above the thresholds, stating that the taxpayer is not subject to either withholding or estimated tax payments, would clarify the proposed rule.

Discussion: Proposed 7.06-1075 1.a defines “required annual payment” as “the total amount of required installment payments and employer withholding for the tax year.” The proposed rule language above indicates that a taxpayer has no required annual payment, and therefore is not subject to either employer withholding or estimated tax payments unless the taxpayer was required to file a return in the previous year. This appears to conflict with other provisions regarding employer withholding and estimated tax payments.

Proposed language:

The required annual payment is the lesser of:

a. *Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year); or*
b. *One hundred percent of the tax shown on the prior year’s return, if qualified.*

Quarterly payments must be made in equal amounts per 7.06-1075 1.b.

Suggestion: Include an annualization exception such as that found in ORS 316.587 (8)(c).

Discussion: Many taxpayers experience income fluctuations from year to year. Property sales, bonuses, and income/losses passed through from businesses can and do vary significantly. In these situations, it is quite possible that a taxpayer will realize income in the fourth quarter of a tax year.

Both Oregon and Federal laws allow taxpayers to make estimated tax payments under an annualization method, which allows taxpayers to estimate their taxes based on income that has been earned for the period. Under an annualization method, a taxpayer that earns 20% of its taxable income in the first quarter, 5% in the second quarter, 25% in the third quarter, and 50% in the fourth quarter could make its estimated tax payments on this basis without being exposed to potential underpayment interest.

This pattern of income recognition is not unusual. Retailers, and businesses closely associated with retailers such as transportation companies, often earn well over 50% of their annual income in the fourth quarter of the year. Owners of pass-through businesses operating in these industries will not know their taxable income until the end of the tax year.

Including an annualization exception similar to that found in ORS 316.587 (8)(c) would allow these taxpayers to pay their estimated taxes based on actual year to date results, rather than be exposed to additional assessments for not being able to accurately predict full year results at the time the first quarter payment is due.

7.06 – 1110 Gross Income of Nonresidents: Personal Services

Proposed language: *An exception to this general rule occurs when the compensation is received for performance of services that, by their nature, have an objective or an effect that takes place within the District. In the case of corporate officers and executives who spend only a portion of their time within the District, but whose compensation paid by a corporation operating in the District is exclusively for managerial services performed by these officers and executives, the entire amount of compensation so earned is taxable without apportionment.*

Suggestion: This section appears to be unworkable for the reasons below, and we suggest it be eliminated.

Discussion: This proposed rule introduces unnecessary ambiguity and the opportunity for significant distortion.

The proposed rule is ambiguous. Metro has not defined the terms “by their nature,” “objective,” “effect,” “takes place,” “executives,” “operating,” or “managerial services.” Any person working for a company could be deemed by either Metro or the taxpayer to be an executive or non-executive; the roles and responsibilities of any person could be deemed to “by their nature” have an “objective” or

"effect" that takes place either within the District or outside the District; or to have an objective or effect in the District but not "by their nature."

The proposed rule also introduces the opportunity for significant distortion. If the terms are defined so that a nonresident can determine clearly whether her compensation is subject to this rule, stating that all compensation "is taxable without apportionment" could significantly distort income assignable to Metro. An executive living in New York, for instance, could be responsible for managing a national retail operation, including a store in the District. Taxing her compensation "without apportionment" would distort income assigned to the District.

It would also violate two rules generally applied in the business context. In general, a tax on a business must meet several standards to be constitutional under the United States Commerce Clause. The standards, described in a United States Supreme Court case, *Complete Auto Transit, Inc. v. Brady*, include fair apportionment, or taxation of only the apportionment of activity that transpires within the taxing jurisdiction, and fair relationship to services provided by the state.

Another concept, also generally applied in the business context, is the concept of "internal consistency." The United States Supreme Court has stated, most recently in *Jerome F. Goldberg and Robert McTigue v. Roger D. Sweet*, that "(t)o be internally consistent, a tax must be structured so that if every State were to impose an identical tax, no multiple taxation would result."

The proposed language would allow any local taxing authority to tax 100% of the executive's compensation, exposing the compensation to tax many times over.

While these cases evaluated state taxation of businesses operating within and without the state, the principles apply to taxation of individuals, particularly Oregon nonresidents. The United States Supreme Court has invalidated taxing schemes that place impermissible burdens on individuals with interstate activity, most recently in *Comptroller of the Treasury of Maryland v. Wynne*.

Finally, it is impossible to determine whether given services "by their nature" have an "effect" that takes place within the District. An executive located anywhere in the world may be responsible for overseeing supply chain movements, human resources, product design, information technology, or any one of thousands of functions that "by their nature" have a global effect, as well as a potential effect within the District.

This section of the rule appears to be unworkable in interpretation, application, compliance, or audit, and if enforced would likely lead to litigation involving significant expense and risk to Metro. We would propose that it be eliminated.

7.06-1125 Business Income Not Subject to Metro Business Income Tax

Proposed language: *If a business has income from business activity both within and without the District, the business may apportion its income. Businesses should look to ORS 314.605-695 to determine the applicable apportionment methodology based on their business.*

Suggestion: To resolve ambiguity and avoid potential negative consequences while minimizing the burdens on smaller businesses, we propose that Metro allow businesses with income not subject to the Metro Business Income Tax to elect to use either the Metro rules, or the provisions in ORS 314.605-695.

Discussion: The proposed rule introduces ambiguity by stating that businesses "should" look to ORS 314.605-695. It is unclear whether a business *may* use ORS 314.605-695 or *must* use ORS 314.605-695 to apportion its income.

More important, Metro rules for apportioning business income diverge from the requirements of ORS 314.605-695 in several important ways. This introduces the potential for inequitable treatment of owners of pass-through businesses operating in the same marketplace, based strictly on total gross receipts. Application of throwback and market sourcing are just two examples of significant differences.

Application of throwback. As currently phrased, a business grossing $5 million through the sale of tangible personal property (Entity A) would be subject to the throwback provisions of ORS 314.665(2), while a business grossing $5.25 million from the same activity (Entity B) would not. This could lead to anomalous results.

For example, assume Entities A and B each sell product at a Metro location and at a location outside Metro, and ship product to customers in other states in which neither entity is taxable. Owners of Entity A could pay significantly more in Metro tax, even with lower net income and lower Metro sales due to application of the throwback rule, as follows:

	ENTITY A	ENTITY B
Pre-apportionment net income	$1,000,000	$1,050,000
Sales at Metro location	$250,000	$1,000,000
Sales at non-Metro location	$250,000	$250,000
Sales of property shipped from Metro location to other states, not subject to tax	$4,500,000	$4,000,000
Total sales (apportionment denominator)	$5,000,000	$5,250,000
Apportionment numerator	$4,750,000	$1,000,000
Apportionment factor	95%	19%
Apportioned income	$950,000	$199,500
Metro tax (1%)	$9,500	$1,995
Sales at non-Metro location	$250,000	$250,000

Additionally, 7.06-1010 directs taxpayers to apply Oregon Administrative Rules when the Metro code and its applicable administrative rules do not address a specific situation. For sales of tangible property, if a purchaser takes physical title by picking up the property (or directing another to do so), Metro code 7.07-1080 considers "delivery" of tangible personal property to occur at the point of pickup. "Delivered or shipped to" may not include activities of the purchaser. In contrast, under Oregon Administrative Rule (OAR) 150-314-0429(2)(a), property may be transported by the purchaser, as well as by the seller or by common carrier.

Application of the rule as proposed could add a significant burden to taxpayers that hold interests in pass-through businesses with $5 million or less in total receipts, as a given delivery could be considered to be in Oregon but not Metro, or even Metro but not Oregon, with differing applications of throwback.

Application of market sourcing. If Entities A and B earned receipts from providing services rather than selling tangible personal property, Entity A would be required to use Oregon's market sourcing principles while Entity B would use Metro's rules in 7.07-1090, which are modeled on the long-standing rules employed by Portland for the Business License Tax and Multnomah County for the Business Income Tax.

Metro 7.07-1090 sources receipts from income such as service income to the location where the taxpayer is performing the income-producing activity. ORS, in contrast, sources these receipts to Oregon if the taxpayer's market for the services is in the state. Here again there could be anomalous results for taxpayers owning the pass-through entities:

	ENTITY A	ENTITY B
Pre-apportionment net income	$1,000,000	$1,050,000
Receipts from services performed at a Metro location for a Metro customer	$500,000	$500,000
Receipts from services performed at a non-Metro location for a Metro customer	$4,500,000	$4,750,000
Total sales (apportionment denominator)	$5,000,000	$5,250,000
Apportionment numerator	$5,000,000	$500,000
Apportionment factor	100%	9.5%
Apportioned income	$1,000,000	$99,750
Metro tax (1%)	$10,000	$998

It appears Metro's intent may have been to reduce the administrative burden on smaller businesses by allowing them to use the Oregon apportionment provisions they already employ rather than imposing a new apportionment regime. However, this could introduce additional unanticipated complexity and inequitable results.

METRO BUSINESS INCOME TAX ADMINISTRATIVE RULES

7.07 – 1040 Seasonal Businesses and Payment of Estimated Taxes

Proposed language: *A seasonal business is one which earns 70% or more of its gross income in a period of six successive months or less. A business that is required to make payments under Metro Code 7.05.190 and qualifies as a seasonal business may make quarterly payments timed with the season in which income is generated. To use the seasonal business quarterly payment method, the business must petition and receive approval in advance from the Administrator. A business*

requesting use of the seasonal business quarterly payment method must petition the Administrator no later than the due date of the 1st quarterly estimated payment required by the codes.

Suggestion: We suggest Including an annualization exception similar to that found in ORS 314.525(4).

Discussion: Many businesses earn income unpredictably and may realize income from a discrete event late in the year, which was not foreseen before the due date of the first quarterly estimated payment.

Both Oregon and Federal laws allow taxpayers to make estimated tax payments under an "annualization" method, which allows taxpayers to estimate their taxes based on income that has actually been earned for year. Under an annualization method, a taxpayer that earns 20% of its taxable income in the first quarter, 5% in the second quarter, 10% in the third quarter, and 65% in the fourth quarter due to a significant transaction could make its estimated tax payments on this basis without being exposed to potential underpayment interest.

Including an annualization exception similar to that found in ORS 314.525(4) would allow these businesses to pay their estimated taxes based on actual year to date results, rather than be exposed to additional assessments for not being able to accurately predict full year results at the time the first quarter payment is due.

7.07 – 1080 Business Activity and Apportionment of Sales of Tangible Personal Property

Proposed language: *"Delivered or shipped to" may not be defined as activities of the purchaser of tangible personal property. If the purchaser takes physical title by picking up the tangible personal property or directing the pick up of tangible personal property (i.e., will-call or other such pick up by the purchaser or purchaser's agent), the property is considered "delivered" at the point of pick up. Any further sale or delivery on the part of the purchaser to any secondary purchaser is not considered as delivery from the original seller to such secondary purchaser.*

Suggestion: We suggest revising the rule to conform with OAR 150-314-0429(2)(a).

Discussion: 7.07-1080 conflicts with OAR 150-314-0429(2)(a), which states that property may be transported by the purchaser, as well as by the seller or by common carrier. There will be several situations where a purchaser picks up property at the seller's dock, either itself, or through directing a common carrier to pick up the freight. In this situation, a sale may be a Metro sale but not an Oregon sale.

The proposed rule requires businesses to maintain databases of their customer sales based on different standards for determining the location of a delivery. Taxpayers will need to configure their accounting systems to distinguish sales to Oregon customers that pick up in Metro from those that do not pick up in Metro. This introduces additional complexity for compliance with the Metro Business Income Tax as well as future auditing.

We would propose that the rule be revised to conform with OAR 150-314-0429(2)(a). This will allow taxpayers to calculate Metro and Oregon apportionment factors using one standard for sourcing sales.

7.07 – 1090 Apportionment of Gross Income from Business Activities Other than Sales of Tangible

Personal Property

Proposed language: *Example 4: Gross income from interest, dividends, and other portfolio income items are apportioned to the Metro district if the administrative activities to select, record, and/or reconcile the portfolio investments are performed in the Metro district. Generally, portfolio activity is attributable to the commercial domicile of the business. Portfolio income may not be apportioned to the location of third party administrators or to any other jurisdictions in which the income would not be taxable because neither the business nor owners of the business have established a taxable domicile in such jurisdiction.*

Suggestion: We suggest modifying the example to clearly define "taxable domicile" and incorporate the fact that a taxpayer may be taxable in the other jurisdiction under that jurisdiction's apportionment rules; replacing the phrase "may not be apportioned" with "may not be attributed" (or an equivalent), and clarifying the treatment of portfolio receipts that the taxpayer cannot attribute to a specific location.

Discussion: In our view, this example introduces potential ambiguity.

First, the phrase "taxable domicile" does not appear to be defined in the Metro code or rules. Proposed rule 7.07—1090 indicates that "a business taxpayer is domiciled within the Metro district" when it has established "physical presence within the Metro district." However, a taxpayer may be taxable in another jurisdiction without any physical presence in that jurisdiction. Under the market sourcing rules employed by many states, including Oregon, a taxpayer that provides services to a customer in another state may be taxed by that state. This usage also conflicts with the usage of "domicile" in proposed rule 7.07-1070, Apportionment of Gains and Incomes due to Sale of a Business, which equates "domiciled" with "headquartered."

Second, stating that portfolio income may not be apportioned to certain locations is slightly inconsistent as a business apportions its entire net income based on its apportionment factor, which includes a numerator comprising receipts attributed, assigned, or sourced to the jurisdiction. Portfolio income, assuming that it is apportionable business income, is not apportioned as a standalone item. Receipts from portfolio investments are attributed, assigned, or sourced to a numerator which is used to apportion business income.

Third, it is unclear whether the rule would assign the portfolio receipts described in Example 4 to the commercial domicile of the taxpayer, or simply exclude them from the apportionment factor altogether.

To resolve the ambiguity, we would propose that the example be modified to clearly define "taxable domicile" and incorporate the fact that a taxpayer may be taxable in the other jurisdiction under that jurisdiction's apportionment rules; replace the phrase "may not be apportioned" with "may not be attributed" (or an equivalent), and clarify the treatment of portfolio receipts that the taxpayer cannot attribute to a specific location.

7.07 – 1105 Apportionment for Freight Carriers

Proposed language: *In those cases where either a pick-up or a delivery occurs within the Metro district with a corresponding pick-up or delivery outside the Metro district, 50% of the income is apportioned to the Metro district.*

Interstate carriers of freight (long-haul trucking) may also partially offset the income received from pick- up or delivery within the Metro district (such offset not to exceed 50% of Metro district income determined in #2 above) by a reasonable methodology…

Suggestion: We would propose that Metro identify the 50% inbound/50% outbound method as a default, with the option to substitute actual miles operated in Metro. Using actual miles is consistent with Oregon and other state apportionment for freight carriers.

