

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING METRO)	ORDINANCE NO. 21-1465
CODE CHAPTERS 7.05, 7.06 AND 7.07 TO ADD)	
CERTAIN CLARIFICATIONS AND MAKE)	Introduced by Chief Operating Officer
HOUSEKEEPING CHANGES)	Marissa Madrigal in concurrence with
)	Council President Lynn Peterson
)	

WHEREAS, on December 17, 2020, the Metro Council adopted Ordinance 20-1454, which codified the personal and business income taxes approved by the voters for Metro’s Supportive Housing Services Ballot Measure into new code chapters 7.05 (Income Tax Administration), 7.06 (Personal Income Tax) and 7.07 (Business Income Tax); and

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

WHEREAS, during the administrative rule adoption process, Metro staff determined that certain clarifications and housekeeping changes were needed to code chapters 7.05, 7.06 and 7.07; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Certain sections of Metro Code Chapter 7.05 are amended as set forth in tracked changes in Exhibit A.
2. Certain sections of Metro Code Chapter 7.06 are amended as set forth in tracked changes in Exhibit B.
3. Certain sections of Metro Code Chapter 7.07 are amended as set forth in tracked changes in Exhibit C.

ADOPTED by the Metro Council this 23rd day of September 2021.



Lynn Peterson, Council President

Attest:



Jaye Cromwell, Recording Secretary

Approved as to Form:



Carrie MacLaren, Metro Attorney

CHAPTER 7.05**INCOME TAX ADMINISTRATION FOR PERSONAL AND BUSINESS TAXES**

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7.05.010 Purpose and Applicability

The purpose of this chapter is to provide consistent, efficient and transparent administration of Metro’s Business Income Tax Law and Personal Income Tax Law (collectively, “Metro’s Income Tax Laws.”). The provisions of this chapter apply to the administration of both the Business Income Tax Law and Personal Income Tax Law, as applicable, unless Chapter 7.06 or Chapter 7.07 specifically exempts a provision.

7.05.020 Definitions

For the purpose of this chapter and Metro Code Chapters 7.06 and 7.07, the terms used are defined as provided in this section unless the context requires otherwise.

Administrator means Metro’s agent for purposes of administering and enforcing the Business and Personal Income Tax Laws.

Appeals Board means the hearings body designated by the Administrator to review taxfiler appeals from final determinations by the Administrator.

Business means an enterprise, activity, profession or undertaking of any nature, whether related or unrelated, by a person in the pursuit of profit, gain or the production of income, including services performed by an individual for remuneration, but does not include wages earned as an employee.

Business Income Tax Law means the taxes imposed on businesses under the provisions of Metro Code Chapter 7.07.

Chief Financial Officer means the Metro Chief Financial Officer and the Officer’s designee(s).

Chief Operating Officer means the Metro Chief Operating Officer and the Officer’s designee(s).

District means all the territory within the jurisdictional boundary of Metro as provided by law.

Doing Business means to engage in any activity in pursuit of profit or gain, including but not limited to, any transaction involving the holding, sale, rental or lease of property, the manufacture or sale of goods or the sale or rendering of services other than as an employee. Doing business includes activities carried on by a person through officers, agents or employees as well as activities carried on by a person on their own behalf.

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. A person's domicile continues as their domicile until the person demonstrates (1) an intent to abandon the current domicile and acquire a new domicile, and (2) then actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections. A person is domiciled in the District if the person's domicile is located within the District.

Employee means any individual who is classified for Oregon tax purposes as an employee. ~~who performs services for another individual or organization and whose compensation is reported by an IRS Form W-2.~~

Gross Receipts means all income from whatever source derived.

Individual means a natural person, including a natural person who reports that person's income to the State of Oregon in a joint personal State income tax return. In such case, Individual refers to the joint taxfiler.

Metro means the Metropolitan Service District of the Portland metropolitan area, a municipal corporation established and existing pursuant to Section 14 of Article XI of the Oregon Constitution, ORS Chapter 268 and the Metro Charter.

Metro Income Tax Laws means, collectively, the Business Income Tax Law, the Personal Income Tax Law and the code chapters and administrative rules that administer and govern those taxes.

Metro Taxable Income means income attributable to sources within the District less deductions from income attributable to sources within the District. This includes, but is not limited to:

- (a) Wages received by a nonresident taxfiler attributable to work performed within the District;
- (b) Items reported to a nonresident taxfiler attributable to the taxfiler's ownership interest in a pass-through entity that does business in the District and reports tax items attributable to that ownership interest to the taxfiler on a Schedule K-1; and
- (c) Income and expenses from a sole proprietorship or disregarded entity attributable to business in the District and reported on a nonresident taxfiler's individual return.

Net Operating Loss means the negative taxable income that may result after the deductions allowed by the Business Income Tax Law in determining net income for the tax year.

Nonbusiness Income means income not created in the course of the taxfiler's business activities.

Nonresident means an individual who is not a resident of the District.

Oregon Taxable Income means the taxable income of residents or part year residents as reported or as reportable to the State of Oregon for personal income tax purposes.

Part-year Resident means a taxfiler who changes status during a tax year from resident to nonresident or from nonresident to resident.

Person means, but is not limited to, an individual, a natural person, married couple filing jointly, proprietorship, partnership, limited partnership, family limited partnerships, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business. Each person who is not a natural person must designate a natural person in writing as its designated representative who is authorized to act and testify on behalf of such person.

Personal Income Tax Law means the personal income taxes imposed on District residents and nonresidents under the provisions of Metro Code Chapter 7.06.

Received means the postmark date affixed by the United States postal service if mailed, the date stamp if delivered by hand or sent by facsimile, or the receipt date from the online file and pay application confirmation notice.

Resident means (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.

Tax Year means the taxable year of a person for Federal or State income tax purposes.

Taxfiler means any person whose income in whole or in part is subject to Metro Income Tax Laws and is required to file a return under Metro Income Tax Laws.

7.05.030 Conformity to State Income Tax Laws; Tax Guidance

- (a) 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 as those laws existed for that tax year. The Administrator will construe the Personal income Tax Law, when applicable, in conformity with the laws and regulations of the State of Oregon imposing taxes on or measured by net income as those laws existed for that tax year.
- (b) Any interpretation under subsection (a) may not conflict with any provision of this chapter, Chapter 7.06, or Chapter 7.07.
- (c) The Administrator has the authority by written policy to connect to or disconnect from any legislative enactment regarding income or excise taxation or the definition of income.

7.05.040 Nexus

The taxes imposed by Chapter 7.06 and Chapter 7.07 apply to all taxpayers that have substantial nexus with the District, subject only to constitutional limitation on Metro's authority.

7.05.050 Tax as a Debt; Collection Authority

- (a) The taxes imposed by Chapter 7.07 and Chapter 7.06 become a debt due to Metro at the time such liability for the tax is incurred. This includes any penalties and interest.
- (b) The Chief Financial Officer or Administrator is authorized to collect any deficient taxes, interest and penalties owed. This includes initiating and defending any civil actions and other legal proceedings.
- (c) Metro or the Administrator, as appropriate, may assign a delinquent tax account to a collection agency for collection.
- (d) Any assignment to an outside collection agency is subject to a reasonable collection fee, as allowed by law, above and beyond any amount owed to Metro.