Discussion: This method may be reasonable for many freight carriers that operate in close proximity to the Metro region. It also provides a workable method for carriers that do not maintain detailed local mileage records. However, it likely distorts income earned by many interstate carriers with an average length of haul of hundreds of miles. These carriers also may have highly sophisticated mileage tracking systems that allow them to determine the actual miles operated within a jurisdiction. Requiring such a carrier to assign at minimum 25% of the revenue from a shipment with a Metro origin and Florida destination risks distorting the income apportioned to Metro. It also subjects the income of this carrier to double taxation, as nearly every state in which the carrier operates will assign income based at least in part on miles operated within the state.

Our thanks, again, for considering these comments and suggestions. We welcome a further discussion regarding these proposed rules and associated examples as you work to finalize them. Please let me know if you have any questions or need further clarification regarding our comments.

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Administrative Rule of Metro Code Chapter 7.06
Administrative Rule Adoption Record and Findings

AR 7.06-1000 through 1155
Metro Personal Income Tax Administrative Rules

These administrative rules are adopted under the authority of Metro Code Chapter 7.05 (Income Tax Administration for Personal and Business Taxes) and Chapter 7.06 (Personal Income Tax), which authorizes the Chief Operating Officer (COO) to adopt and amend administrative rules to implement Chapter 7.06. In accordance with Metro Code, the COO provided an opportunity for public comment and held a public hearing on these rules before their adoption.

The COO finds that these administrative rules are necessary to implement certain provisions of Metro Code Chapter 7.06 and adopts Administrative Rules Nos. 7.06-1000 through 1155. The requirements of these administrative rules are in addition to all other requirements and provisions in Metro Code Chapter 7.06. These rules have the same force and effect as any other provision of Metro Code Chapter 7.06.

It is so ordered:

__________________________________ _______________________

Marissa Madrigal
Metro Chief Operating Officer

Date

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PERSONAL INCOME TAX
ADMINISTRATIVE RULES **AR 7.06-1000 through 1155**
Income Tax Administration

Effective: TBD, 2021

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GENERAL

7.06 – 1000 Purpose
The purpose of these rules is to implement Chapter 7.06 (Personal Income Taxes) and to ensure that Metro's income tax rules and examples are consistent and transparent.

7.06 – 1005 Legal Authority
These administrative rules are issued under the authority of Metro Code Chapter 7.05 and Chapter 7.06. These rules are in addition to all other requirements and provisions in Metro Code Chapter 7.05 and 7.06.

7.06 – 1010 State Law References
Any term used in these rules has the same meaning as when used in a comparable context in the laws of Oregon relating to state income taxes, unless a different meaning is clearly required or the term is specifically defined in these rules. Any reference in these rules to the laws of Oregon refers to the laws of Oregon as they are amended and in effect, and as applicable to the tax year of the taxfiler.

When the Metro Code and applicable administrative rules do not address a specific situation, taxfilers should use as guidance the Oregon Administrative Rules relating to state income taxes.

WITHHOLDING

7.06 – 1015 Withholding by Employers

1. Metro Code Section 7.06.120(a) describes each employer's obligation to collect and remit the Metro personal income tax from the wages its employees earn that are subject to the Metro personal income tax.
2. Definitions for purposes of Sections 7.06.120 and 7.06.130:
    a. Employer and Employee. The terms "employer" and "employee" have the same definitions as they do for purposes of wage withholding under ORS Chapter 316. Additionally, if the relationship of employer and employee actually exists, a different description of the relationship by the parties is immaterial; thus, it is of no consequence that the employee may be designated as a partner or independent contractor, contrary to fact. The Administrator will use the criteria set forth in ORS Chapter 316 and regulations thereunder to evaluate whether an employer and employee relationship exists.
    b. Wages. The term "wages" has the same definition as it does for purposes of wage withholding under ORS Chapter 316. In general, this includes remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash.
    c. District employer. For purposes of these rules, "district employer" is an employer that:
        i) pays wages to employees for services performed within the District; and
        ii) has a physical location within the District.

        Example:

Sunshine, Inc. is based in San Diego, CA, and has no physical location in the District. They employ an individual who works remotely from their home in the Metro District. Sunshine, Inc. is not a District employer.

3. For periods beginning on or after January 1, 2022, all District employers are required to:
   a. withhold the Metro personal income tax from wages for services performed by any employee within the District if that employee earns $200,000 or more during a calendar year, and
   b. offer withholding to all employees who work in the District.
4. An employer who is not a District employer is not required to withhold District tax or offer to withhold District tax from the wages of an employee. However, the employer may register and withhold as a convenience to the employee.
5. All wages paid to nonresidents (persons domiciled outside the District) for services performed in the District are subject to withholding. If the nonresident earns wages both in and outside of the District, such an employee who has a permanent arrangement to telecommute part of each week, only that part of the wages earned in the District is subject to withholding.

   Example:

   Korra lives outside the District but works for an employer within the District. Korra's regular schedule is: Mondays and Fridays work from home, Tuesday, Wednesday and Thursday work at the office. Korra's annual compensation is $250,000, but since only 3/5 of that is earned while performing work in the District, Korra's District source compensation is $150,000. The employer is not required to withhold because the District sourced compensation is below $200,000.
6. If the employer, in violation of the provisions of Section 7.06.120 and these regulations, fails to deduct and withhold the tax, the employer nevertheless is liable to remit to the Administrator the amount which should have been withheld. The employer is relieved of the liability if and when the employer can show by proper evidence and proof satisfactory to the Administrator that the employee's income tax against which such sum would have been credited has been paid without reduction through failure to withhold. The waiver does not operate to relieve the employer from liability for penalties, additions, or interest. The moneys withheld by employers from the wages of employees must be remitted promptly on the due date and no extension of time for remittance is provided by statute or can be granted by the Administrator. The funds involved are held by the employer in trust for the District, and any use of the funds by the employer is an illegal conversion. The employer may not regard the funds as being in the same category as their own personal income tax indebtedness.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

7.06 – 1020 Basis of Amount Withheld

An employer must determine an employee's wages subject to withholding using the same criteria as the Oregon personal income tax wage base for all employees who are subject to the personal income tax at Chapter 7.06. Subject wages may only include the value of fringe benefits received to the extent that the fringe benefits are taxable for Oregon personal income tax purposes.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

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7.06 – 1025 Calculation of Withholding

1. The Administrator will publish formulas to compute the amount to be withheld from regular wage payments. Employers may not modify the published formulas.
2. If the employer makes a supplemental wage payment and the employee has Metro tax withholding calculated under the Administrator published formulas, the employer must withhold at a flat rate of 1%. If the employer makes a supplemental wage payment and the employee is not subject to Metro tax withholding, has opted out, or has opted in at an employee designated withholding amount, the employer is not required to withhold. Supplemental wage payments include bonuses, premiums, awards, gifts and other payments made to an employee, on the condition of their employment.

Example:

An employer pays a $10,000 bonus to two of its employees, Juan and Herrita. Juan earns an annual salary of $25~~21~~0,000 and has opted out of Metro personal income tax withholding. Herrita earns an annual salary of $25~~21~~0,000 and the employer calculates withholding using formulas published by the Administrator. The employer is required to withhold from Herrita's bonus, but not from Juan's. The employer would not change the withholding amount on the regular salary payment to Herrita, and would withhold $100 ($10,000 * 1%) on the supplemental payment.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

7.06 – 1030 Metro Opt Form

1. The Metro personal income tax allows an exemption of $125,000 for single filers and $200,000 for joint filers. Due to the exemption and unique situations of individual taxfilers, employees may opt in or opt out of payroll withholding, based on their tax situation.
2. The Metro Opt form allows an employee:
    a. Subject to mandatory withholding to opt out of withholding by certifying to the employer that the employee has no District withholding requirement or that the employee will utilize another method to make payments; or
    b. Not subject to mandatory withholding to elect withholding at an employee designated amount; or
    c. Subject to mandatory withholding to elect a different amount of withholding as determined by the employee.
3. An employer must follow the employee's opt form election until the employee submits a new Opt form or withdraws the Opt form election in writing.
4. An employer must provide all Metro Opt forms to the Administrator as requested by the Administrator.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

7.06 – 1035 Withholding: Payments and Quarterly Reports

An employer required to withhold or withholding for employees who have opted in must register with the Administrator. The Administrator will assign an account number for use in its administration of the

personal income tax withholding tax laws. Employers must use the account number on all reports and payments filed with the Administrator. A registered employer must submit a report for each quarterly reporting period, even though the employer may not have had any payroll during that period. An employer is required to file reports until the employer notifies the Administrator that it no longer has employees subject to personal income tax withholding and the employer has filed a final annual reconciliation return.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120 and 7.06.130

Commented [RL1]: Added reference to Metro Code

7.06 – 1040 Withholding: Payment and Quarterly Report Due Dates
An employer who reports and remits personal income taxes withheld from employee wages under these rules must do so at the same time and for the same period as the employer is required to report and remit payroll tax to the state of Oregon.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120 and 7.06.130

Commented [RL2]: Added reference to Metro Code

7.06 – 1045 Withholding: Annual Reporting by Employer

1. An employer required to withhold or withholding for employees who have opted in must include the following information on the W-2:
    a. Total District wages reported as Local wages;
    b. District tax withheld during the calendar year reported as Local income tax;
    c. The Locality name as “Metro”; and
2. The employer must use a federal W-2, or whichever form the employer uses for Oregon personal income tax purposes.
3. The due date for filing the W-2 form for District purposes is the same as the federal due date.
4. The information in the W-2 must be filed electronically with the Administrator for all employees in which Metro tax was withheld and for all employees with $200,000 or more in District wages. If an employer cannot file electronically, they may request permission of the Administrator to use an alternate filing method.
5. Employer Annual Reconciliation Return.
    a. An employer required to withhold or withholding for employees who have opted in must file a summary of total compensation paid and District personal income tax withheld for each employee. Each reconciliation return must include a reconciliation of income tax remitted to the Administrator by the employer for the calendar year to the total of income tax withheld from employees’ pay for the calendar year.
    b. The reconciliation returns for income tax withholding must be filed electronically with the Administrator. If an employer cannot file electronically, they may request permission of the Administrator to use an alternate filing method.
    c. If there is a difference between the amount paid to the Administrator by the employer and the amount withheld by the employer from the employees' pay, the employer must explain the difference on the return.

d. The due date for each reconciliation return is January 31. If the due date is on a weekend or a holiday, the return is due the next business day. If the employer ceases doing business, each reconciliation return is due within 30 days of termination of business.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.130

Commented [RL3]: Added reference to Metro Code

7.06 – 1050 Withholding Payments: Cash Basis
All withholding is on a cash basis and must be reported on a cash basis.

Example:
If services are performed in January but not compensated until April, withholding on the wages for those services is reported on the report for the quarter ending June 30.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

Commented [RL4]: Added reference to Metro Code

7.06 – 1055 Personal Liability of Responsible Officers, Members or Employees for Taxes Withheld

1. A person may be held personally liable for unremitted income tax withholding, if that person is considered an "employer," as that term is defined for purposes of ORS Chapter 316. The person must have been in a position to pay or direct the payment of the income tax withholding at the time the duty arose to withhold or pay the taxes. Additionally, the person must have been aware, or been in a position that should have been aware, that the income tax withholding was not paid to the Administrator. An employer cannot avoid personal liability by delegating its responsibilities to another.
2. The Administrator will look to ORS Chapter 316 when determining whether an individual has sufficient indicia of control such that it is reasonable to hold the individual personally liable for failure to remit income tax withholding.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

7.06 – 1060 Credit for Tax Withheld; Employee's Rights

1. If the tax has actually been withheld at the source and reported to the Administrator, a credit or refund of an overpayment of tax must be made to the recipient of the income even though the tax has not been paid to the Administrator by the employer. When the employer has neither reported nor paid the tax required to be withheld from an employee's wages but the employee submits evidence proving to the satisfaction of the Administrator that the employer actually did withhold such a tax, the Administrator will allow the employee credit or refund for the amount so proved. Ordinarily, minimum satisfactory evidence will consist of a statement from the employer showing the amount of tax withheld and an affidavit of the employee as to the facts upon which the claim for credit or refund is based.

2. Recourse against an employer in regard to taxes on wages withheld and reported, but not paid to the Administrator, is exclusively that of the District. An employee's rights as to any such tax withheld, reported and unpaid are those of a tax credit or refund.

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Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

7.06 – 1065 Treatment of Payroll Based Program Overpayments

1. If an employer has overpaid income tax withholding due for a quarter and files an original or amended quarterly tax return, the Administrator will apply the overpayment toward the employer's liability for the next quarter, unless the employer submits a written request for a refund to the Administrator.

2. If the Administrator records show that the employer is no longer in business, and all returns have been filed, the overpayment will be refunded to the employer's last known address on file.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.120

ESTIMATED TAX

7.06 – 1070 Estimated Tax Requirements

1. Beginning January 1, 2022, every taxfiler expecting to have a Metro personal income tax liability of $1,000 or greater must estimate and pay the taxfiler's tax liability for the current tax year as follows:
   a. Quarterly estimated payments;
   b. Employer provided withholding from taxfiler's wages; or
   c. Both.
2. Generally, estimated tax payments will not be refunded prior to the taxfiler's filing of the tax return for the year for which the estimated tax payments were made. When taxfilers establish to the satisfaction of the Administrator that the facts warrant a refund, a refund of estimated taxes can be made prior to the filing of the tax return.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.05.180

Commented [RL5]: Added reference to Metro Code

7.06 – 1075 Estimated Tax Payments

1. Definitions for purposes of Sections 7.05.180 and 7.05.190:
   a. Required annual payment means the total amount of required installment payments and employer withholding for the tax year.
   b. Required installment payments are quarterly estimated tax payments in equal amounts.
2. The required annual payment is the lesser of:
   a. Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year); or
   b. One hundred percent of the tax shown on the prior year's return, if qualified. This is sometimes referred to as 'safe harbor.' To use the prior year's tax to determine the required annual payment, the prior year's return must be filed before the current year's return, and the prior tax year must consist of 12 months; or.

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~~b.~~c. If there is no prior year tax filing requirement, ~~there is no~~the required annual payment amount is $0.

Example 1:
Amani's taxable income on the 2022 return was $300,000 and the District tax liability after credits was $1,750. Amani's 2023 District tax liability after credits is $2,000. Ninety percent of the 2023 tax after credits is $1,800. Amani's required annual payment for 2023 estimated tax is 100 percent of the 2022 tax liability of $1,750. The required installment payments are $437.50 ($1,750 x 25 percent) on each quarterly installment due date.

Example 2:
Gopal's taxable income in 2022 was $120,000. This amount is below the exemption amount of $125,000 for single filers, and Gopal did not owe District tax in 2022. In 2023 Gopal's taxable income was $250,000. Gopal is required to file a return and pay tax of $1,250 in 2023, however, Gopal is not required to make estimated payments as there was no prior year tax filing requirement. In 2024 Gopal's taxable income was $175,000. Gopal is required to file a return and pay tax of $500, however, Gopal is not required to make estimated payments as the tax liability is less than $1,000.