7.05.060 Administration

- (a) The Administrator is the administrator of record and has the authority to administer and enforce the Metro Income Tax Laws including, but not limited to, administrative return processing, auditing, and determinations; collection of taxes, penalties and interest

(including instituting legal action in any court of competent jurisdiction by or on behalf of the Metro); and protests and appeals.

- (b) The Administrator has access to and maintains all tax filings and records under this chapter and the Metro Income Tax Laws on behalf of Metro. The Administrator may, upon taxfiler's written request and at the sole discretion of the Administrator, interpret how this chapter or the Metro Income Tax Laws apply to taxfiler's facts and circumstances. Nothing in this chapter or Chapters 7.06 and 7.07 preclude or is intended to preclude, the informal disposition of controversy by stipulation or agreed settlement, through correspondence or a conference with the Administrator.

7.05.070 Administrative Authority

- (a) The Administrator may implement procedures, forms, and written policies for administering the provisions of the Business Income Tax Law and Personal Income Tax Law.
- (b) The Administrator will coordinate with Metro to adopt administrative rules relating to matters within the scope of this chapter to administer compliance with the Business Income Tax Law and Personal Income Tax Law.

7.05.080 Ownership of Taxfiler Information

Metro is the sole owner of all taxfiler information under the authority of the Metro Income Tax Laws. The Chief Operating Officer, Metro Attorney, Chief Financial Officer, Administrator, and their agents have the right to access all taxfiler information for purposes of administration.

7.05.090 Confidentiality

- (a) No Metro elected official, employee, or agent, nor any person who has acquired information pursuant to the Metro Income Tax Laws, may divulge, release, or make known in any manner any financial information, social security numbers or any other elements of a tax return or tax account, including fact of filing and collection activity submitted or disclosed to Metro or the Administrator under the provisions of this chapter, the Metro Income Tax Laws, and any applicable administrative rules, unless otherwise provided in this chapter or as required by law.
- (b) Nothing in this section prohibits:
 1. The disclosure of general statistics in a form that would prevent the identification of financial information or social security numbers regarding an individual taxfiler;

2. The filing of any legal action by or on behalf of the Administrator or Metro to obtain payment on unpaid accounts or the disclosure of information necessary to do so; or
 3. The assignment to an outside collection agency of any unpaid account balance receivable provided that the Administrator notifies the taxfiler of the unpaid balance at least 60 days before the assignment of the claim.
- (c) Any person that violates this section may be subject to criminal penalties as set forth in Section 7.05.240.

7.05.100 Persons to Whom Information May Be Furnished

- (a) The Administrator and Metro Chief Operating Officer may disclose and give access to information described in Section 7.05.090 to an authorized representative of the Department of Revenue, State of Oregon, or of any local government of the State imposing taxes upon or measured by gross receipts or net income, for the following purposes:
1. To inspect the tax return of any taxfiler;
 2. To obtain an abstract or copy of the tax return;
 3. To obtain information concerning any item contained in any return;
 4. To obtain information of any financial audit of the tax returns of any taxfiler; or
 5. To maintain compliance with State or Federal Law (such as providing social security numbers to the Internal Revenue Service with 1099G filings for refunds issued).

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

- (b) Upon request of a taxfiler, or authorized representative, the Administrator will provide copies of any tax return information filed by the taxfiler in the Administrator's possession to the taxfiler or authorized representative.
- (c) If a court of competent jurisdiction issues a court order requiring the disclosure of a taxfiler's tax return information, the Administrator will comply with the terms of that court order after providing written notice to the taxfiler at taxfiler's last known address.
- (d) The Administrator may also disclose and give access to information described in Section 7.05.090 to:

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1. The Metro Attorney, the Attorney's assistants and employees, or other legal representatives of Metro, to the extent disclosure or access is necessary for the performance of the duties of advising or representing Metro.
 2. The Administrator's Attorney, the Attorney's assistants and employees, or other legal representatives of the Administrator, to the extent the Administrator deems disclosure or access necessary for the performance of the duties of advising or representing the Administrator, including but not limited to instituting legal actions on unpaid accounts.
 3. Other Metro employees and agents, to the extent disclosure or access is necessary for such employees or agents to perform their duties regarding or under contracts or agreements between Metro and the Administrator.
 4. The Administrator's employees, agents and officials, to the extent the Administrator deems disclosure or access necessary for such employees, agents or officials to:
 - A. Aid in any legal collection effort on unpaid accounts;
 - B. Perform their duties under contracts or agreements between the Administrator and Metro or between the Administrator and any other department, bureau, agency or subdivision of the Administrator relating to the administration of the Metro Income Tax Laws; or
 - C. Aid in determining whether a Metro Income Tax Law account is in compliance with all City, County, State and Federal laws or policies.
- (e) All employees and agents specified in Section 7.05.100(d) above, prior to the performance of duties involving access to financial information submitted to Metro or the Administrator under the terms of the Personal Income Tax Law or Business Income Tax Law, must be advised in writing of Section 7.05.240 relating to penalties for the violation of Sections 7.05.090 and 7.05.100. Such employees and agents must execute a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of Sections 7.05.090 and 7.05.100.
- (f) No person described in subsection (a) to whom disclosure or access to financial information has been given may make a disclosure under this section unless that person:
1. Is advised in writing of Section 7.05.240 relating to penalties for the violation of Section 7.05.090; and
 2. Executes a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating these provisions of law have been reviewed and that person is aware of the penalties for the violation of Section 7.05.090. The Chief Operating

Officer's or Administrator's signature on the certificate, required by this subsection, constitutes consent to disclosure to the persons executing the certificate.

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

7.05.110 Taxfiler Representation

Third parties, such as attorneys or certified public accountants, may represent taxfilers before the Administrator. The Administrator may establish procedures for taxfilers to authorize a third party to represent the taxfiler, which may include a written authorization submitted to the Administrator. The Administrator is not required to recognize a third party who claims to represent a taxfiler if that third party does not comply with the established procedures.

7.05.120 Representation Restrictions

- (a) No employee or official of Metro, the Administrator, or any public agency authorized to collect taxes imposed by this chapter may represent any taxfiler in any matter before the Administrator. This restriction against taxfiler representation continues for two years after termination of employment or official status.
- (b) Members of the appeals board may not represent a taxfiler before the appeals board. No member of the appeals board may participate in any matter before the board if the appellant is a client of the member or the member's firm.

7.05.130 Information Request; Examination of Books, Records or Persons

- (a) The Administrator may require a taxfiler to produce documents. The Administrator may also examine any books, papers, records, or memoranda, including State and Federal income or excise tax returns, to ascertain the correctness of any tax return or to make an estimate of any tax. The Administrator has the authority, after notice, to:
1. Require the attendance of any person required to file a tax return under the Metro Income Tax Laws, or officers, agents, or other persons with knowledge of the person's business operations, at any reasonable time and place the Administrator may designate;
 2. Take testimony, with or without the power to administer oaths to any person required to be in attendance; and
 3. Require proof for the information sought, necessary to carry out the provisions of this

chapter.