3. A part-year resident may use the prior year tax, even though that tax year may be based on less than 12 months.
4. Use the amounts from the original return to determine the payments unless an amended return was filed. If an amended return was filed, before or after the due date of the original return, it must be used to determine the required annual payment.

Example:
Aliyah's original tax return showed a tax liability after all credits of $1,400. In July, the return was amended and the tax liability after credits was $1,200. Aliyah bases the required annual payment on the $1,200 tax shown on the amended return.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.05.180

Commented [RL6]: Added reference to Metro Code

7.06 – 1080 Estimated Tax Due Dates

1. Required installment payments of estimated tax are due:
   a. First installment payment due on or before the fifteenth day of the fourth month of the tax year;
   b. Second installment payment due on or before the fifteenth day of the sixth month of the tax year;
   c. Third installment payment due on or before the fifteenth day of the ninth month of the tax year; and
   d. Fourth installment payment due on or before the fifteenth day of the first month of the subsequent tax year.
2. If the due date is on a weekend or a holiday, the return is due the next business day.

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Adopted: TBD
Statutory/Other Authority: Metro Code 7.05.190

Commented [RL7]: Added reference to Metro Code

7.06 – 1085 Tax Used to Compute Underpayment of Estimated Tax
Any interest due for underpaying estimated taxes is computed using the total tax liability shown on the return. If the return is adjusted in initial processing, the recomputed tax must be used for determining any underpayment interest. Any changes in tax due to an amended return or audit will result in the recalculation of interest.

Example:
Mary files a Metro income tax return on a calendar year basis. Mary filed a return for tax year 2022 on February 15, 2023, showing a tax liability of $1,700. On June 10, 2023, Mary filed an amended return for tax year 2022 showing a tax liability of $1,450. The return for the taxable year for purposes of computing any interest on underpayment of estimated tax is the amended return filed on June 10, 2023.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.05.270

Commented [RL8]: Added reference to Metro Code

RESIDENCY AND DOMICILE; CHANGE IN STATUS

7.06 – 1090 Definitions for Residency
For purposes of Metro Code Chapter 7.05 and 7.06:

1. A "Resident" is (1) an individual whose domicile is within the District for the entire taxable year unless the individual maintains no permanent place of abode in the District, does maintain a permanent place of abode outside of the District, and spends on aggregate not more than 30 days per tax year in the District; or, (2) an individual who is not domiciled in the District but maintains a permanent place of abode in the District and spends in the aggregate more than 200 days or any part of a day of the tax year in the District unless the individual proves that the individual is in the District for only a temporary or transitory purpose.

   Resident does not include: an individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year; the spouse of a qualified individual under Section 911(d)(1) of the Internal Revenue Code, if the spouse is not a resident of the District; a resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under Section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States; a member of the Armed Forces who performs active service as defined in 10 U.S.C. 101(d)(3), other than annual training duty or inactive-duty training, if the member's residency as reflected in the payroll records of the Defense Finance and Accounting Service is outside the District.. An individual must be an Oregon resident for taxable purposes to be a District resident.

2. A "nonresident" is an individual who is not a resident of the District. A nonresident may or may not be an Oregon resident for taxable purposes.

3. A "part-year resident" is an individual who changes status during a tax year from resident to nonresident or from nonresident to resident.

4. "Domicile" means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time. It continues as the domicile until the person demonstrates an intent to

abandon it, to acquire a new domicile, and actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections.

Example:

Shane maintains a home in the District and works in the District. Shane purchased a winter home in Palm Springs, California and each year thereafter spent about three or four months in Palm Springs and six or seven months of each year in the District. Shane continued to maintain the home and social, club and business connections in the District, but established bank accounts in California. The months not spent in California or the District Shane spent traveling in other states or countries. Shane is domiciled in District and is taxed as a resident of the District because there was not demonstrated intent to abandon the domicile in the District nor has Shane shown an intent to make California Shane's permanent home.

5. "Permanent place of abode" means a dwelling place permanently maintained by the taxfiler, whether or not owned by the taxfiler, and generally includes a dwelling place owned or leased by the taxfiler's spouse. To constitute a permanent place of abode, the taxfiler must maintain a fixed place of abode over a sufficient period of time to create a well-settled physical connection with a given locality. It is distinguishable from "domicile" in that an individual may have several residences (or abodes), but only one domicile, at any given time.

    a. Rented or leased premises. A person is deemed to have a permanent place of abode even in rented premises, which he or she is free to leave at will, but from which the person has no present intent or desire to change. Factors that contribute to permanence include the amount of time spent in the locality, the nature of the place of abode, activities in the locality and the taxfiler's intentions with regard to the length and nature of the stay.

    b. Other residential property. Generally, residential property, such as a house, condominium, or apartment, is not considered a permanent place of abode if the individual never uses the property as a dwelling. For example, if the taxfiler acquires residential property for investment or rental purposes, as the result of an estate settlement, or as part of a settlement in a divorce proceeding, and the property is never used by the taxfiler or the taxfiler's family, the property is not considered a permanent place of abode for the taxfiler. For purposes of this rule, family includes the taxfiler, the taxfiler's spouse, and lineal ascendants and descendants of the taxfiler. If the property is used during the tax year by the taxfiler, even if for just a day, and also used by the taxfiler's family for a sufficient period of time to create a well-settled physical connection, then it is generally deemed to be a permanent place of abode for the taxfiler. However, use of the residential property by a family member will generally not be attributed to the taxfiler if the residential property is rented to the relative for fair rental value in an arm's-length transaction or if the taxfiler never uses the property as a dwelling during the tax year at issue.

    c. Vacation home. A camp or cottage that is suitable for and used only for vacations is not a permanent place of abode. A dwelling that does not contain facilities ordinarily found in a dwelling, such as facilities for cooking and bathing, is generally not considered a permanent place of abode. A second home that contains all the amenities found in a primary residence does not constitute a camp or cottage even if it is located in a vacation area. Therefore, a second home that contains cooking and bathing facilities and is suitable for year-round living may constitute a permanent place of abode even though used primarily for vacations or on weekends.

d. Temporary stay. A place of abode, whether in the District or elsewhere, is not deemed permanent if it is maintained only during a temporary stay of short duration for the accomplishment of a particular purpose.

Example 1:

John is a long-haul truck driver for a District company. John's work requires travel throughout the United States. John is domiciled in the District but does not maintain a permanent place of abode in the District. John spends less than 31 days in the District during the year. John's only residence is in John's truck, which has a sleeper unit, closet and refrigerator. Except for two weeks of vacation each year, John stays in any given locale only temporarily and only for the purpose of delivering or picking up a load. Because John does not maintain a permanent place of abode elsewhere, John is taxable as a resident of the District.

Example 2:

Paul and Cathy had lived and worked in the District for 40 years. On January 1, they retired, sold their personal residence, and began traveling throughout the United States. They have not established a new domicile outside of the District nor do they intend to give up their District domicile. Because Paul and Cathy do not maintain a fixed place of abode over a sufficient period of time to create a well-settled physical connection with a given locality, they are considered not to have a permanent place of abode elsewhere. Thus, Paul and Cathy are taxed as District residents.

Example 3:

James is domiciled in Oregon. After retiring, James sold the District home James lived in and purchased a recreational vehicle (RV). James rents space year-round at an RV park in Arizona for 7 to 9 months each year. James spends the remainder of the year traveling in the United States, including the District, but does not remain in any particular locality more than thirty days. James is considered to have a permanent place of abode in Arizona, as the stay at the Arizona RV park constitutes the maintenance of a fixed place of abode over a sufficient period of time to create a well-settled physical connection with that locality. James is taxed as a nonresident as long as James does not establish a permanent place of abode in the District and spends less than 31 days in the District.

e. Military personnel. For purposes of this rule, an individual serving in the military is considered to have a permanent place of abode elsewhere during the time the individual resides outside of the District.

2. The phrase "temporary or transitory" means that a person's stay in the District is not permanent and is not expected to last indefinitely. Generally, an individual who is domiciled elsewhere and who is simply passing through the District on the way to another state or country, is here for a brief rest or vacation, or to complete a particular transaction that requires presence in the District only for a short period, is treated as being in the District for temporary or transitory purposes, and is not considered a resident by virtue of physical presence here. Whether a person's stay is temporary or transitory depends to a large extent upon the facts and circumstances of each particular case.

Example 1:

Brad and Karen are domiciled in Minnesota. They maintain their family home there. Each October they come to the District and stay through April, spending more than 200 days here during the year.

Originally they rented an apartment or house for the duration of their stay. Three years ago they purchased a house in the District. The house is either rented or put in the charge of a caretaker from May to October. Brad has retired from active control of a Minnesota business but still keeps office space and nominal authority in it. Brad and Karen belong to clubs in Minnesota, but none in the District. Brad and Karen have no business interest in the District. Brad and Karen are not taxed as District residents because their presence here is temporary or transitory.

Example 2:

Juan is domiciled in Illinois. Following graduation from high school, Juan moved to the District to attend college. Juan works in the District during the summer and returns to Illinois to visit family several times each year. Juan is taxed as a nonresident as Juan's stay in the District is for a temporary or transitory purpose.

a. Temporary employment in the District. An individual domiciled outside the District may be assigned to work in the District for a fixed and limited period, after which the person is to return to the permanent location. If the person takes an apartment or other housing in the District during this period, the individual is not deemed a resident, even though the individual spends more than 200 days of the taxable year in the District, because the person's stay in the District is temporary or transitory. The individual will be taxable as a nonresident on income from District sources.

   Example:

   Ibram, a computer consultant, is domiciled in New York where Ibram owns a home and keeps most personal belongings. Ibram votes in New York, maintains bank accounts there and returns to home whenever possible. Ibram accepts a position in the District with a large corporation with the expectation that the work will take one and one-half years. Ibram spends virtually the entire time in the District, living in a house built by the employer, where Ibram's family visits in the summer. Ibram intends to return to New York when the job is completed. During this period Ibram will be taxed as a nonresident, even though Ibram is in the state more than 200 days during the year, because Ibram is in the state for a temporary or transitory purpose.

b. Indefinite employment in the District. If a work assignment in the District is not for a fixed and limited period, the person is not considered to be present in the District for a temporary or transitory purpose. If a permanent place of abode is maintained in the District, and the person is in this state for more than 200 days during the tax year, then the person is taxed as a resident of Oregon.

   Example 1:

   Fran is domiciled in California. In January, Fran accepts a transfer to Fran's employer's Portland, Oregon office and rents an apartment there. The length of Fran's assignment is indefinite, although Fran believes there may be a transfer back to California within three years. Fran's spouse and children remain at the California residence and Fran returns there on weekends and holidays. Fran is taxable as a resident of the District because Fran maintains a permanent place of abode in the District, spends more than 200 days here, and the presence is not temporary or transitory.

   Example 2:

   Li is domiciled in Idaho and works as a sales person for a manufacturing company. Li spends the workweek traveling in a motor home in the District meeting with existing and potential

customers. Li returns to the Idaho home when it is convenient, but may be in the District for 2 or 3 months at a time. Li's assignment is indefinite and thus presence in the District is not for a temporary or transitory purpose. However, Li does not maintain a permanent place of abode in the District, as Li does not remain in any place for a sufficient period of time to create a well-settled physical connection with a given locality. Li is taxed as a nonresident.

3. A nonresident includes a person who is a foreign nonresident as defined under Oregon's administrative rules.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.05.020

7.06 – 1095 Taxable Income of a Resident
The taxable income of a resident of the District is Oregon Taxable Income per the Oregon personal income tax return.

Example:
Sam and Scott live in Tigard, inside the District, and use filing status married filing jointly. Sam owns an S-corporation that does business in Salem, outside the District, and Scott commutes to a job in Washington State. Regardless of where their income is sourced, their Metro taxable income is the same as Oregon Taxable Income because they are residents of the District.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL9]: Added reference to Metro Code

7.06 – 1100 Taxable Income of Nonresidents and Part-year Residents
1. For nonresidents Metro taxable income is the taxfiler's income from District sources after adjustments, Oregon modifications attributable to District sources, and prorated deductions.
2. For part-year residents Metro taxable income is:
   a. For the portion of the year the taxfiler is a resident see 7.06 – 1095 Taxable Income of a Resident, plus
   b. For the portion of the year the taxfiler is a nonresident see section (1) above.

   Example:

   Bennett lived in the District from January 1 – June 30, 2021, and worked for a company in Washington State. On July 1, 2021 Bennett permanently left the District and moved domicile to Washington. Bennett must file a Metro part-year resident return for 2021, and Metro taxable income would include earnings from January 1 – June 30, 2021 while a resident of the District.

   In the example above, if Bennett instead worked for a company in the District, and commuted to the District after the move, then Metro taxable income would include all District employment earnings for the year.
3. In computing taxable income, nonresident and part-year resident taxfilers are allowed a proportionate share of all deductions, with required modifications. This includes the accrued federal tax deduction and itemized deductions or the optional standard deduction. The fraction to be used in making the proration of deductions is provided in 7.06 – 1105 Proration of Deductions for Nonresidents and Part-year Residents.

Attachment C
Changes after public comment June 2021

4. For purposes of these rules a part-year District resident includes in District source income the sum of:

   a. All guaranteed payments and taxable cash distributions from a partnership or S corporation received while the partner or shareholder was an District resident, plus

   b. Payments or distributions received from an entity that has business activity in the District while the taxfiler was not a District resident. The payments or distributions are subject to the allocation and apportionment provisions of Metro Code Chapter 7.07 Business Income Tax.

      Example:

      Joe was a California resident all of 2021 and a partner in a California partnership. The partnership has no business activity in the District. Joe moved to the District March 1, 2022. Joe receives $1,000 each month as a guaranteed payment. The payments received through February 2022 are not District source income because they were received prior to the date Joe became a District resident from an entity with no business activity in the District.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040 and 7.06.100

Commented [RL10]: Added reference to Metro Code

7.06 – 1105 Proration of Deductions for Nonresidents and Part-year Residents

Commented [RL11]: Changes in this rule are per Metro/tax administrator review and recommendation

1. Nonresidents and part-year residents will prorate deductions by a fraction.

   a. The numerator of the fraction is the taxfiler's federal adjusted gross income from District sources, with the Oregon modifications attributable to the District.

   b. The denominator of the fraction is the taxfiler's federal adjusted gross income from all sources, with the Oregon modifications to that income, which relate to adjusted gross income, less Oregon Public Employees Retirement System and Federal Employees Retirement System income included in federal adjusted gross income.

2. For taxfilers filing an Oregon nonresident or part-year resident return, the denominator will be the ~~same as the~~ denominator used to calculate the Oregon percentage for Oregon personal income tax filing purposes less Oregon Public Employees Retirement System and Federal Employees Retirement System income included in federal adjusted gross income. For taxfilers filing an Oregon resident return, the denominator will be ~~Oregon Taxable Income before Deductions~~ the taxfiler's federal adjusted gross income from all sources, with the Oregon modifications to that income which relate to adjusted gross income, less Oregon Public Employees Retirement System and Federal Employees Retirement System income included in federal adjusted gross income.