- (b) The Administrator will designate the employees who have the power to administer oaths under this section.

7.05.135 Subpoena Powers

- (a) The Administrator may subpoena and examine witnesses, administer oaths, and require the production of any books or papers in the hands of any person, company or corporation, whenever necessary for the prosecution of any inquiries deemed necessary or proper.
- (b) If any person fails to comply with any subpoena of the Administrator or refuses to testify when the Administrator requires that person to testify, the Administrator may apply to a court of competent jurisdiction for an order to the person to produce the books and papers or attend and testify, or otherwise comply with the demand of the Administrator.
- (c) The Administrator will apply to the court by ex parte motion, upon which the court will make an order requiring the person against whom it is directed to comply with the Administrator's request or demand within 10 days after the service of the order, or within the additional time granted by the court, or to justify the failure within that time. The order will be served upon the person to whom it is directed in the manner required by the State of Oregon or other applicable jurisdiction for service of process, which is required to confer jurisdiction upon the court.
- (d) Upon petition of the person subpoenaed, the court will make an order determining if the evidence sought by the subpoena is relevant to the pending proceeding and, if requested by the person subpoenaed, an order as required in the interests of justice to protect the confidentiality of the information subpoenaed. Upon failure of the subpoenaed person to show cause for noncompliance, the court will make an order requiring the person to comply with the demand of the Administrator within such time as the court directs.
- (e) Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section is in addition to other remedies, civil or criminal, that may exist.
- (f) The Administrator will designate the employees who have the power to administer oaths under this section.

7.05.140 Taxfiler Records Retention

Every person required to file a return under the Business Income Tax Law or Personal Income

Tax Law must keep and preserve for not less than seven years such documents and records, including State and Federal income and excise tax returns, accurately supporting the information reported on the taxfiler's return and calculation of tax for each year.

7.05.150 Deficiencies and Refunds

- (a) The Administrator may assess deficiencies and grant refunds any time within the periods set forth for deficiencies or refunds under ORS Chapter 314. The Administrator may by agreement with the taxfiler extend the time periods to the same extent as provided by statute.
- (b) When no tax return has been filed, there is no time limit for a notice of deficiency or the assessment of taxes, penalty and interest due.
- (c) Notwithstanding subsections (a) and (b), the Administrator is not required to accept any tax return for any tax period from a taxfiler if:
 - 1. The Administrator obtains a money judgment against the taxfiler for failure to pay an unpaid account balance due; and
 - 2. The Administrator or its designee lawfully served the taxfiler with the lawsuit pursuant to the Oregon Rules of Civil Procedure; and
 - 3. The tax return is for a taxable year that is the subject of the general money judgment; and
 - 4. The Administrator gave written notice stating that the taxfiler had an outstanding balance due at least 30 days before the Administrator (or its designee) filed a lawsuit for those particular taxable years.

7.05.160 Protests and Appeals; Penalty Waiver

- (a) A taxfiler may protest any determination by the Administrator. The Administrator must receive written notice of the protest within 30 days after the Administrator mailed or delivered the notice of determination to the taxfiler. The protest must state the name and address of the taxfiler and an explanation of the general grounds for the protest. The Administrator must respond within 30 days after the protest is filed with either a revised determination or a final determination. The Administrator's determination must include the reasons for the determination and state the time and manner for appealing the determination. The time to file a protest or the time for the Administrator's response may be extended by the Administrator for good cause. Requests for extensions of time must be

received before the original 30-day protest deadline expires. The Administrator will give written notice to the taxfiler if the Administrator's deadline is extended.

(b) A taxfiler may appeal any final determination by the Administrator to the appeals board. The Administrator must receive written notice of the appeal within 30 days after the Administrator mailed or delivered the final determination to the appellant. The notice of appeal must state the name and address of the appellant and include a copy of the final determination.

(c) Within 90 days after the Administrator mails or delivers the final determination to the appellant, the appellant must file with the appeals board a written statement containing:

1. The reasons the Administrator's determination is incorrect; and
2. What the correct determination should be.

Failure to file this a written statement within the time permitted is a waiver of any objections, and the appeal will be dismissed.

(d) Within 150 days after the Administrator mails or delivers the final determination to the appellant, the Administrator will file with the appeals board a written response to the appellant's statement. A copy of the Administrator's response must be mailed to the address provided by the appellant within 10 days after the Administrator files it with the appeals board.

(e) The Administrator must provide the appellant written notice of the hearing date and location at least 14 days before the hearing. The appellant and the Administrator may present relevant testimony, evidence, and oral argument at the hearing. The appeals board may request additional written comment and documents as the board deems appropriate.

(f) Decisions of the appeals board must be in writing, state the basis and legal authority for the decision and be signed by the appeals board chair.

(g) The decision of the appeals board is final as of the issue date and no further administrative appeal will be provided.

(h) The filing of an appeal with the appeals board temporarily suspends the obligation to pay any tax that is the subject of the appeal pending a final decision by the appeals board.

(i) Penalty waiver or reduction requests are not subject to the protest/appeal process or timeline outlined in subsections 7.05.160(a) through 160(h). The taxfiler must file a written request with the Administrator detailing why a penalty should be waived within 30 days of receipt of a billing notice that assesses a penalty. The Administrator must respond to requests to reduce or waive penalties within 60 days from the date the written request is

received. As provided in subsections 7.05.260(f) and 7.05.270(e), the Administrator may waive or reduce penalties in certain situations. If the taxfiler has requested that penalties be waived and the Administrator denies the taxfiler's request for this discretionary waiver of penalties, the taxfiler may request a conference with the Administrator (or Administrator's designee) within 30 days of the date of the Administrator's notice of denial. If the conference with the Administrator results in a denial of the penalty waiver request, that decision is final and may not be appealed to the Appeals Board.

7.05.170 Return Due Date; Extensions

- (a) Tax returns must be on forms provided or approved by the Administrator. All tax returns must be filed together with payment of the specified tax by the fifteenth day of the fourth month following the end of the tax year. If the due date falls on a weekend or Federal or State holiday, the due date is the first business day following the weekend or holiday. With respect to the Business Income Tax Law, for cooperatives and non-profit corporations that have later due dates under Oregon tax law, the due date for filing tax returns with the Administrator must conform to the due date under Oregon tax law.
- (b) The Administrator may, for good cause, grant extensions for filing returns. However, no extension may be granted for more than six months beyond the initial due date. This extension does not extend the time to pay the tax. Payments made after the due date may be subject to interest and penalties as provided in this chapter.
- (c) The tax return must contain a written declaration, verified by the taxfiler, to the effect that the statements made therein are true.
- (d) The Administrator will prepare blank tax returns and make them available upon request. Failure to receive a form does not relieve any person from the obligation to pay a tax under either the Business Income Tax Law or Personal Income Tax Law.

7.05.180 Payment of Estimated Tax

- (a) Every taxfiler expecting to have a tax liability under Chapter 7.06 or Chapter 7.07 of \$1,000 or greater must estimate and pay the taxfiler's tax liability for the current tax year as follows:
 - 1. Quarterly payments as provided in Section 7.05.190; or
 - 2. Employer provided withholding from taxfiler's wages as provided in Section 7.06.120.

- (b) If a taxfiler is required to remit estimated tax payments, such amounts remitted must total either the lesser of ninety percent of the taxfiler's current year tax liability or one hundred percent of the taxfiler's reported prior year tax liability.
- (c) The Administrator will not impose underpayment interest for failure to make quarterly estimated payments for tax year 2021 (tax year beginning on or after January 1, 2021). For tax years beginning on or after January 1, 2022, the Administrator will impose penalties and interest as provided in this chapter.

7.05.190 Schedule for Payment of Estimated Tax

(a) A taxfiler required under Section 7.05.180 to make payments of estimated tax must make the payments in installments as follows:

1. One quarter or more of the estimated tax on or before the fifteenth day of the fourth month of the tax year;
2. One quarter or more of the estimated tax on or before the fifteenth day of the sixth month of the tax year;
3. One quarter or more of the estimated tax on or before the fifteenth day of the ninth month of the tax year; and
4. For business income taxfilers, the balance of the estimated tax must be paid on or before the fifteenth day of the twelfth month of the tax year;
5. For personal income taxfilers, the balance of the estimated tax must be paid on or before the fifteenth day of the first month of the subsequent tax year.

(b) Any payment of the estimated tax received by the Administrator for which the taxfiler has made no designation of the quarterly installment to which the payment is to be applied, will first be applied to underpayments of estimated tax due for any prior quarter of the tax year. Any excess amount will be applied to the installment that next becomes due after the payment was received.

~~(b)~~(c) If the due date falls on a weekend or federal holiday, the due date is the first business day following the weekend or holiday.

7.05.200 Tax Return Payment; Minimum

(a) Business Income Tax. Each business income tax return must be accompanied by a tax payment at the rate established in Metro Code Section 7.07.030, provided that each tax

return must be accompanied by a minimum tax of \$100. The minimum payment may have previously been paid by quarterly payments, an extension payment, or credit available from a prior tax year.

- (b) Personal Income Tax. Each personal tax return must be accompanied by a tax payment at the rate established in Metro Code Section 7.06.040.

7.05.210 Payment Plan; Fee

If a person fails to pay the Business Income Tax or Personal Income Tax when due, the Administrator may establish a payment plan pursuant to written policy. The Administrator may charge a setup fee for each payment plan established.

7.05.220 Settlement Offers and Agreements

- (a) The Administrator may, upon good and sufficient cause, make settlement agreements with taxfilers in the recomputation of taxes payable or in the collection of those taxes. These agreements must be consistent with ORS 305.150 and 305.155 and corresponding OARs. The Administrator will provide applications for settlement offers to taxfilers proposing settlement offers.
- (b) In addition to the general power granted under this section, the Administrator may, upon a showing of good and sufficient cause, grant a taxfiler's request when the Oregon Department of Revenue has granted relief to a taxfiler under ORS 316.368 or ORS 316.369. In such case, a taxfiler who is granted relief will be treated as a single taxfiler for purposes of the tax imposed under this Chapter.

7.05.230 Changes to Federal or State Tax Returns

- (a) If a taxfiler's reported income under applicable State laws imposing a tax on or measured by income is changed by the Federal Internal Revenue Service or the State Department of Revenue, or amended by the taxfiler to correct an error in the original Federal or State return, the taxfiler must file a report of that change with the Administrator within 60 days after the date of the notice of the final determination of change or after an amended return is filed with the Federal or State agencies. The report must be accompanied by an amended tax return with respect to such income and by any additional tax, penalty, and interest due.
- (b) The Administrator may assess deficiencies and grant refunds resulting from changes to any relevant Federal, State or local income tax return within the time periods provided for in Section 7.05.150, treating the report of change in Federal, State or business income tax return as the filing of an amended tax return.

- (c) The Administrator may assess penalties and interest on the additional tax due as provided in Sections 7.05.260, 7.05.270, and 7.05.280 or may refuse to grant a refund of taxes as a result of the amended return if the amended return is not filed with the Administrator within the time limits set forth in subsection (a).

7.05.240 Criminal Penalties

A violation of Section 7.05.090 or Section 7.05.100 is punishable, upon conviction thereof, by a fine not exceeding \$500 or by imprisonment for a period not exceeding six months, or by both fine and imprisonment. In addition, any Metro employee convicted for violation of Section 7.05.090 or Section 7.05.100 is subject to possible dismissal from employment and a possible prohibition from employment for a period of five years thereafter. Any agent of Metro who is convicted is ineligible for participation in any Metro contract for a period of five years thereafter.

7.05.250 Civil Penalty for Unauthorized Access of Tax Information

- (a) Definitions. As used in this section, the following definitions apply:

Computer Database means any computer application(s) used by the Administrator to calculate or store business, personal, and financial data collected under the authority granted by Metro Income Tax Laws.

Loss means any reasonable cost incurred by Metro or the Administrator, including but not limited to the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

- (b) Any individual who intentionally accesses the Computer Database without authorization will be fined:
1. \$10,000 if the individual acquires any information regarding any business or personal account found in the Computer Database;
 2. \$10,000 or the cost of the loss (whichever is greater) if the individual uses or attempts to use the acquired information for financial gain of any kind; or
 3. \$10,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Computer Database, and, as a result of such conduct, causes damage to the Computer Database.

7.05.260 Penalties for Violations of Business Income Tax Law

(a) A penalty will be assessed if a person:

1. Fails to file a tax return or extension request at the time required under Section 7.05.170(a) or 7.05.230(a); or
2. Fails to pay a tax when due.
3. The penalty under subsection (a) is:
 - A. Five percent of the total tax liability if the failure is for a period less than four months;
 - B. An additional penalty of twenty percent of the total tax liability if the failure is for a period of four months or more; and
 - C. An additional penalty of one hundred percent of the total tax liability of all tax years if the failure to file is for three or more consecutive tax years.

(b) A penalty will be assessed if a person who has filed an extension request:

1. Fails to file a tax return by the extended due date; or
2. Fails to pay the tax liability by the extended due date.
3. The penalty under subsection (b) is:
 - A. Five percent of the total tax liability if the failure is for a period of less than four months; and
 - B. An additional penalty of twenty percent of the total tax liability if the failure is for a period of four months or more.

(c) A penalty will be assessed if a person:

1. Fails to pay at least ninety percent of the total tax liability by the original due date; or
2. Fails to pay at least one hundred percent of the prior year's total tax liability by the original due date.

3. The penalty under subsection (c) is five percent of the tax underpayment, but not less than \$5.
- (d) The Administrator may impose a civil penalty of up to \$500 for each of the following violations of this chapter:
1. Failure to file any tax return within 60 days of the Administrator's original written notice to file; or
 2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment; or
 3. Failure to provide either documents or information as required by this chapter or Chapter 7.07 within 60 days of the Administrator's original written notice to provide the documents or information; or
 4. Failure to fully complete any form required under the Business Income Tax Law; or
 5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.07 unless the section has a separate penalty calculation.
- (e) The Administrator may impose a civil penalty under subsection (d) only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or respond in the original written notice.
- (f) The Administrator may waive or reduce any penalty determined under subsections (a) through (d) for good cause, according to and consistent with written policies.
- (g) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.07. For purposes of this subsection, a tax return position is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.
- (h) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Business Income Tax Law.