   Example 1:

   Jude and Reese are married and live in Camas, WA. Jude earns $250,000 in the District and Reese earns $250,000 in Camas. They file a joint Oregon nonresident return. They will file a joint Metro nonresident return, and report $250,000 in income from the District, and $500,000 in total income. Jude and Reese have Oregon itemized deductions of $20,000. These deductions will be prorated by 50% ($250,000 / $500,000) to $10,000. Metro taxable income will be $240,000 ($250,000 - $10,000). The first $200,000 of taxable income is exempt on a Metro joint return, therefore Jude and Reese will owe $400 in tax ($40,000 * 1%).

   Example 2:

Shelby and Crystal are married and live and work within the District. On October 1, 2021, they permanently move to southern Oregon, outside the District. They file a joint Oregon resident return. They will file a joint Metro part-year resident return. Shelby and Crystal are co-owners of an S-corporation, which has less than $5 million in gross receipts and is not subject to the Metro Business Income Tax. In the first nine months of the year Shelby and Crystal earned $300,000 in net income from their company. After they moved their business picked up and they earned $200,000 in the last three months of the year. Shelby and Crystal will report $300,000 in income from the District, and $500,000 in total income. They have Oregon itemized deductions of $50,000. These deductions will be prorated by 60% ($300,000 / $500,000) to $30,000. Metro taxable income will be $270,000 ($300,000 - $30,000). The first $200,000 of taxable income is exempt on a Metro joint return, therefore Shelby and Crystal will owe $700 in tax ($70,000 * 1%).

3. Under no circumstances may the percentage exceed 100 percent.
4. If the taxfiler has positive modified District income and negative or zero modified federal adjusted gross income, the allowable percentage is 100 percent. If the taxfiler's modified federal adjusted gross income from District sources and modified federal adjusted gross income are both losses, the allowable percentage will be computed as follows:
   a. If the District loss is smaller than the federal loss, 100 percent.
   b. If the District loss is greater than the federal loss, divide the federal loss by the District loss.

      Example 1:

      A taxfiler has modified federal adjusted gross income from District sources of ($100) and modified federal adjusted gross income of ($1,000). Since the District loss is less than the federal loss, the percentage is 100 percent.

      Example 2:

      A taxfiler has federal adjusted gross income from District sources of ($1,000) and federal adjusted gross income of ($100). The percentage is 10 percent.
5. If the taxfiler has negative or zero modified District income and positive modified federal adjusted gross income, the allowable percentage is zero.
6. Nonresident and part-year resident taxfilers must prorate deductions and modifications not relating to adjusted gross income using the fraction provided in this rule. This includes, but is not limited to, the following deductions and modifications:
   a. The greater of:
      i. Net Oregon itemized; or
      ii. The standard deduction.
   b. Federal tax liability.
   c. Additional federal tax paid from a prior year.
   d. Gambling losses (itemized).
   e. Federal income tax refunds from amended or audited returns.
   f. ~~Alimony deduction.~~
   g. ~~Student loan interest.~~

~~h. Contributions to IRA, Keogh or Qualified Medical Savings Accounts.~~

7. Nonresident and part-year resident taxfilers do not prorate the following deductions and modifications not relating to adjusted gross income.

   a. Art object donation deduction.

   b. Fiduciary adjustment.

   c. ~~Moving expense deduction, if the taxfiler's principal place of work is within the District. If the taxfiler's principal place of work is not within the District a deduction is not allowed.~~

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040 and 7.06.100

Commented [RL12]: Changes in this rule are per Metro's tax administrator review and recommendation. These are items Oregon handles as modifications to federal AGI. For consistency with Oregon treatment these items were removed from this rule.

Commented [RL13]: Changes in this rule are per Metro's tax administrator review and recommendation. This item Oregon handles as a modification to federal AGI. For consistency with Oregon treatment this item was removed from this rule.

Commented [RL14]: Added reference to Metro Code

7.06 – 1110 Gross Income of Nonresidents: Personal Services

1. Personal service.

   a. Except as provided in section (2) of this rule, the gross income of a nonresident (who is not engaged in the conduct of the nonresident's own trade or business, but receives compensation for services as an employee) includes compensation for personal services only to the extent that the services were performed in this District.

   b. Compensation for personal services performed by a nonresident employee wholly outside the District and in no way connected with the management or conduct of a business in the District is excluded from gross income. This compensation is excluded even if payment is made from a point within the District or the employer is a resident individual, partnership, or corporation.

   c. Compensation for personal services performed by a nonresident wholly within the District is included in gross income although payment is received at a point outside the District or from a nonresident individual, partnership, or corporation.

2. Allocation of personal services.

   a. When compensation is received for personal services that are performed partly within and partly without the District, that part of the income allocable to the District is included in gross income. In general, income is allocable to the District to the extent the employee is physically present in the District at the time the service is performed. Physical presence is determined by the actual physical location of the employee performing the services and not by the location of the employer or the location where compensation is paid. Employees who work in the District and at an alternate work site located outside of the District may allocate their compensation under the provisions of this rule.

      Example 1:

      Dick, a nonresident, works as a medical transcriptionist for a Portland, Oregon employer. During the year, Dick works about 80 percent of the time from home in Washington. Dick spends the remainder of work time in the Portland office. Only the time Dick spends at the Portland office is considered time worked in the District.

      i. The gross income from commissions earned by a nonresident for services performed or sales made, (whose compensation is a specified commission on each sale made or services performed), includes the specific commissions earned on sales made or services performed in the District. Allowable deductions must be computed on the same basis.

ii. If nonresident employees work within and without the District, the portion of total compensation for personal services allocable to the District is the total number of actual working days employed within the District divided by the total number of working days both within and without the District.

iii. If nonresident employees work part of a day in the District and part of a day outside the District, the portion of total compensation for personal services allocable to the District is the number of hours worked in the District divided by the total number of hours worked within and without the District.

Example 2:

Latasha is a nonresident of the District. Latasha works for ACE Cell Tower, Inc and is paid to work 40 hours each week. Latasha travels in and out of the District for work, and some days works both in the District and outside the District. Latasha earned $280,000 in 2022. Latasha's employer requires a detailed log of travel. At the end of 2022 Latasha had worked a total of 1,850 hours and the contemporaneously prepared travel log and showed that 962 of those hours were worked in the District. Latasha's compensation taxable to the District is computed as follows:

(Hours worked in the District / Total hours worked) x Total compensation = District compensation

0.520 (962 hours divided by 1,850 hours) x $280,000 = $145,600

Latasha's compensation subject to District personal income tax is $145,600.

iv. If an employee is paid on a mileage basis, the gross income from sources within the District includes that portion of the total compensation for personal services which the number of miles traveled in the District bears to the total number of miles traveled within and without the District.

v. If an employee is paid on some other basis, the total compensation for personal services must be apportioned between the District and outside the District in such a manner as to allocate to the District that portion of the total compensation which is reasonably attributable to personal services performed in this the District.

b. The gross income of all other nonresident employees, including corporate officers, includes that portion of the total compensation for services which the total number of actual working days employed within the District bears to the total number of actual working days employed both within and without the District during the taxable period.

Example 1:

Jan is a nonresident of the District. Jan works for A Corp. and manages offices in the District and Washington. A Corp. pays Jan a salary of $300,000 for the management of both offices. Jan worked a total of 220 days and worked in the District 132 days. Jan's compensation subject to District tax is computed as follows:

(Days worked in the District / Total days worked) x Total compensation = District compensation.

0.600 (132 days divided by 220 days) x $300,000 = $180,000

Jan's compensation subject to District personal income tax is $180,000.

An exception to this general rule occurs when the compensation is received for performance of services that, by their nature, have an objective or an effect that takes place within the District. In the case of corporate officers and executives who spend only a portion of their time within the District, but whose compensation paid by a corporation operating in the District is exclusively for managerial services performed by these officers and executives, the entire amount of compensation so earned is taxable without apportionment.

Example 2:

Cade is a nonresident of the District. Cade works for Best Engineering and manages its only office, which is located in the District. Best Engineering pays Cade a salary exclusively for managerial services in the total amount of $258,000. Even though Cade may perform some administrative duties from home, the compensation received is for managing the District office. The entire $258,000 is taxable to the District.

c. Total compensation for personal services includes sick leave pay, holiday pay, and vacation pay. Sick leave days, holidays, and vacation days are not considered actual working days either in or out of the District and are to be excluded from the calculation of the portion of total compensation for personal services taxable to the District.

Example:

Joan is a nonresident of the District. Joan actually worked a total of 220 days during the year and was paid for 40 non-working days (holidays, sick days and vacation days). Of that, 110 days were worked in the District. Joan's compensation (including compensation for holidays, sick leave and vacations) was $260,000. Joan's compensation subject to District tax is computed as follows:

(Days worked in the District / Total days worked) x Total compensation = District compensation

0.500 (110 days divided by 220 days) x $260,000 = $130,000

Joan's compensation subject to District personal income tax is $130,000.

d. Payment in forms other than money. Total compensation for personal services includes amounts paid in a form other than money. To the extent the payments are recognized as compensation income for Oregon income tax purposes under ORS Chapter 316, the payments will be recognized as compensation income for District tax purposes and must be apportioned as provided above. Examples include but are not limited to, non-statutory stock options, taxable fringe benefits such as personal use of a business asset, and employer-paid membership fees.

e. Unemployment compensation. Total compensation includes unemployment compensation benefits to the extent the benefits pertain to the individual's employment in the District. If unemployment compensation benefits are received by a nonresident for employment in the District and in one or more other jurisdictions, the unemployment compensation benefits must be apportioned to the District using any method that reasonably reflects the services performed in the District.

f. Severance pay. Compensation includes severance pay to the extent the pay is attributable to services performed in the District. For purposes of this rule, "severance pay" means compensation payable on voluntary termination or involuntary termination of employment based on length of service, a percentage of final salary, a contract between the employer and the employee, a lump sum payment based on accumulated paid leave, or some other method but does not include "retirement income" as defined under Oregon law.

If severance pay is received for employment within and without the District, the severance pay is allocated to the District using any method that reasonably reflects the services performed in the District. For lump sum payments based on accumulated leave, leave allocated to the District will be calculated using a first-in-first-out (FIFO) method, unless documentation establishes that another method of allocation more reasonably reflects the services performed in the District. Severance pay and other similar distributions are taxable to the District even though a taxfiler received it in a tax year when the taxfiler did not work in the District if the severance pay is based on District employment.

Example 1:

JT, a nonresident, worked for Plumbing Inc. for twenty years: eight years outside the District and twelve years in the District. After 20 years, Plumbing Inc. reorganized and eliminated JT's position. Because of JT's loyalty to the company and twenty years of service, the company gave JT a lump-sum payment of $36,000. This lump-sum was based on 3 percent of the final annual salary ($60,000 x 3% = $1,800) multiplied by the number of years of service (20). The lump-sum payment was made because of prior services, thus it is allocable to the District to the extent the services were performed in the District. JT will include $36,000 in federal taxable income and $21,600 in District taxable income, computed as follows:

(Years worked in the District for company / Total years worked for company) x Total compensation = District compensation

0.600 (12 years divided by 20 years) x $36,000 = $21,600

Example 2:

Shawn, a nonresident, worked in the District for XYZ Foods, Inc. for six years before resigning from the company. XYZ Foods, Inc. and Shawn entered into a termination agreement that provided $25,000 for Shawn to release a specific claim against the company for wrongful termination or other potential claims. The termination agreement also provided $10,000 to require that Shawn not work for any other food chain within a 100 mile radius of XYZ Foods, Inc. for a period of 36 months. No employment agreement, benefit plan, or any facts or circumstances indicate that Shawn is entitled to a payment for services performed prior to resigning from the company. The payment that Shawn receives pursuant to the termination agreement is in exchange for the release of the wrongful termination claim and the covenant not to compete and is not allocable to the District because it is not based on services performed in the District.

Example 3:

Assume the same facts as in Example 2 above except that the termination agreement also provided for a lump-sum payment of one month's salary per year worked ($30,000) in addition to a $25,000 payment for release of a wrongful termination claim and $10,000 payment for the covenant not to compete. No employment agreement, benefit plan, or other agreement indicates that Shawn is entitled to a payment for services performed prior to resigning from the company. The $25,000 payment for the release of the wrongful termination claim and the $10,000 payment for the covenant not to compete are not allocable to the District because neither is based on services performed in the District. The $30,000 lump-sum cash payment based on Shawn's salary and years of service associates the payment with the employer-employee relationship. It is 100 percent allocable to the District because Shawn worked in the

District and the facts and circumstances indicate that it is paid because of prior performance of services and no other reason.

Example 4:

Natalie, a nonresident, worked for Chocolate Inc. for 14 years: 12 years and 8 months outside the District and in the District for the last 16 months. Upon resignation, Natalie's hourly wage was $50 and Natalie had 400 hours of paid vacation leave available. Natalie received 8 hours of paid vacation leave per month, therefore the 400 hours of leave represents 50 months of work (400/8=50). Chocolate Inc. paid a lump sum payment for accumulated and accrued vacation leave balance of 400 hours totaling $20,000. Using the first-in-first-out method of allocation, the 400 hours in the leave balance when Natalie terminated will be treated as having been earned in the most recent 50 months of employment; 34 months out of District (68%) and 16 months in the District (32%). Natalie's District taxable income will include all wages from Chocolate Inc. for the year and $6,400 ($20,000 x 32%) of the lump sum payment.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL15]: Added reference to Metro Code

7.06 – 1115 Gross Income of Nonresidents: Sale of Tangible Property
The gain from any sale, exchange, or other disposition by a nonresident of real or tangible personal property located in the District is taxable, even though it is not connected with a business carried on in the District. The loss from such a transaction is deductible if it is a business loss or a transaction entered into for profit. The gain or loss from the sale, exchange, or other disposition of real property or tangible personal property located in the District is determined in the same manner and recognized to the same extent as the gain or loss from a similar transaction by a resident.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL16]: Added reference to Metro Code

7.06 – 1120 Gross Income of Nonresidents: Compensation Received by Nonresident Professional Athletes

1. General Rule. Metro taxable income of a nonresident individual who is a member of a professional athletic team includes that portion of the individual's total compensation for services rendered as a member of a professional athletic team during the taxable year, based on the number of duty days spent within the District rendering services for the team in any manner during the taxable year to the total number of duty days spent both within and without the District during the taxable year. A taxfiler must follow the definitions and examples under OAR 150-316-0175 or its successor, substituting the District for the State of Oregon.
2. Special rule. Travel days that do not involve either a game, practice, team meeting, promotional caravan or other similar team event are not considered duty days spent in the District. However, those travel days are considered duty days spent within and without the District.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL17]: Added reference to Metro Code

BUSINESS INCOME

Attachment C
Changes after public comment June 2021

7.06 – 1125 Business Income Not Subject to Metro Business Income Tax
This section pertains to income from a business, trade, profession or occupation (including independent contractor, but excluding compensation received as an employee) reported as Oregon taxable income or Metro taxable income, and not subject to the Metro business income tax. This includes all sole proprietorships and disregarded entities, as well as pass through entities whose gross receipts from all business income, both within and without the District, is equal to or less than $5 million.