7.05.270 Penalties for Violations of Personal Income Tax Law

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

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

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

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

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

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

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

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

2. In the case of any item attributable to an abusive tax shelter: no reduction of the amount of the understatement will be made with regard to that item regardless of the existence of substantial authority for the treatment of the item by the taxfiler; and, no reduction of the amount of the understatement will be made with regard to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition to the disclosure, the Administrator determines in the Administrator's sole discretion, that the taxfiler reasonably believed that the tax treatment of the item was more likely than not the proper treatment. This chapter expressly adopts the definitions contained in ORS 314.402 and the administrative rules thereunder.
 3. The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the taxfiler that there was reasonable cause for the understatement or any portion thereof, and that the taxfiler acted in good faith.
- (e) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.06. For purposes of this subsection, a tax return position is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of "frivolous positions" as provided in Oregon Administrative Rule 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.
- (f) Failure of Administrative Compliance. The Administrator may impose a penalty of up to \$500 for the following violations of this chapter:
1. Failure to file any tax return within 60 days of the Administrator's original written notice to file;
 2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment;
 3. Failure to provide either documents or information as required by this chapter or Chapter 7.06 within 60 days of the Administrator's original written notice to provide the documents or information;
 4. Failure to fully complete any form required under the Personal Income Tax Law; or
 5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.06 unless the section has a separate penalty calculation.

The Administrator may impose a civil penalty under this subsection only if the Administrator gave notice of the potential for assessment of civil penalties for failure to comply or

respond in the original written notice. The Administrator may waive all or any part of the penalty imposed under this paragraph on a showing by the taxfiler that there was reasonable cause for the Failure of Administrative Compliance, and that the taxfiler acted in good faith.

- (g) Penalties cumulative. Each penalty imposed under this section is in addition to any other penalty imposed under this section.
- (h) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Personal Income Tax Law.

7.05.280 Interest

- (a) Interest will be assessed on any unpaid tax at the rate in subsection (c), computed from the original due date of the tax to ~~the fifteenth day of the month following~~ the date of payment.
- (b) Interest will be assessed on any unpaid or underpaid quarterly estimated payment required by Section 7.05.180 and Section 7.05.190 at the rate in subsection (c), computed from the due date of each quarterly estimated payment to the original due date of the tax return to which the estimated payments apply.
- (c) Unless specifically provided otherwise by administrative rule as provided in subsection (d), the interest rate is 0.833% simple interest per month or fraction thereof (ten percent per annum).
- (d) If the Administrator determines that the interest rate provided in subsection (c) is at least one percentage point more or less than the effective interest rate on January 1 charged by the State of Oregon Department of Revenue, the Administrator may adjust the interest rate by administrative rule to match the State of Oregon Department of Revenue interest rate. The Administrator may not adjust the interest rate more than once in a calendar year. The adjusted interest rate applies to unpaid tax or underpaid estimated payments outstanding on or after the effective date of the adjusted interest rate.
- (e) Notwithstanding subsection (b), there is no interest on underpayment of quarterly estimated payments if:
 1. The total tax liability of the prior tax year was less than \$1,000;
 2. An amount equal to at least ninety percent of the total tax liability for the current tax year was paid in accordance with Section 7.05.190; or
 3. An amount equal to at least one hundred percent of the prior year's total tax liability was paid in accordance with Section 7.05.190.

- (f) For purposes of subsection (b), the amount of underpayment is determined by comparing ninety percent of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return. However, if one hundred percent of the prior year's total tax liability is paid to the Administrator by the due date of the fourth quarterly payment, the Administrator may use the prior year's tax liability if doing so will reduce the amount of interest owed.
- (g) For purposes of subsection (a), the amount of tax due on the tax return will be reduced by the amount of any tax payment made on or before the date for payment of the tax in accordance with Section 7.05.170(a) or Section 7.05.190.
- (h) Interest at the rate specified in subsection (a) accrues from the original due date without regard to any extension of the filing date.
- (i) Any interest amounts properly assessed in accordance with this section may not be waived or reduced by the Administrator, unless specifically provided for by written policy.

7.05.290 Payments Applied

Tax payments received will be applied first to any penalty accrued, then to interest accrued, then to taxes due, unless the Administrator determines in accordance with its written policies that a more equitable method exists for a particular taxfiler's account. The Administrator will apply tax payments received without a designation for a specific period to the oldest periods first in the order set forth above.

7.05.300 Interest on Refunds

When a taxfiler is entitled to a refund of a portion or all of a tax paid to the Administrator, the taxfiler will receive simple interest on that amount at the rate specified in Section 7.05.280(c), subject to the following:

- (a) Any overpayments will be refunded with interest for each month or fraction thereof for a period beginning four months after the later of:
 1. The due date of the tax return;
 2. The date the tax return was filed or the refund was otherwise requested; or
 3. The date the tax was paid, to the date of the refund.

- (b) Any overpayments of taxes that are the result of an amended return being filed will be refunded with interest for each month or fraction thereof for the period beginning four months after the date the taxfiler filed the amended return. This subsection applies to tax returns that are amended due to a change to any relevant Federal, State or local income tax return.

7.05.310 Accountability of Funds; Audits

- (a) Every year a public accounting firm must conduct a financial audit of the revenue generated by the Business Income Tax and Personal Income Tax Laws and the distribution of that revenue. Metro will make the audit public as well as any report to the Metro Council regarding the results of the audit. Metro may use the revenue generated by the taxes to pay for the costs of the audit required under this section.
- (b) The revenue and expenditures from the taxes are subject to performance audits conducted by the Office of the Metro Auditor.

7.05.320 Severability

If a court of competent jurisdiction finds that any part, section or provision of this chapter is unconstitutional, illegal or invalid, that finding affects only that part, section or provision of the chapter and the remaining parts, sections or provisions remain in full force and effect.

CHAPTER 7.06

PERSONAL INCOME TAX

Section	Title
7.06.010	Title
7.06.020	Administration of Personal Income Tax Law
7.06.030	Definitions
7.06.040	Personal Income Tax Imposed; Filing Status
7.06.050	Effective Date and Reauthorization; Term
7.06.060	Tax Exemptions
7.06.070	Individuals Required to File a Tax Return
7.06.080	Taxfiler Identification Number
7.06.090	Deduction for Pass-through Income
7.06.100	Proration of Income for Part Year Residents
<u>7.06.101</u>	<u>Credit for Personal Income Taxes Paid by Resident to Another State Jurisdiction</u>
7.06.110	Overpayments of Personal Income Tax
7.06.120	Withholding Tax on Wages
7.06.130	Withholding Reconciliation by Employer for Payment of Withheld Tax
7.06.140	Final Tax Returns(s) of Deceased Taxfiler
7.06.150	Severability

7.06.010 Title

This chapter is known and may be cited as the Metro Personal Income Tax Law.

7.06.020 Administration of Personal Income Tax Law

The Personal Income Tax Law will be administered under the provisions set forth in this chapter and Metro Code Chapter 7.05, as applicable.

7.06.030 Definitions

For purposes of this chapter, the terms used are defined as provided in Chapter 7.05, unless the context requires otherwise.

7.06.040 Personal Income Tax Imposed; Filing Status

- (a) A tax of one percent is imposed on the entire Oregon Taxable Income of every resident of the District subject to tax under ORS chapter 316. Taxfilers that file a joint Metro return may exempt the first \$200,000 of taxable income; taxfilers that file a single Metro return may exempt the first \$125,000 of taxable income.
- (b) A tax of one percent is imposed upon the Metro Taxable Income of every nonresident of the District subject to tax under ORS chapter 316. Taxfilers that file a joint Metro return may exempt the first \$200,000 of taxable income; taxfilers that file a single Metro return may exempt the first \$125,000 of taxable income.
- (c) Taxfiler filing status must follow the filing status of the taxfiler's Oregon income tax return.
 - 1. Taxfilers using Oregon filing statuses married filing jointly, head of household and qualifying widow(er) must file a joint Metro return.
 - 2. Taxfilers using Oregon filing statuses single and married filing separately must file a single Metro return.

7.06.050 Effective Date and Reauthorization; Term

- (a) The Metro Personal Income Tax takes effect in Tax Year 2021 (Tax Year beginning on or after January 1, 2021).

- (b) The Metro Personal Income Tax will remain in effect for all periods through Tax Year 2030 (Tax Year beginning on or after January 1, 2030).
- (c) After Tax Year 2030, the tax will expire unless reauthorized by Metro voters on or before that date. After the tax expires, Metro or the entity authorized to collect the Personal Income Tax may continue to take all reasonable and necessary actions to ensure that taxes still owing are paid in full.

7.06.060 Tax Exemptions

- (a) Exemptions Required by Law. A person whom Metro is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon or the Metro Charter is exempt from payment of the tax set forth in this chapter.
- (b) Notwithstanding the exemptions listed in subsection (a), the Administrator may require the filings of tax returns or other documentary verification of any exemption claimed under this section.

7.06.070 Individuals Required to File a Tax Return

- (a) Every resident of the District who is required to file an Oregon income tax return for the taxable year and who reports Oregon Taxable Income over \$200,000 using Oregon filing status married filing jointly, head of household or qualifying widow(er), or over \$125,000 using Oregon filing status single or married filing separately is required to file a Metro Personal Income Tax return.
- (b) Every nonresident of the District who is required to file an Oregon income tax return for the taxable year and who reports Metro Taxable Income over \$200,000 using Oregon filing status married filing jointly, head of household or qualifying widow(er), or over \$125,000 using Oregon filing status single or married filing separately is required to file a Metro Personal Income Tax return.
- (c) Nothing contained in this section precludes the Administrator from requiring any individual to file a return when, in the judgment of the Administrator, the individual should file a return.
- (d) The Administrator will release the form that the taxfiler must file. The Administrator may accept substitute forms (such as created by tax software) provided the forms include identical information in comparable format as provided on the Metro tax return form.
- (e) A copy of the taxfiler's Oregon tax return is required to be filed with the tax return. If the personal income tax has been withheld from wages, a copy of Form W-2 is required to be

filed with the Personal Income Tax return unless otherwise notified by the Administrator. The Administrator is authorized to require a taxfiler to submit additional information with the taxfiler's report if, in the Administrator's sole discretion, such information is necessary to effectively administer the tax imposed under this chapter.

7.06.080 Taxfiler Identification Number

- (a) A taxfiler must provide information on tax records as required on and forms established by the Administrator. This includes tax returns, refund claims, applications, registrations, records, requests for information, reports, and other items of a similar nature filed with the Administrator as required by the item being filed.
- (b) The Administrator uses Tax Identification Numbers as a part of providing expeditious and practicable processing systems in the administration of the laws by the Administrator, including (but not limited to) such matters as the issuance of tax refunds, allocation or application of incoming tax payments and other matters of a similar nature. The Administrator may require a taxfiler to provide a copy of the taxfiler's social security card.
- (c) A social security number used as a taxfiler identification number is confidential information. Disclosure of social security numbers resulting in a breach of confidentiality will result in penalties pursuant to Metro Code Section 7.05.240.

7.06.090 Deduction for Pass-through Income

- (a) A taxfiler is allowed a deduction from taxable income for pass-through income subject to tax under Metro Chapter 7.07 Business Income Tax. Pass-through income comes from a business whose net income is taxed on the owners' or partners' personal tax returns. This includes, but is not limited to, entities taxed as partnerships and S-corporations.
- (b) The deduction amount allowed in subsection (a) is the individual owners' or partners' distributive share of taxable income on the Metro Business Income Tax return, as calculated and reported to the owner or partner by the business.
- (c) If the taxable income per the Metro Business Income Tax return is zero, the taxfiler is not allowed a deduction.

7.06.100 Proration of Income for Part-Year Residents

If a taxfiler is a part-year resident of the District for the tax year at issue, the taxfiler's taxable income includes:

- (a) For the portion of the year in which the taxfiler was a resident of Metro, the taxfiler's Oregon Taxable Income;
- (b) For the portion of the year in which the taxfiler was a nonresident, the taxfiler's Metro Taxable Income.

7.06.101 Credit for Personal Income Taxes Paid by Residents to Another State Jurisdiction

- (a) A resident that pays personal income taxes based on or measured by net income to another state jurisdiction is allowed a credit against tax otherwise owed under this chapter for the amount of income tax imposed on the taxfiler for the tax year by that other state jurisdiction on income derived from sources therein and that is also subject to the Metro Personal Income Tax.
- (b) The credit provided under this section is the lesser of the District tax based on mutually taxed income or the tax actually paid to the other state.
- (c) No credit is allowed under this section for income taxes paid to a state that allows a nonresident a credit against the income taxes imposed by that state for taxes paid or payable to the state of residence.
- (d) The Administrator will establish by written policy the criteria and procedures for obtaining the credit, such as furnishing proof of tax payment to another state jurisdiction, and examples when this credit is allowed. The Administrator may refer to ORS 316.082 to establish these policies.

7.06.110 Overpayments of Personal Income Tax

To the extent a refund is allowed by Metro Code 7.05.150(a), the Administrator will apply overpayments of the personal income tax in the following manner:

- (a) Overpayments will first be applied against any outstanding balances due from prior years (with the net overpayment, if any, to be refunded).
- (b) If the Administrator determines that prior Metro tax returns were due but have not yet been filed, overpayments will be transferred as a credit to the estimated tax account of ~~to~~ the earliest prior year~~(s)~~ yet to be filed.
- (c) If the Administrator determines that no outstanding balances are due and no prior returns are outstanding, the Administrator will offer the taxfiler the option of either a refund of all overpayments or a credit of the balance to the current open estimated tax account.

- (d) The credit will be applied as of the fifteenth day of the fourth month of the taxable year to the extent that the overpayment of tax is attributable to payments received prior to that date. Payments received after the first quarter estimated tax due date will be applied to estimated tax as of the date the payment is received. In the case of an amended or delinquent return, the amount will be credited to the estimate tax installment as of the date the amended or delinquent return was filed or the date a payment was received, whichever is later.
- (e) No refunds or credits toward estimated taxes will be allowed for overpayments on returns filed outside the time periods for refunds allowed by Metro Code 7.05.150(a).