1. If a business has income from business activity both within and without the District, the business may apportion its income. Businesses ~~should~~ must look to ORS 314.605-695 to determine the applicable apportionment methodology based on their business.
   a. Exception: If an item of income is affected, for purposes of the Oregon personal income tax, by application of various federal laws relating to income received by nonresidents from rail, motor, air and water carriers, then the item has the same characterization that it has for Oregon personal income tax purposes.
2. Businesses that pass-through income to their owners or partners must report the following with the Schedule K-1:
   a. A statement that the business is not subject to the Metro business income tax and has not filed a Metro business income tax return for the tax year of the Schedule K-1.
   b. The Metro apportionment percentage as determined in section (1). If the business does not apportion income, this percentage is 100%.
3. Rents. The gross income of a nonresident from rents includes all rents received from property, whether real or personal, located within the District.
4. S Corporations. The taxable income of an S corporation that elects to be taxed under the provisions of IRC Section 1362 which is derived from or connected with sources in the District is taxable income to nonresident shareholders. Net operating losses of an S corporation derived from or connected with sources in the District are deductible by nonresident shareholders. Net operating losses are determined under IRC Section 1366. If an S corporation of District commercial domicile is liquidated any gain or loss from liquidation is District source income. Nonresident shareholders must report their proportionate share of the gain or loss on their individual District income tax returns as income from District sources.
5. Fiduciary fees. District source income of a nonresident includes compensation received for services performed as a fiduciary of a District estate or trust.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL18]: Added reference to Metro Code

7.06 – 1130 Business Income Not Subject to Metro Business Income Tax: Net Operating Losses
1. Net Operating Loss for a full-year resident.
   a. For District income tax purposes, a resident's net operating loss ("NOL") is computed in the same manner as for Oregon purposes.
   b. General rule. A District NOL for any loss years is applied in the same manner as the Oregon NOL. If the loss was not attributable to District sources and was incurred while the taxfiler was a nonresident, there is no District NOL to carry over even if the taxfiler later becomes a District

resident. In such cases, the amount of the NOL carryover that is not attributable to District sources is added back on the District resident tax return. If a taxfiler carries back an Oregon NOL, the taxfiler is treated as carrying the loss back for District purposes as well. If a taxfiler makes an election to carry over the Oregon NOL, the taxfiler is treated as making the same irrevocable election for District purposes as well.

c. Exceptions.

i. If a taxfiler has a District NOL but does not have an Oregon NOL, the taxfiler may elect to carry the District NOL over to the next succeeding year. This is an irrevocable election that a taxfiler makes on a timely filed District loss year return (including extensions). If no such election is made, then the taxfiler may only carry the District loss forward or back in the same manner as provided in IRC Section 172(b).

ii. If a taxfiler is not required to file a District return for all years to which the Oregon net operating loss deduction ("NOLD") is applied, the District NOL is carried to the year in which the loss may be first applied.

iii. The total number of years to which an NOL may be carried back or forward is the same as for Oregon (including exceptions and limitations).

2. NOLD carryback and carryover amount for a full-year resident.

a. A taxfiler's NOLD, carryback, and carryover amount is computed in the same manner as for Oregon purposes. The method to compute the carryback and carryover amount is not modified for District purposes.

b. For a full-year resident, generally an NOLD, carryback, and carryover amount is the same as for Oregon purposes.

3. NOL for a part-year resident and a nonresident.

a. A nonresident is allowed a District NOL for any loss year when the NOL is attributable to District sources. A taxfiler is not allowed an NOL or carryover on the District return if the loss was incurred while the taxfiler was a nonresident and the loss was not attributable to the District. The computation of the allowable NOL for District purposes begins with Metro Taxable Income. A nonresident's Metro NOL must be computed subject to the same limitations and exclusions as a nonresident's Oregon NOL but only taking into account items related to the nonresident's income and deductions sourced to the District.

b. General rule. A District NOL for any loss years is applied in the same manner as the Oregon NOL for the same period. If the loss was not attributable to District sources and was incurred while the taxfiler was a nonresident, there is no District NOL to carry over. If a taxfiler carries back an Oregon NOL, the taxfiler is treated as carrying the loss back for District purposes as well. If a taxfiler makes an election to carry over the Oregon NOL, the taxfiler is treated as making the same irrevocable election for District purposes as well.

c. Exceptions.

i. If a taxfiler has a District NOL but does not have an Oregon NOL, the taxfiler may elect to carry the District NOL forward or back in the same manner as provided in IRC Section 172(b).

ii. If a taxfiler is not required to file a District return for all years to which the Oregon NOLD is applied, the District NOL is carried to the year in which the loss may be first applied.

iii. The total number of years to which an NOL may be carried back or forward is the same for the District and Oregon (including exceptions and limitations).

4. NOLD carryback and carryover amount for a part-year resident and a nonresident.
   a. A taxfiler's NOLD, carryback, and carryover amount is computed in the same manner as for Oregon purposes. The method to compute the carryback and carryover amount is not modified for District purposes.
   b. A part-year resident and a nonresident use the Oregon method without modifications, except that the NOLD, carryback and carryover are based only upon amounts attributable to District sources.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL19]: Added reference to Metro Code

7.06 – 1135 Business Income Subject to Metro Business Income Tax: Adjustments for Pass Through Income

1. Pursuant to Metro Code Section 7.06.090, taxfilers are allowed a deduction against the taxfiler's Oregon taxable income or Metro taxable income that is equal to that taxfiler's share of pass-through income subject to Metro 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.

2. Businesses that are subject to the Metro business income tax and pass through income to their owners or partners must report the following with the Schedule K-1:
   a. A statement that the business is subject to the Metro business income tax and has filed a Metro business income tax return for the tax year of the Schedule K-1.
   b. The Metro apportionment percentage. If the business does not apportion income, this percentage is 100%. If the business does apportion income, this percentage is determined pursuant to Metro Business Income Tax Administration Rules.

3. The amount of deduction is the Metro apportionment percentage multiplied by the net of all income and deduction amounts reported on the Schedule K-1. The deduction cannot be less than zero, and must be calculated separately for each Schedule K-1.

   Example 1:

   Archer is a resident of the District. Archer holds a 30% ownership interest in Parklife, LLC and is entitled to receive 30% of Parklife, LLC's profits. For tax year 2023, Parklife, LLC operated entirely within the District and paid Metro business income tax on its net income of $6 million. Parklife, LLC reports Archer's $1.8 million share of its 2023 net profit on schedule K-1 to Archer. Archer may take a deduction against Oregon taxable income of $1.8 million for tax year 2023.

   ~~Example 2:~~

   Using the above example, if Parklife, LLC apportioned its income and determined its Metro apportionment percentage to be 75%, Archer would multiply the $1.8 million income reported on the Schedule K-1 by 75% to determine the allowable deduction. Archer may take a deduction against Oregon taxable income of $1.35 million for tax year 2023.

Example ~~3~~2:

Fred and George are 50/50 partners in WizBang Partnership. Fred is a District resident, and George is a nonresident. WizBang has net income of $10 million and apportions $6 million to the District on its Metro business income tax return. WizBang reports $5 million in operating income on Schedule K-1 to both Fred and George, and states that WizBang has filed a Metro business income tax return and the Metro apportionment percentage is 60%. This is the only income for both Fred and George, who both use tax filing status single.

As a resident, Fred uses Oregon taxable income as the starting figure on the Metro personal income tax return. Fred calculates the pass-through income deduction as $5 million * 60%, or $3 million. Fred takes the $125,000 single filer exemption, for total taxable income of $1,875,000 ($5 million - $3 million - $125,000).

As a nonresident, George must first calculate Metro taxable income. George's uses the Metro apportionment percentage to determine that $3 million of the WizBang pass through income was sourced from the District ($5 million * 60%). George calculates the pass-through income deduction the same as Fred: $5 million * 60%, or $3 million, and also takes the same $125,000 single filer exemption. George's total taxable income is $0 ($3 million - $3 million - $125,000).

4. The deduction under these rules may not reduce a taxfiler's Oregon taxable income or Metro taxable income for any period below zero.

Example:

Bérénice is a nonresident of the district. Bérénice owns 60% of CDE, Inc., a California corporation that has elected to be taxed as a Subchapter-S corporation. CDE, Inc. has gross receipts of $70 million from all sources, and net income of $28 million. CDE, Inc. has nexus with the District and is required to file and pay tax to the District. CDE, Inc's apportioned net income under Metro Code Chapter 7.07 is $7 million for 2024. CDE, Inc. pays tax on its net income to the District. Bérénice's Schedule K-1 reports an income share of $16.8 million and Metro apportionment percentage of 25% ($7 million / $28 million). Bérénice calculates a deduction of $4.2 million ($7 million * 25%). Bérénice has Metro taxable income after personal exemption for tax year 2024 of only $3 million, because Bérénice has losses associated with sole proprietorship activity in the District. Bérénice's pass through deduction amount is reduced to $3 million, because the pass-through deduction may not reduce taxable income below zero.

5. A business subject to Metro business income tax which incurs a net operating loss is allowed to carry over the loss to subsequent tax years. Due to the carry over provision, business losses reported to owners or partners on a Schedule K-1 must be added back to the owners' or partners' Oregon taxable income or Metro taxable income.

6. The amount of the addition is the Metro apportionment percentage multiplied by loss amounts reported on the Schedule K-1.

Example:

Alex is a resident of the District. Alex holds a 40% ownership interest in Gambit, Inc, an S corporation. For tax year 2023, Gambit, Inc earns gross receipts of $10 million and reports a loss of $2 million. Gambit, Inc files a Metro business income tax return and carries over the net operating loss. On the Schedule K-1 to Alex, Gambit, Inc reports net operating loss of $800,000 and Metro apportionment percentage of 100%. Alex must make an addition to Oregon taxable income to add

back the $800,000 loss. Gambit, Inc will carry over the net operating loss as allowed under Metro Administrative Rule 7.07 – 1045.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.090

Commented [RL20]: Added reference to Metro Code

7.06 – 1140 Other Income and Sale of Property: Nonresidents

1. Income from intangible personal property.
    a. Business situs. Intangible personal property, including money or credits, of a nonresident has a situs for taxation in the District when used in the conduct of the taxfiler's business, trade, or profession in the District. Income from the use of the property, including dividends, interest, royalties, and other income from money or credits, constitutes a part of the income from a business, trade, or profession carried on in the District when the property is acquired or used in the course of the business, trade, or profession as a capital or current asset and is held in that capacity at the time the income arises.
    b. If a nonresident pledges stocks, bonds, or other intangible personal property in the District as security for the payment of indebtedness, taxes, etc., incurred in connection with a business in the District, the property has a business situs here. Thus, if a nonresident maintains a branch office here and a bank account on which the agent in charge of the branch office may draw for the payment of expenses in connection with the activities in the District, the bank account has a business situs here. If intangible personal property of a nonresident has acquired a business situs here, the entire income from the property, including gains from the sales of the property, regardless of where the sale is consummated, is income from sources within the District and is taxable to the nonresident.
2. Sales of property.
    a. Tangible property. The gain from any sale, exchange, or other disposition by a nonresident of real or tangible personal property located in the District is taxable, even though it is not connected with a business carried on in the District. The loss from such a transaction is deductible if it is a business loss or a transaction entered into for profit. The gain or loss from the sale, exchange, or other disposition of real property or tangible personal property located in the District is determined in the same manner and recognized to the same extent as the gain or loss from a similar transaction by a resident.
    b. Intangible property. The gain from the sale, exchange, or other disposition of intangible personal property, including stocks, bonds, and other securities is not taxable unless the intangible personal property has acquired a business situs in the District. See section (1) of this rule. Likewise, losses from the sale, exchange, or other disposition of such property are not deductible, unless they are losses incurred in a business carried on within the District by the nonresident taxfiler.
    c. Disposition of interests in business entities. In general, to calculate a nonresident's Metro taxable income or loss on the sale, exchange, or disposition of an interest in a business entity, a taxfiler must follow the sourcing treatment of the disposition for Oregon personal income tax purposes under OAR 150-316-0171 or its successor, substituting the District for the State of Oregon.

3. Interest income received on contract sale of property. Interest income received by a nonresident from the sale of District property is not Metro taxable income. The source of the income is not from the sale of the property but rather from the use of the money permitted the buyer in an installment contract.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL21]: Added reference to Metro Code

7.06 – 1145 Partnerships: Guaranteed Payments to Nonresidents

1. Guaranteed payments paid to nonresident partners of a partnership that has business activity in the District are treated as a distributive share of partnership income for District tax purposes. In order to determine the income attributable to District sources, each nonresident partner's entire distributive share, including the guaranteed payments, is then subject to the allocation and apportionment provisions of Metro Code Chapter 7.07.

   Example:

   Frank is a 25 percent partner in the law firm DC & H, Associates, a calendar year partnership. DC & H's main office is in Washington, but it also has a branch office in the District. Total gross receipts of the law firm are less than $5 million, and the firm is not subject to the Metro Business Income Tax. Frank lives in Seattle and works in the Washington branch of the firm. This is Frank's only District sourced income.

   For tax year 2021, Frank received $250,000 in guaranteed payments from the partnership. Frank's 25 percent share of partnership profits after the deduction of guaranteed payments was $500,000. DC & H calculated and reported to Frank on the Schedule K-1 that DC & H's apportionment percentage for the District was 20 percent. Frank's 2021 Oregon source income attributable to the law firm is calculated as follows:

Distributive share of partnership income	$500,000
Guaranteed payments	$250,000
Adjusted distributive share	$750,000
District apportionment percentage	x 20%
Frank's 2021 District sourced income	$150,000

2. The inclusion of guaranteed payments into a nonresident partner's share of apportionable income is irrespective of that partner's percentage interest in the profit or loss of the partnership.

   Example:

   Assume the same facts as the example above, except that Frank does not share in the profits or loss of the partnership. Frank's 2021 Oregon source income attributable to the law firm is calculated as follows:

Distributive share of partnership income	$0

Guaranteed payments	$250,000
Adjusted distributive share	$250,000
District apportionment percentage	x 20%
Frank's 2021 District sourced income	$50,000

In the second example, Frank's District sourced income is below the requirement to file a Metro return per Metro Code 7.06.070.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL22]: Added reference to Metro Code

OTHER CREDITS AND DEDUCTIONS

7.06 – 1150 Credit for Income Taxes Paid Another State

1. General: A resident taxfiler may claim a credit against income tax imposed under Chapter 7.06 if the taxfiler claims a credit for income taxes paid to another state on the taxfiler's Oregon income tax return.
2. The credit may only be used to reduce tax and cannot be claimed as an offset against interest or penalty charges imposed by the District.
3. Computation: The definitions and method to calculate the credit are the same as for Oregon personal income tax purposes. The credit is the lesser of:
   a. The District tax based on mutually taxed income; or
   b. The tax actually paid to the other state.