7.06.120 Withholding Tax on Wages

(a) Employer Withholding from Employee Wages.

1. Beginning January 1, 2021 withholding will be voluntary. However, an employer must offer to its employees in writing to withhold the Metro personal income tax from the employees' wages as soon as the employer's payroll system(s) can be configured to capture and remit the taxes withheld.
2. Beginning January 1, 2022, and each year thereafter, withholding is mandatory for all employees ~~that who~~ work in the Metro District and earn \$200,000 or more during the calendar year. ~~This applies to residents and nonresident employees.~~
 - A. For employees who are residents of the District, withholding is calculated on all wages.
 - A.B. For employees who are nonresidents of the District, the minimum required withholding is calculated on wages paid for services performed in the District.
3. Employers must also offer withholding to all employees who are not subject to mandatory withholding.
- ~~2.4.~~ 2.4. An employee below the \$200,000 earning threshold in subsection (2) may choose to "opt in" to withholding with the employer, based on the employee's tax situation. An employee who meets the mandatory withholding criteria in subsection (2) may choose to "opt out" of withholding by the employer based on the employee's tax situation. The Administrator will provide guidance to employers on the information a taxfiler (employee) must provide to taxfiler's employer to "opt in" or "opt out" of withholding. Once provided, the employer must honor the employee's withholding election until notified of a change.
- ~~3.5.~~ 3.5. An employer must provide all "opt out" information to the Administrator on an annual basis in such form as the Administrator prescribes or upon a withholding audit by the Administrator.

- (b) Due Date of Withheld Taxes to Administrator by Employer. An employer who withholds the Personal Income Tax from employee payroll must remit the withheld amounts to the Administrator within the time that each employer is required to remit taxes withheld for state income tax purposes for any period.

Withheld amounts remitted to the Administrator must be accounted for as part of the collections under this section. No employee has any right of action against an employer in respect of any moneys deducted from wages and remitted in compliance or intended compliance with this section.

- (c) Personal Liability of Responsible Officers, Partners, Members, or Employees. If an employer withholds amounts due under this chapter from an employee's wages with proper authorization from the employee, the employer must remit that withheld tax on the due date as set forth in subsection (b). This chapter provides no extension of time, nor can the Administrator grant an extension. The employer holds the funds involved in trust for Metro, and any use of the funds by the employer is an illegal conversion.

1. When an employer fails to remit in whole or in part any tax withheld at the time required under this section, the Administrator will assess a late payment penalty. The penalty is:
 - A. Five percent of the balance of the tax paid after the original due date if the failure to remit is for a period less than or equal to four months;
 - B. An additional 20 percent of the balance of the tax paid after the original due date if the failure to remit is for a period greater than four months; and,
 - C. An additional penalty of 100 percent of the balance of the tax paid after the original due date of all tax years if the failure to remit is for three or more consecutive tax years.

The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the employer that there was reasonable cause for the failure to remit the withheld taxes or any portion of the withheld taxes and that the employer acted in good faith.

2. If an employer fails to remit to the Administrator amounts that have been withheld under this section, any Responsible Officer, Partner, Member, or Employee of the employer is personally responsible for the amounts that were withheld but not remitted. A Responsible Officer, Partner, Member, or Employee is included in the definition of "employer." This subsection specifically adopts the criteria set forth in OAR 150-316-0243(2) and (3) to determine whether an individual is a Responsible Officer, Partner, Member, or Employee.
3. The Administrator is authorized to collect from the Employer, including any individuals who are included in the definition of employer, pursuant to subsection 2 above, or any combination thereof, up to 100 percent of the tax that was withheld but not remitted to

the Administrator. In addition, the employer is subject to interest for unpaid taxes as set forth in Chapter 7.05.

- (d) Credit for Tax Withheld. If the tax has actually been withheld by an employer and reported to the Administrator, credit or refund will be made to the employee even though the employer has not paid the tax to the Administrator. 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 the tax, the Administrator will allow the employee credit or refund for the amount so proved. Ordinarily, minimum satisfactory evidence will consist of a pay 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.

7.06.130 Withholding Reconciliation by Employer for Payment of Withheld Tax

- (a) Quarterly Withholding Reconciliation. On or before the last day of the month following the quarter in which withholdings pursuant to 7.06.120(a) have been made, the employer must file a quarterly tax report. If the due date is on a weekend or federal holiday, the report is due the next business day.
- (b) Annual Withholding Reconciliation. On or before the last day of January following any calendar year in which withholdings pursuant to 7.06.120(a) have been made, the employer must file with the Administrator a reconciliation of taxes withheld and taxes remitted. If the due date is on a weekend or federal holiday, the reconciliation is due the next business day.
- (c) The Administrator will determine by administrative rule the required format and information necessary to comply with subsections (a) and (b) above.

7.06.140 Final Tax Return(s) of Deceased Taxfiler

The Administrator may grant a fiduciary's request or enter into a settlement agreement with respect to the estates of decedents that are consistent with ORS 316.387 and corresponding Oregon Administrative Rules.

7.06.150 Severability

If a court of competent jurisdiction finds that any part, section or provision of this chapter is unconstitutional, illegal or invalid, that finding affects only that part, section or provision of the chapter and the remaining parts, sections or provisions remain in full force and effect.

CHAPTER 7.07

BUSINESS INCOME TAX

Section	Title
7.07.010	Title
7.07.015	Administration of Business Income Tax Law
7.07.020	Definitions
7.07.030	Business Income Tax Imposed
7.07.040	Effective Date and Reauthorization; Term
7.07.050	Tax Exemptions
7.07.060	Presumption of Doing Business
7.07.070	Income Determinations
7.07.080	Apportionment of Income
7.07.090	Presumptive Tax
7.07.100	Reporting for Pass-through Through Entities
7.07.110	Severability

7.07.010 Title

This chapter is known and may be cited as the Metro Business Income Tax Law.

7.07.015 Administration of Business Income Tax Law

The Business Income Tax Law will be administered under the provisions set forth in this chapter and Metro Code Chapter 7.05, as applicable.

7.07.020 Definitions

For the purpose of this chapter, the terms used are defined as provided in in Chapter 7.05, unless the context requires otherwise.

7.07.030 Business Income Tax Imposed

A tax of one percent is imposed on the net income of each person doing business within the District.

7.07.040 Effective Date and Reauthorization; Term

- (a) The Metro Business Income Tax takes effect in Tax Year 2021 (Tax Year beginning on or after January 1, 2021).
- (b) The Metro Business Income Tax will remain in effect for all periods through Tax Year 2030 (Tax Year beginning on or after January 1, 2030).
- (c) After Tax Year 2030, the tax will expire unless reauthorized by Metro voters on or before that date. After the tax expires, Metro or the entity authorized to collect the Business Income Tax may continue to take all reasonable and necessary actions to ensure that taxes still owing are paid in full.
- (d) The payment of a tax required under this chapter and the acceptance of that tax payment does not entitle a taxfiler to carry on any business not in compliance with all the requirements of this code and all other applicable laws.