   Example:

   Jim is a District resident who claims a credit for income taxes paid to another state on the Oregon income tax return. Jim's modified adjusted gross income of $400,000 includes mutually taxed rental income taxed to Idaho and the District of $40,000. Jim's District net income tax is $2,750 and Idaho net income tax is $2,500. Jim figures the allowable credit as follows:

   (Mutually taxed income / modified adjusted gross income) x District net income tax = District tax based on mutually taxed income.

   ($40,000 ÷ 400,000) x $2,750 = $275

   Jim's allowable credit is $275, which is the lesser of the District tax based on mutually taxed income or the income tax actually paid to Idaho of $2,500.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL23]: Added reference to Metro Code

7.06 – 1155 ~~Deduction~~ Exemption for PERS and FERS Income

Commented [RL24]: Changes in this rule are per Metro's tax administrator review and recommendation

Local governments are prohibited from taxing Oregon Public Employees Retirement System (PERS) or Federal Employees Retirement System (FERS) under ORS 238.445.

1. Residents who receive PERS or FERS income are allowed an exemption deduction of for that income from Oregon taxable income.
2. Nonresidents and part-year residents who receive PERS or FERS income should exclude that income when determining District sourced income.

Adopted: TBD
Statutory/Other Authority: Metro Code 7.06.040

Commented [RL25]: Added reference to Metro Code

Administrative Rule of Metro Code Chapter 7.07
Administrative Rule Adoption Record and Findings

AR 7.07-1000 through 1115
Metro Business Income Tax Administrative Rules

These administrative rules are adopted under the authority of Metro Code Chapter 7.05 (Income Tax Administration for Personal and Business Taxes) and Chapter 7.07 (Business Income Tax), which authorizes the Chief Operating Officer (COO) to adopt and amend administrative rules to implement Chapter 7.07 (Business Income Taxes). In accordance with Metro Code, the COO provided an opportunity for public comment and held a public hearing on these rules before their adoption.

The COO finds that these administrative rules are necessary to implement certain provisions of Metro Code Chapter 7.07 and adopts Administrative Rules Nos. 7.07-1000 through 1115. The requirements of these administrative rules are in addition to all other requirements and provisions in Metro Code Chapter 7.07. These rules have the same force and effect as any other provision of Metro Code Chapter 7.07.

It is so ordered:

__________________________________ ________________________

Marissa Madrigal
Metro Chief Operating Officer

Date

Attachment C
Changes after public comment June 2021

BUSINESS INCOME TAX ADMINISTRATIVE RULES

AR 7.07-1000 through 1115

Income Tax Administration

Effective: TBD, 2021

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7.07 – 1000 Purpose
The purpose of these rules is to implement Chapter 7.07 (Business Income Taxes) and to ensure that Metro's income tax rules and examples are consistent and transparent.

7.07 – 1005 Legal Authority
These administrative rules are issued under the authority of Metro Code Chapter 7.05 and Chapter 7.07. These rules are in addition to all other requirements and provisions in Metro Code Chapter 7.05 and 7.07.

7.07 – 1010 Diversified Investing Fund Deduction
Currently, a federal and Oregon tax deduction exists for Regulated Investment Companies (i.e., mutual funds) that allows the individual owner to pay tax on the earnings from the mutual fund investments as opposed to the mutual fund paying the tax itself. Similar investment funds (Diversified Investing Funds), while not meeting the requirements for the federal deduction, will be allowed to take a similar deduction to determine net income under the Business Income Tax.

For purposes of this rule, a Diversified Investing Fund is a limited partnership or limited liability company that is classified as a partnership for federal income tax purposes and that meets all of the following requirements:

(1) Is formed and operated for the primary purpose of buying, holding, or selling qualifying investment securities, on its own behalf and not as a broker, and the capital of which fund is primarily (more than 50%) derived from investments by entities or individuals which are neither related to nor affiliated with the fund except in the capacity as investors that do not actively participate in the management of the fund;

(2) No less than 90% of the diversified investing fund's cost of its total assets consists of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as a diversified investing fund; and

(3) No less than 90% of its gross income consists of interest, dividends, pass-through income, and gains from the sale or exchange of qualifying investment securities.

"Qualifying investment securities" include all of the following:

(a) Common stock, including preferred or debt securities convertible into common stock, and preferred stock;

(b) Bonds, debentures, and other debt securities;

(c) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities;

(d) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies;

(e) Repurchase agreements and loan participations;

(f) Foreign currency exchange contracts and forward and futures contracts on foreign currencies;

(g) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities;

(h) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (a) to (g), inclusive;

(i) Regulated futures contracts; and

(j) Interests in a limited partnership or limited liability company, if classified as a partnership for federal income tax purposes.

This deduction is limited to the amount of interest, dividends, pass-through income, and gains from the sale or exchange of qualifying investment securities.

Example 1:
VC Fund, LP (the Fund), a venture capital investment fund, is managed by VC Management, LLC (the Manager), a venture capital firm. The Manager and the Fund are located within the Metro district. The Manager receives funds from outside investors and deposits them into the Fund. The Fund pays the Manager fees for managing the investments and administering the funds. The Fund meets the requirements to be considered a Diversified Investing Fund.

The Manager must file and pay the Business Income Tax based on the net income of the LLC, if gross receipts exceed $5 million. Their net income would include the management fees from the Fund.

The Fund must file and pay the Business Income Tax based on the net income of the LP, but it is allowed a deduction equal to the otherwise taxable net income that can be attributed to the investment income. The applicable minimum fee would be based on the gross income before the deduction. No deduction for net income from the Fund's investment in a partnership is allowed, to the extent that the Fund claims an exclusion for such income as pass-through income pursuant to Administrative Rule 7.07 – 1060 (Treatment of Currently Taxed Pass-Through Income). In other words, the Fund cannot take a deduction for income that it has already excluded or reversed from its income.

Diversified investing funds often are structured so that a member of the fund (typically, the fund's general partner in the case of a fund organized as a limited partnership) is entitled to a percentage interest in the fund disproportionate to its invested capital. The additional interest is referred to as the "carried interest" or the "carry." The following example illustrates one possible circumstance in which income attributable to a carried interest is not subject to Business Income Tax:

In the example above, assume that the Fund's general partner is a business entity that contributes 1% of the invested capital. The general partner also is entitled to a 20% interest (a "carried interest") in profits after all investors receive a specified rate of return on their invested capital. The sole activity of the general partner is to make investment decisions on behalf of the Fund, and to engage and monitor the services of the Manager implementing those decisions. The general partner has its commercial domicile inside the Metro district and conducts its activities inside the Metro district. In this example, both the income attributable to the 1% investment and the income attributable to the carried interest are reversed from the general partner's Metro return and therefore are not subject to the Business Income Tax pursuant to Administrative Rule 7.07 – 1060 (Treatment of Currently Taxed Pass-Through Income).

If a Diversified Investment Fund which is otherwise entitled to the deduction, disqualifies itself from the deduction as a result of an unusual or extraordinary transaction occurring during startup or wind-down, they may petition the Administrator to allow the deduction. The Administrator may then allow the deduction or a portion of the deduction at its discretion.

Adopted: TBD
Metro Code 7.07.070

7.07 – 1015 Oregon Modifications
Income, as defined by the Business Income Tax law, is net income of any business, as required to be reported to the State of Oregon. Oregon modifications to business income are those additions and subtractions to a business' federal net income required by state law to determine net income for Oregon purposes. These modifications arise from differences between federal and Oregon tax laws that may be in effect from time to time. Oregon modifications to business income are required adjustments to determine a business' net income for business income tax purposes. Modifications that relate to personal incomes or expenses are not allowed adjustments for business income tax purposes.

<u>Example 1:</u>
J Marshall, Inc., an S corporation, owns an equipment rental business in Portland that is reported on a Federal 1120S. During 2021, J Marshall, Inc. purchased additional business equipment that it will depreciate by different methods for federal and state purposes. Its Oregon depreciation difference is the only Oregon modification allowed for business income tax purposes.

<u>Example 2:</u>
Jones & Smith, a partnership located in the Metro district, has filed its 2021 partnership return. The Oregon Form 65 indicated modifications to federal income for state filing purposes. These modifications to net income are allowed for business income tax purposes.

Adopted: TBD
Metro Code 7.07.070

7.07 – 1020 Doing Business for an Estate
An estate is a tax reporting entity under the Business Income Tax law. An estate is a temporary entity created the day after the death of an individual for the purpose of the valuation and distribution of the individual's assets.

<u>Example:</u>
Donna Martin owned four commercial buildings, twenty residential rentals and a portfolio of stocks and bonds. Annual gross receipts exceed $5 million. Upon Donna’s death, the estate must file and pay the business income tax. All income items from the business activities are used in both the determination of net income and the apportionment calculation as directed in Administrative Rule 7.07 – 1090 (Apportionment of Gross Income from Business Activities Other than Sales of Tangible Personal Property).

Adopted: TBD
Metro Code 7.07.060

7.07 – 1025 Doing Business for a Trust
A trust is established to preserve assets for one or more beneficiaries. As a result, a trust may contain assets and conduct activities that fall within the "doing business" definitions of the Business Income Tax law, in addition to assets that are not related to business activity. Accordingly, tax will only be assessed on those activities that are "doing business" under the Metro Code.

(A) If other trust assets are temporarily held for investment but are used primarily in the business, the other assets are deemed part of the business activity. Business income does not include portfolio income unless:

1. The portfolio income is held primarily for use in or as reserves for the operation of a business;

2. The trust is in the trade or business of active investment trading; or

3. The portfolio income is directly derived from the sale of an asset used for "doing business" within the jurisdiction notwithstanding such business activity has ceased.

(B) Income from portfolio assets purchased with the after tax proceeds from the sale of a discontinued business activity or installment sale payment from a sold business is not considered business income.

(C) "Portfolio income" is defined as interest, dividends, royalties, and gain on disposition of “portfolio” assets. Portfolio income as used and defined in these rules is restricted to this administrative rule.

(D) When determining whether a trust is exempt by gross income, gross income is determined by the "doing business" activities. Gross income from portfolio income will only be included if the portfolio income falls within the business activities described in (A) 1-3 above.

(E) Expenses directly related to the business activity and distributions to beneficiaries are allowable deductions to arrive at net income. For trusts that distribute all income to beneficiaries, net income will be zero and the trust will not owe tax. For trusts that do not distribute all income to beneficiaries, the trust will owe tax on net income.

(F) A trust other than a grantor trust with business activity within the Metro district is subject to the tax on business income apportioned for the trust’s business activity within the district. A trust is not subject to the tax solely because the fiduciary is located within the district.

(G) A grantor trust, as that term is defined under Sections 671 through 678 of the Internal Revenue Code of 1986 as amended and in existence as of October 15, 1994, is not responsible for filing a return or payment of the tax on its business income as long as the grantor or deemed grantor of the trust is responsible for inclusion of the income and payment of the tax in the income of their personal return. In such a case, the grantor or deemed grantor has the duty to file as an individual and will be taxed under the rules applicable to individuals.

<u>Example 1:</u>
The Murphy trust contains the following assets and income items during 2021:

- Six residential rental dwelling units,
- One commercial rental building sold on contract during the year,

- Stock portfolio that generates interest, dividends, and an occasional gain or loss on the sale of an investment.

The annual proceeds from the sale of the commercial rental are invested in portfolio investments. When calculating the taxes, the following incomes are included in both the gross income and net income calculations:

- Rents from the residential and commercial rentals
- Gain recognized from the installment sale of the commercial rental
- Interest income earned on contract for the sale of the commercial rental

Adopted: TBD
Metro Code 7.07.060 and 7.07.070

7.07 – 1030 Taxable Income after Business Activity has Ceased

When a taxfiler receives continuing income from a business activity that has ceased, the taxfiler is required to pay the Metro Business Income Tax until 1) the continuing business income has ceased, or 2) the gross receipts from all business activities or business incomes including the continuing income from the business that has ceased are $5,000,000 or less.

Example 1:

A cash basis taxfiler goes out of business but continues receiving payments on the entity's accounts receivable after the liquidation of the business assets. The taxfiler is required to continue to file a business income tax return reporting and paying taxes on the income from the accounts receivables until gross receipts from all business incomes are $5,000,000 or less.

Example 2:

An individual owns a commercial building in Portland. The individual sells the building on contract and reports the sale as an installment sale for state and federal tax purposes. If annual gross receipts exceed $5,000,000, the individual is required to continue to file a business income tax return reporting the income from the installment sale (gain and interest) plus any other business income.

Adopted: TBD
Metro Code 7.07.050

7.07 – 1035 Exemption for Insurance Producers (as Defined in ORS 731.104)

Insurance producers are exempt from filing returns under the Metro Business Income Tax law only when the producer's gross income arises solely from premiums or fees for insurance policies, including all premiums, assessments, dues and fees received or derived. The insurance producer loses this filing exemption if the producer has gross income from any other business activity subject to the Metro Business Income Tax law. The gross income from insurance policies and fees remains exempt throughout the apportionment calculation.

Example:

Johnson Insurance, an insurance company, has gross income from insurance activities of $6,000,000 a year and generates $4,000,000 in fees from financial advising services. All the activities are managed and performed from the business location within the Metro district. Johnson Insurance is required to file a Metro business income tax return and will report the net income (loss) earned from the agency activities as well as the financial advising service activities. The total business net income (loss) will be

multiplied by the apportionment factor of 40% for Metro ($4,000,000 / $10,000,000). The gross income from insurance activities is exempt and is not included in the numerator of the apportionment formula, even though it was derived from business activity performed in the Metro district.

Adopted: TBD
Metro Code 7.07.050
Other references: ORS 731.840 (4) (a) and (b)

7.07 – 1040 Seasonal Businesses and Payment of Estimated Taxes
A seasonal business is one which earns 70% or more of its gross income in a period of six successive months or less. A business that is required to make payments under Metro Code 7.05.190 and qualifies as a seasonal business may make quarterly payments timed with the season in which income is generated. To use the seasonal business quarterly payment method, the business must petition and receive approval in advance from the Administrator. A business requesting use of the seasonal business quarterly payment method must petition the Administrator no later than the due date of the 1st quarterly estimated payment required by the codes.

Example:
Santa's Workshop, Inc. is a calendar year seasonal business which generates 80% of its income from September to December. A petition requesting the use of the seasonal business quarterly payment method was filed prior to April 15th and approved by the Administrator. Santa's Workshop has the option to pay quarterly estimates as follows:

QUARTER	PAYMENT
First Quarter	$0
Second Quarter	$0
Third Quarter	1/4 of estimated tax liability
Fourth Quarter	Balance due (3/4) of total estimated tax liability

Adopted: TBD
Metro Code 7.05.190

7.07 – 1045 Net Operating Losses
A Net Operating Loss (NOL) deduction is allowed in certain situations. This deduction is subject to several restrictions.

It is the taxpayer's responsibility to calculate, claim and support this deduction. In calculating the available NOL for a taxpayer, the NOL amount must be reduced by the amount of a deduction allowed or allowable in each subsequent year. Due to the taxpayer's firsthand knowledge of their own tax return and the potential complexities of their specific NOL calculation, the Administrator is not required to perform this calculation on the taxpayer's behalf.

The Administrator can track the NOL generation and usage for a taxpayer, but this information is primarily used to ensure that a taxpayer is not claiming losses in excess of the amount to which they are entitled. The Administrator can, at its own discretion, correct an NOL in a taxpayer's favor, but this is limited to ensure the efficient administration of the tax.

An NOL may not be carried forward from any income tax year during which the taxfiler conducted no business within the Metro district or the taxfiler was otherwise exempt from payment of the business income tax. However, in cases where the taxpayer has conducted business in the Metro district and the taxpayer is exempt from payment of the tax under the gross receipts exemption for that tax year, the taxpayer may petition the Administrator Director to claim an NOL generated during that tax year. These petitions will only be considered if the business income tax return for the applicable tax year is completed and filed with payment of the $100 minimum tax due (plus any penalties or interest, if applicable). These petitions will not be considered in cases in which a taxpayer has zero gross income in the Metro district for the applicable tax year.

Adopted: TBD
Metro Code 7.07.050 and 7.07.070

7.07 – 1050 Partnership Basis Adjustments
Per Metro Code 7.07.070, Business Income Tax is assessed at the entity level. Partnerships that acquire assets have basis in the assets (partnership basis), while the partners have basis in their individual interest in the partnership (partner basis). Sales of partnership interests can create disparity between partnership and transferee partner basis. IRS Section 754 allows some remedy for this disparity at the partnership level by allowing the partnership to increase its basis and related depreciation. However, this allowance is allocated (through Schedule K and K-1) to only the involved partner(s). While the form of the Section 754 election is a partnership transaction, in substance it is deemed to be a partner-level transaction because it relates directly to the calculation of transferee partner basis.

A deduction for the step up in basis for partnership assets related to an Internal Revenue Code (IRC) Section 754 election (which allows IRC Section 743 adjustments) is not allowed for the Business Income Tax. The stepped-up basis applies to the transferee individual partner(s) only and is reflected on the partner's Schedule K-1, regardless of the fact that it may have also been reported on Schedule K of the partnership's return. IRS Form 1065 instructions for tax year 2017 (subject to change) state the adjustments must be on an attached statement to Schedule K-1 using the codes for Other Income or Other Deductions. For purposes of this rule, partnerships include any tax entity that directly reports Section 743 adjustments.

Example 1:
Individuals A, B, and C form Partnership Z as equal partners (each owning 33.3%). The partnership purchases a building for $600,000. Over the next five years, the partnership has depreciated the building by $60,000 and now has a remaining basis of $540,000. This depreciation deduction was used to reduce the Metro taxable income of Partnership Z. Each of the three partners now has a basis of $180,000.

Individual A then sells their interest in Partnership Z to Individual D for $500,000. The gain on the sale of the partnership interest recognized by Individual A of $320,000 would generally not be subject to the Metro Business Income Tax as it is the investment income of an individual. It would be subject to the Personal Income Tax. Individual D now has a $500,000 depreciable basis in the building through their partnership interest. If Partnership Z makes an IRC Section 754 election, Individual D may take an additional depreciation deduction on their federal tax return based on the increase in the "transferee partner basis" of Individual D's purchased asset. However, this deduction is not allowed on the Metro tax return of Partnership Z.

Example 2:

Corporation A and B form Partnership Z as equal partners (each owning 50%). Corporation C bought its interest (50%) in Partnership Z solely from Corporation A. Corporation C does business in the Metro district in addition to its ownership percentage in Partnership Z. Corporation C sells its interest in Partnership Z three years later. Corporation C can include its stepped-up basis in determining the reportable gain from the sale of the interest in Partnership Z when determining Metro taxable income because Partnership Z did not get to claim any of the additional depreciation from Corporation C's stepped-up basis.

Adopted: TBD
Metro Code 7.07.070

7.07 – 1055 Short Periods Count as Tax Year
Any short period return required to be filed under federal and state tax laws requires a short period return for business income tax purposes. This short year counts as one tax year.

When counting the five years in the carryforward period for a net operating loss, a short period will count as one full year, in accordance with Treasury Regulation Section 1.172-4(a)(2).

For a short period, the tax year is considered the year in which the period begins. For example, if a short period begins 2/23/2021, the short period will be considered a 2021 tax year. However, if the short period was the beginning of a 52-53 week year, the period is construed as starting on the 1st day of the relevant month. For example, if a 52-53 week year began on 12/29/2021 and closed as a short period on 7/29/22, the short period is construed as a 2022 tax year.

Adopted: TBD
Metro Code 7.07.070

7.07 – 1060 Treatment of Currently Taxed Pass-Through Income
Business Income Tax law requires that a tax be paid by a Partnership or S corporation doing business in the Metro district. This tax is measured by the net income of the entity at the entity level.

To avoid potential double taxation of partnership and S corporation income (loss) as it flows through to a partner or shareholder who is also liable to pay a tax for business activities separate from the flow-through activities, the partner or shareholder will reverse all income (loss) items and attributes that passed through from a currently taxed entity.

If the partnership or S Corporation is not subject to the Business Income Tax, the recipient entity is not entitled to reverse the net income (loss) pass-through items.

Example 1:
Ace Tools, a partnership, is located in the Metro district and pays business taxes on incomes earned in the Metro district. One of the partners of Ace Tools is another partnership, Top Brass. Top Brass also owns commercial buildings that generate $500,000 per month. Top Brass must pay business taxes for Metro business incomes that are not incomes reported by Ace Tools.

Ace Tools had net income of $10,000,000. Top Brass received 75% of the partnership profit.

Top Brass had net income of $4,700,000 including a loss of ($2,800,000) in net rental income from the commercial buildings. In determining the income for Metro, Top Brass will exclude the $7,500,000 passed through from Ace Tools and will not include the distributive share of Ace Tools partnership gross income in either the numerator or denominator of the apportionment factor. Top Brass would report a loss of ($2,800,000) and gross income of $6,000,000.

Example 2:
Bellevue Corporation, a taxpayer domiciled in the Metro district, is a partner in Costello Partnership in addition to other business activities in the Metro district. Costello Partnership conducts all its income producing activity outside the Metro district. Since Costello Partnership is not required to file or pay the business income tax, Bellevue will include the pass-through net income from Costello in reported net income, and will include the pass-through gross income from Costello in the denominator of the apportionment formula for business tax purposes.

Adopted: TBD
Metro Code 7.07.070

7.07 – 1065 Qualified Retirement Plans
Contributions made by an employer into a Qualified Retirement Plan will be allowed as a deduction for purposes of the Business Income Tax law. To be "qualified", a plan must meet the requirements of IRC Sec. 401(a). If the plan allows nondeductible employee contributions, those contributions are not an allowed deduction for business income tax purposes.

Example:
Adams and Baker Partnership is owned by 15 partners. Each partner receives pass-through ordinary net income from self-employment. Additionally, the partnership passes through a deduction of $15,000 for each partner's Keogh plan contributions. Since the Keogh is a qualified plan, a deduction will be allowed for the Keogh contributions when determining the partnership net income.

Adopted: TBD
Metro Code 7.07.070

7.07 – 1070 Apportionment of Gains and Incomes Due to Sale of a Business
The Business Income Tax law defines “any transaction involving the holding, sale, rental or lease of property” as “Doing Business”. “Property” includes real property, tangible personal property and intangible property. Therefore, income from the sale of a business located within the Metro district (including gains on real property, tangible personal property and intangible property) is subject to the Business Income Tax.

If a business has income from business activity both within and without the Metro district the business may apportion its income. All gross income, including gains derived from property transactions (see Administrative Rule 7.07 1075 (Definition of Total Gross Income and Gross Receipts for Apportionment and Exemption) must be included in the denominator of the apportionment fraction.

When a business is sold, the gains associated with that sale are assigned to the numerator and/or denominator of the apportionment formula. Gains associated with real property or tangible personal property will be assigned to the location of the real property or the tangible personal property. If the business is domiciled (headquartered) within the Metro district, gains related to the sale of intangible

property business will generally be included in the numerator of the apportionment formula. In a case in which a business maintains multiple fixed physical locations, gains related to the sale of intangible property of the business will be logically allocated to those multiple locations.

Example 1

XYZ Manufacturing, based in California, owns a manufacturing plant within the Metro district. XYZ Manufacturing sells the plant at the end of the tax year.

XYZ manufacturing will include the following in the numerator of the apportionment formula:

1. Gains related to the sale of the plant (including real property and tangible personal property).
2. Gross receipts of tangible personal property shipped or delivered to locations within the Metro district.
3. Any other incomes (including interest from working capital accounts) that may have been earned by this business location.

Example 2

Columbia, PC (an S Corporation) is a professional corporation engaged in professional activities throughout the Metro district. Columbia, PC has a single office located in the Metro district, and states that 70% of its services are performed within the district.

At the end of the tax year, Columbia, PC sells 100% of its stock in a Section 338 (H)(10) election (deemed asset sale).

The "deemed asset sale" is a taxable asset sale reported at the S Corporation level. Therefore, the gain from the sale must be included as gross income in the denominator of the apportionment formula.

The following must be included in the numerator of the apportionment factor:

1. 70% of the service income generated during the year.
2. The gain related to the deemed asset sale.
3. Any passive incomes that may have been earned by this entity.

Example 3

Worldwide Manufacturing, Inc. has a manufacturing plant and headquarters located in the Metro district. A sales office is also located in California. Worldwide Manufacturing states 1% of its gross receipts are delivered to locations within the Metro district. Worldwide Manufacturing sells all assets in a complete divestiture at the end of its tax year.

It is determined that 50% of the sales price of $100,000,000 is for goodwill (with $0 book value). The remainder of the sales price is for the plant and equipment (with a book value of $50,000,000). The net gain is $50,000,000.

The following must be included in the numerator of the apportionment factor:

1. 1% of the gross receipts generated during the year.
2. The majority of the gain related to goodwill (note: The California "sales office" does not constitute a secondary headquarters for domicile purposes, however, a small, reasonable allocation of the goodwill may be allowed).

3. Any passive incomes that may have been earned by this entity.

Adopted: TBD
Metro Code 07.07.080

7.07 – 1075 Definition of Total Gross Income and Gross Receipts for Apportionment and Exemption
Total gross income of a business is defined as all income from whatever source derived, including but not limited to:

a. gross receipts (less returns and allowances) from the sale of tangible personal property;
b. gross receipts from the sale of services, including fees and commissions;
c. gains derived from property transactions (including installment sales);
d. interest (including interest from installment sales);
e. rents;
f. royalties;
g. dividends;
h. income from life insurance and endowment contracts;
i. franchise fee income;
j. distributive share of partnership gross income;
k. income received from business contractual agreements, such as non-compete contracts; and
l. business income from an interest in an estate or trust.

The "gross receipts" determined as earned from the sale of property transactions (as referenced in (c) above), is the gain from such transactions for both apportionment and exemption purposes.

Example:
Brown, Inc. sold its commercial rental on January 31, 2021 for a gain of $3,000,000 after receiving $1,500,000 in gross rents for the year. The commercial rental was sold for $10,000,000. For purposes of the Business Income Tax, the gross receipts for both apportionment and exemption purposes is $4,500,000 not $11,500,000.

Adopted: TBD
Metro Code 7.07.050 and 7.07.080

7.07 – 1080 Business Activity and Apportionment of Sales of Tangible Personal Property
For business income tax purposes, a person must have taxable nexus outside the Metro district in order to apportion sales of tangible personal property. If a person does not have taxable nexus outside the Metro district, no apportionment of income is allowed.

Taxable nexus is the connection between a person and a taxing jurisdiction sufficient to allow the jurisdiction to impose a tax based on or measured by net income. For sales of tangible personal property, taxable nexus is generally created by physical presence (through employees and/or property). Owning or renting real or personal property, or having employees outside the Metro district generally creates taxable nexus outside the Metro district. Solicitation of sales and delivery/shipment of sales to locations outside of the Metro district are generally not sufficient business activity to create taxable nexus outside the Metro district unless they extend beyond the protections afforded by PL 86-272. Once taxable nexus is created both inside and outside the Metro district, only sales delivered or shipped to customers in the Metro district are apportioned to the Metro district.

"Delivered or shipped to" may not be defined as activities of the purchaser of tangible personal property. If the purchaser takes physical title by picking up the tangible personal property or directing the pick up of tangible personal property (i.e., will-call or other such pick up by the purchaser or purchaser's agent), the property is considered "delivered" at the point of pick up. Any further sale or delivery on the part of the purchaser to any secondary purchaser is not considered as delivery from the original seller to such secondary purchaser.

Example 1:
XYZ Laboratory manufactures over-the-counter medicine at its only facility, located in the Metro district. Sales are almost entirely within the Metro district except for a long-standing order from a large retail drugstore located outside of the Metro district. XYZ has one salesperson who routinely visits this customer and solicits sales. XYZ delivers its product to this customer by common carrier and in its company truck driven by a company employee.

The solicitation of sales and the delivery of sales outside the Metro district do NOT create taxable nexus for XYZ Laboratory outside of the Metro district. All of XYZ's income is taxable to the Metro district.

If the company's delivery employee (i.e. truck driver) or salesperson collects payments, takes orders, stocks shelves, or does any other type of routine and ongoing service in addition to delivery and solicitation of sales at the site of the customer, the employee creates taxable nexus for XYZ Laboratory in the jurisdiction of the drugstore. XYZ Laboratory may apportion its income between the Metro district and the outside jurisdiction.

If XYZ Laboratory opens a sales office or manufacturing facility outside of the Metro district, it creates taxable nexus outside of the Metro district, and XYZ Laboratory may apportion its income between the Metro district and the outside jurisdiction.

Example 2:
ABC Suppliers is a distributor located outside the Metro district. ABC takes mail and phone orders from its customers and delivers those orders to its Metro district customers using common carriers and ABC's own company trucks driven by company employees. Two ABC salespersons regularly visit Metro district locations to maintain and establish a Metro district customer base.

The solicitation of sales and the delivery of sales do NOT create taxable nexus in the Metro district for ABC Suppliers. ABC Suppliers is not required to pay Business Income Tax.

If ABC delivery employees (i.e. truck drivers) or salespersons collect payments, take orders, stock shelves, or do any other type of routine and ongoing service in addition to delivery and sales calls at the Metro district locations, the employees create taxable nexus for ABC Suppliers. ABC must apportion part of its income to the Metro district.

If ABC Suppliers opens a warehouse in the Metro district, ABC creates taxable nexus in the Metro district. ABC must apportion part of its income to the Metro district.

Example 3:
Superior Clothing began as a mail order specialty clothing business whose only operations were a warehouse and office located in the Metro district. Superior shipped all orders by a freight carrier or the US mail from the Metro district location to its customers nationwide. Superior had no business activity

outside the Metro district and did not apportion its net income. It reported 100% of its income as taxable to the Metro district.

In January of a following year, Superior opens a retail outlet outside the Metro district. This outlet creates taxable nexus outside the Metro district for Superior. With taxable nexus established outside the Metro district, Superior may begin apportioning its income. Only sales of tangible personal property shipped to or delivered within the Metro district will be included in the numerator of the apportionment factor for Metro district. Once taxable nexus is created outside the Metro district, all sales of tangible personal property may be apportioned to the point of delivery regardless of method of delivery.

<u>Example 4:</u>
Premium Pipelines, Inc. is located within the Metro district where it sells and stores bulk gasoline. Premium Pipelines, Inc. does not deliver gasoline nor does it contract with others to deliver gasoline, instead it relies on purchasers to pick up the gasoline. Paramount Petroleum, Inc. purchases bulk gasoline from Premium Pipelines, Inc. Paramount Petroleum, Inc. then contracts with M&M Gasoline Delivery Services to pick up the gasoline and deliver the gasoline to several locations as directed by Paramount Petroleum, Inc.

The gross income of such gasoline sales by Premium Pipelines, Inc. is gross income within the Metro district because the purchaser has taken title within the Metro district and all delivery activity is directed and controlled by the purchaser. In such case, Premium Pipelines, Inc. has transferred title and control beyond mere FOB or other conditions of sale.

Adopted: TBD
Metro Code 7.07.080

7.07 – 1085 De Minimus Business Activity for Tangible Personal Property
"De Minimus" means activity that is trivial, of little importance or significance. Activity that is not routine and continuing or has little or no tie to the production of income is considered de minimus. De minimus activity does not create nexus in a jurisdiction. *See, for example, Wisconsin Dept of Revenue v Wrigley* 505 US 214, 120 L Ed 2d 174, 112 SCt 2447 (1992).

<u>Example 1:</u>
Snazzy Jacket Company manufactures and warehouses all manufactured goods in the Metro district. Employees take orders by phone and mail at the Metro district location. All orders are filled from that location and are shipped by a freight carrier to customers. All business activity is conducted within the Metro district. Once a year an employee will call on a customer outside the Metro district only for the purpose of seeing how the merchandise is displayed. No orders are taken. This activity is de minimus and does not create business activity outside the Metro district and, therefore, no apportionment is allowed.

<u>Example 2:</u>
Comfy Coats Company manufactures and warehouses all its manufactured goods outside the Metro district. Employees take orders by phone and mail from the location outside the Metro district. All orders are filled from that location and are shipped by a freight carrier to customers around the country, including within the Metro district. All business activity is conducted outside the Metro district. Once a year an employee will call on a Metro district customer for the purpose of seeing how the merchandise

is displayed. No orders are taken. This activity is de minimus and does not create business activity in the Metro district. Comfy Coats Company does not file a business income tax return with the Metro district.

Adopted: TBD
Metro Code 7.07.080

7.07 – 1090 Apportionment of Gross Income from Business Activities Other than Sales of Tangible Personal Property

Passive, portfolio, personal service income, and all other items of gross income are apportioned to the location of the income producing activity. The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its business for the ultimate purpose of obtaining gain or profit.

Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation which gives rise to such gross income. Personal service not directly connected with the performance of a contract or other obligation (for example, time expended in negotiating the contract) is excluded from the computations.

Income from transactions and activities performed on behalf of a business, such as those conducted on its behalf by an independent contractor, must be apportioned to the business' domicile location. If a business taxpayer is domiciled within the Metro district (established by physical presence within the Metro district), and there is no jurisdiction to tax the income of the business taxpayer outside of the Metro district, then the business taxpayer must report and pay tax upon 100% of their business income.

Example 1:
Gross income from the performance of personal services is apportioned to Metro district to the extent such services are performed in the Metro district. Gross income from services performed wholly within the Metro district must be apportioned wholly to the Metro district. Gross Income from services performed wholly outside the Metro district are wholly excluded from gross income apportioned to the Metro district. If services relating to a single item of income are performed partly within and partly without the Metro district, the gross income for the performance must be apportioned using the Hourly Method as described below.

Hourly Method: Gross income apportioned to the Metro district on income producing activity occurring partly within and partly without the Metro district is determined by multiplying the gross proceeds of such income producing activity by the ratio of time spent performing such services within the Metro district compared to the total time spent performing such services everywhere. This method will generally apply on a contract-by-contract basis. However, if a taxpayer's incomes are not determinable on such a basis, the taxpayer can determine on other reasonable bases (using logbooks, calendars or other such data) the percentage of time spent within and without the Metro district during the year and apply such ratio to the gross income of the full year.

Example 2:
A broker provides the service of matching a supplier with a purchaser of either tangible personal property (e.g., lumber, food products) or services (e.g., employment). Gross income for the performance of the service are apportioned to the Metro district to the extent such services are performed in the Metro district and is apportioned following the Hourly Method identified in Example 1. If a broker has not established a taxable presence outside the Metro district, no apportionment is allowed.

<u>Example 3:</u>
Gross income from the rental, leasing, sale, or licensing of real and personal property are apportioned to the Metro district if the property is located in the Metro district. Generally, transactions involving property are attributable to the situs of the property.

<u>Example 4:</u>
Gross income from interest, dividends, and other portfolio income items are apportioned to the Metro district if the administrative activities to select, record, and/or reconcile the portfolio investments are performed in the Metro district. Generally, portfolio activity is attributable to the commercial domicile of the business. Portfolio income may not be apportioned to the location of third party administrators or to any other jurisdictions in which the income would not be taxable because neither the business nor owners of the business have established a taxable domicile in such jurisdiction.

<u>Example 5:</u>
Gross income from royalties, patents, customer lists and other intangibles are apportioned to the Metro district if the commercial domicile of the business is in the Metro district. There must be significant costs of performance away from the commercial domicile to apportion the income elsewhere.

<u>Example 6:</u>
Gross income from sale of franchises located in the Metro district and gross income of franchise fees or royalties from Metro district sources are apportioned to the Metro district. Due to the nature of franchise agreements, a minimum connection between the franchisor and the Metro district exists when a franchisor takes advantage of the economic milieu of the Metro district. This minimum connection is satisfied by entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchises or licenses within the Metro district.

Additional minimum connection may be found in the use or allowance of copyrights, trademarks, licenses, patents or other intangible assets within the Metro district. Other minimum connections may also be in the form of an employee coming to Metro district to solicit the sale of franchises, copyrights, trademarks, licenses, patents or other intangible assets, inspect franchisee operations, coordinate joint advertising, etc., or to perform after the sale activities in the Metro district for the franchisee.

Adopted: TBD
Metro Code 7.07.080

7.07 – 1095 Apportionment for Banking Income
"Banking activities" are defined as the receiving or accepting of money or its equivalent on deposit as a regular business activity – including such activities engaged in by Banking Organizations and by Savings and Loan Organizations. If income from banking activities is derived from business activity both within and without the Metro district, Metro district gross income is determined by a formula comparing deposits in the Metro district to deposits everywhere. Deposits are defined as average daily deposits—net of all public funds, all treasury tax and loan deposits, all correspondent bank deposits, and money orders or official checks. Upon determining deposits locally and everywhere, the following formula is used:

Gross income everywhere is the denominator of the apportionment fraction. The numerator of the apportionment fraction is determined by adding Metro district gross banking income and Metro district gross income from other non-banking business income.

The formula to determine Metro district banking gross income is:

$$\frac{\text{Metro district Deposits}}{\text{Deposits Everywhere}} \times \text{Total Banking Receipts}^{1} = \text{Metro district Banking Gross Income}$$

[1]Total Banking Receipts as included in Oregon Form 20, Schedule C-1.

Gross income earned in the Metro district from income producing activity other than banking income is added to the Metro district gross income derived from banking activity.

Example:
XYZ BANK, INC. (consolidated with ZZZ Corporation).

1. Total Consolidated Gross Income	=	$50,000,000
2. Total Banking Gross Income	=	$35,000,000
3. Total Deposits	=	$500,000,000
4. Metro district Deposits	=	$250,000,000
5. Metro district Gross Income of ZZZ Corp	=	$500,000 (non-banking gross)
6. Metro district Banking Gross Income 250,000,000 (#4)/500,000,000 (#3) X 35,000,000 (#2)	=	$17,500,000
7. TOTAL METRO DISTRICT GROSS INCOME (#5 + #6)	=	$18,000,000
8. METRO DISTRICT APPORTIONMENT FACTOR (#7/#1)	=	36%

Adopted: TBD
Metro Code 7.07.080

7.07 – 1100 Apportionment for Domestic Insurers
If the income of a domestic insurer is derived from business activity both within and without the Metro district, Metro district apportionment is determined by using an "insurance sales factor" consistent with ORS 317.660:

(a) dividing the direct premiums (excluding reinsurance accepted and without deduction of reinsurance ceded) received by the insurer during the taxable year on policies and contracts which are located within the Metro district by

(b) the total of such premiums received by the insurer during the taxable year on policies and contracts which have been sold everywhere.

Example 1:
Joe's Dental Plan, Inc. (JDPI) is a domestic insurance provider. All of JDPI's insurance contracts are with individuals and families. JDPI's only income is from premiums and insurance contracts. To compute the business taxes due to the Metro district, JDPI will apportion its net income by multiplying it by a fraction, the numerator of which is the total direct premiums received from insurance contracts with individuals and families located within the Metro district during the tax year, and the denominator of which is the direct premiums of individuals and families located everywhere during the tax year.

Example 2:
Contracts, Ltd (CL) is a domestic insurance provider with offices throughout Oregon, and is headquartered in the Metro district. CL provides insurance to businesses and, in some cases, their employees. To compute the business taxes due, CL will apportion its net income by multiplying it by a fraction, the numerator of which is the total direct premiums that CL received from insurance contracts with businesses located within the Metro district (regardless of the home address of employees obtaining insurance), and the denominator of which is the direct premiums earned everywhere during the tax year.

Adopted: TBD
Metro Code 7.07.080
Other References: ORS 731.840 & 317.660

7.07 – 1105 Apportionment for Freight Carriers
Persons whose business activity is the pick-up and/or delivery of freight, including deliveries or pick-ups of freight occurring outside the Metro district, may apportion the income from such business activity to reflect the business activity outside the Metro district. For those businesses performing pick-up and delivery of freight, the following general apportionment standard is applied:

1. In those cases in which both the pick-up and delivery are within the Metro district, the income is apportioned to the Metro district.

2. In those cases where either a pick-up or a delivery occurs within the Metro district with a corresponding pick-up or delivery outside the Metro district, 50% of the income is apportioned to the Metro district.

Interstate carriers of freight (long-haul trucking) may also partially offset the income received from pick-up or delivery within the Metro district (such offset not to exceed 50% of Metro district income determined in #2 above) by a reasonable methodology which may include:

1. Total mileage outside the Metro district related to the delivery or pick-up which occurs within the Metro district (for long-haul trucking).
2. Extent of business activity occurring within the Metro district (compared to elsewhere).
3. Extent of business presence within the Metro district (compared to elsewhere).
4. Apportionment as reported to the State of Oregon compared to Metro district apportionment.
5. Comparability within the industry.

Persons whose business activity is contracting with others to perform pick-up or delivery services may not apportion such activity.

Adopted: TBD
Metro Code 7.07.080

7.07 – 1110 Apportionment for Passenger Carriers
The percentage of net income apportioned to the Metro district for air and ground passenger transportation (airline, bus, and rail) who do business within the Metro district may be determined using either of the following methods:

a. *Departure Method.*
The following formula applies for this method:
Local Departures / # Departures Everywhere = Apportionment %
In the airline industry, different types of aircraft differentiate revenues (as with jumbo jets versus smaller planes). Airlines may determine apportionable revenues in the following manner:
Type 1 plane gross revenues X % of local departures of Type 1 planes +
Type 2 plane gross revenues X % of local departures of Type 2 planes, etc.

<u>Example:</u>
Airline ZED has 100 departures locally during the year. Airline ZED has 5,000 departures during the year everywhere. This equates to an apportionment of 2%. However, Airline ZED receives a large portion of its income from flying jumbo jets out of Los Angeles and Seattle. Airline ZED has 2,000 departures everywhere which represent jumbo jets--only 10 of these jumbo jet departures are local departures.

Therefore, Airline ZED may make the following apportionment determination:

	Jumbo	Regular Jet	Total
Everywhere Departures	2000	3000	5000
Local Departures	10	90	100
Local Percentage	0.5% (1/2 of 1%)	3%	2% (average)
Gross Revenues	10,000,000	5,000,000	15,000,000

Local Revenues	50,000	150,000	200,000

200,000/15,000,000=Redetermined Apportionment: 1.3333%

b. *Ticket Sales Method.*
Gross ticket sales sold for departures from Metro district (including station sales, ticket agent sales, internet sales, etc.) is included in the numerator of the apportionment fraction as Metro district income. Other Metro district incomes from other activities must also be included in the numerator of the apportionment fraction. The denominator of the apportionment fraction is gross income everywhere. Gross income everywhere is defined as gross ticket sales everywhere plus all taxable incomes from all other activities.

Adopted: TBD
Metro Code 7.07.080

7.07 – 1115 Apportionment for Providers of Electronic or Telephonic Services
If the income of a service provider of electronic or telephonic services is derived from business activity occurring both within and without the Metro district, the gross income earned within the Metro district is determined as earned at the situs of delivery and/or use of such services.

Example 1:
Gross incomes from delivery and/or use of electronic or electrical signals is included in the numerator of the apportionment fraction for the Metro district if the location of the use of the electronic or electrical signals are within the Metro district.

Example 2:
Gross incomes from the delivery and/or use of digital information other than general telephone services (such as computer services delivered via phone lines or coaxial cable) is included in the numerator of the apportionment fraction for Metro district if such digital information is used within Metro district. Examples include monthly subscription payments received from customers of internet service providers and per-use payments received from customers to view online content.

Example 3:
Gross incomes from the delivery and/or use of telephonic services generated by electromagnetic radiation (e.g., cell phones and satellite phones) is included in the numerator of the apportionment factor if the service is billed or paid from an address located within the Metro district.

[*Note: Since cell phone usage is generally mobile in nature, it is assumed that usage will be uniform over boundaries, therefore, it is determined the most logical assignment of incomes is to the billing address of the user of such services.*]

Example 4:
Gross incomes from the delivery and/or use of long-distance telephone services is included in the numerator of the apportionment factor if the long-distance call originates or terminates within the Metro district and is billed or paid from an address located within the Metro district.

For purposes of this rule, gross incomes from custom computer programming services are not considered Electronic or Telephonic Services. Custom computer programming services would be considered personal services under Administrative Rule 7.07 1090 (Apportionment of Gross Income from Business Activities Other than Sales of Tangible Personal Property). It is not relevant that the completed product may be delivered electronically to the customer.

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