7.07.050 Tax Exemptions

The following exemptions apply:

- (a) Small Business Exemption. A person whose gross receipts from all business income, both within and without the District, that is equal to or less than \$5 million is exempt from the payment and filing requirements of the tax set forth in this chapter.
- (b) Sole Proprietorships and Disregarded Entities. Sole proprietorships and disregarded entities owned by an individual are not subject to tax under this chapter and are subject to tax under the Personal Income Tax Law in Chapter 7.06.
- (c) Exemptions Required by Law. A person whom Metro is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the State of Oregon or the Metro Charter is exempt from payment of the tax set forth in this chapter.
- (d) Corporations exempt from the State of Oregon Corporation Excise Tax under ORS 317.080, provided that any such corporation subject to the tax on unrelated business income under ORS 317.920 to 317.930 must pay a tax based solely on such income.
- (e) Trusts exempt from federal income tax under Internal Revenue Code Section 501, provided that any exempt trust subject to tax on unrelated business income and certain other activities under Internal Revenue Code Section 501(b) are subject to the tax under this chapter based solely on that income.
- (f) Any person whose only business transactions are exclusively limited to operating within a permanent structure a display space, booth or table for selling or displaying merchandise by an affiliated participant at any trade show, convention, festival, fair, circus, market, flea market, swap meet or similar event for less than 14 days in any tax year.
- (g) Notwithstanding the exemptions listed in subsections (a)-(f), the Administrator may require the filings of tax returns or other documentary verification of any exemption claimed under this section.

7.07.060 Presumption of Doing Business

A person is presumed to be doing business in the District and subject to this chapter if engaged in any of the following activities:

1. Advertising or otherwise professing to be doing business within the District;
2. Delivering goods or providing services to customers within the District;
3. Owning, leasing or renting personal or real property within the District;

4. Engaging in any transaction involving the production of income from holding property or the gain from the sale of property, which is not otherwise exempted in this chapter. Property may be personal, including intangible, or real in nature;
5. Engaging in any activity in pursuit of gain which is not otherwise exempted in this chapter; or
6. Engaging in any activity that constitutes substantial nexus with the District.

7.07.070 Income Determinations

The net income arising from any business, as reportable to the State of Oregon (State) for corporation, S-corporation, partnership or trust excise or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for a net operating loss carry-forward or carry-back is subject to the Metro Business Income Tax.

- (a) Partnerships, S-corporations, limited liability companies (excluding disregarded entities), limited partnerships, limited liability partnerships, family limited partnerships, estates, and trusts are liable for the business tax and not the individual partners, shareholders, members, beneficiaries or owners. The income of these entities must include all income received by the entity including ordinary income, interest and dividend income, income from sales of business assets and other income attributable to the entity.
- (b) If one or more persons are required or elect to report their income to the State for corporation excise or income tax purposes in a consolidated, combined or joint return, a single return must be filed by the person filing such return. In such cases, net income means the net income of the consolidated, combined or joint group of taxfilers before any allocation or apportionment for operation out of the state, or deduction for a net operating loss carrying-forward or carry-back.
- (c) The absence of reporting income to the Internal Revenue Service or the State of Oregon does not limit the ability of the Administrator to determine the correct income of the taxfiler through examination under Section 7.05.130.
- (d) Estates and trusts. In determining income for estates and trusts, income is measured after distribution of profits to beneficiaries. No additional deduction is allowed.
- (e) Nonbusiness income. In determining income under this section, an allocation is allowed for nonbusiness income as reported to the State of Oregon. However, income treated as nonbusiness income for State of Oregon tax purposes may not necessarily be defined as nonbusiness income under the Business Income Tax Law. Interest and dividend income, rental income or losses from real and personal business property, and gains or losses on sales of property or investments owned by a trade or business are treated as business

income for purposes of the Business Income Tax Law. Income derived from non-unitary business functions reported at the state level may be considered nonbusiness income. Non-unitary income will not be recognized at an intra-state level. The taxfiler has the burden of showing that income is nonbusiness income.

- (f) Certain Deductions Not Allowed. In determining income, no deduction is allowed for:
1. Taxes based on or measured by net income;
 2. The federal built-in gains tax; or
 3. The City of Portland Clean Energy Surcharge.
- (g) Ordinary gain or loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property must be included as ordinary gain or loss.
- (h) Net operating loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75% of the income determined for the current tax year before this deduction but after all other deductions from income allowed by this section and apportioned for business activity both within and without the District.
1. When the operations of the taxfiler from doing business both within and without the District result in a net operating loss, that loss will be apportioned in the same manner as the net income under Section 7.07.080. A net operating loss may not be carried forward from any tax year during which the taxfiler conducted no business within the District or the taxfiler was otherwise exempt from payment of the Business Income Tax unless specifically provided for by administrative rule or written policy.
 2. In computing the net operating loss for any tax year, the net operating loss of a prior tax year is not allowed as a deduction.
 3. The net operating loss of the earliest tax year available must be exhausted before a net operating loss from a later tax year may be deducted.
 4. The net operating loss in any tax year is allowed as a deduction in any of the five succeeding tax years until used or expired. Any partial tax year will be treated the same as a full tax year in determining the appropriate carry-forward period.

7.07.080 Apportionment of Income

- (a) "Jurisdiction to tax" occurs when a person engages in business activities in a jurisdiction that is not protected from taxation by Public Law 86- 272 (15 U.S.C. Section 381-384). Public Law 86-272 applies to interstate sales of tangible personal property. For purposes of the

Business Income Tax Law, the limits imposed by Public Law 86-272 for interstate jurisdiction to tax are also presumed to apply on an intrastate basis. If a taxfiler's business is based in the District, a taxfiler must have business activity outside the District that results in a jurisdiction to tax outside the District to apportion the income of the business. Without jurisdiction to tax outside the District, all income of a business is taxable by Metro.

- (b) "Business activity" means any of the elements of doing business. The income reportable as income earned from business activity within the District will include all business income from sources within the District that is taxable income under Oregon tax laws and regulations unless otherwise exempted or excluded in this chapter.
- (c) In computing the tax, taxfilers that have income from business activity both within and without the District must determine the income apportioned to the District by multiplying the total net income from the taxfiler's business by a fraction, the numerator of which is the total gross income of the taxfiler from business activity in the District during the tax year, and the denominator of which is the total gross income of the taxfiler from business activity everywhere during the tax year.
- (d) In determining the apportionment of gross income within the District under subsection (c):
 - 1. Sales of tangible personal property are deemed to take place in the District if the property is delivered or shipped to a purchaser within the District regardless of the f.o.b. point or other conditions of sale. If sales of tangible personal property are shipped from the District to a purchaser located where the taxfiler is not taxable, those sales are not apportioned to the District.
 - 2. Sales other than sales of tangible personal property are deemed to take place in the District, if the income producing activity is performed in the District.
- (e) Certain industries or incomes are subject to specific apportionment methodologies. These methodologies are described in administrative rules adopted in accordance with Section 7.05.070 or Metro ordinance. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes for apportionment of gross sales will be used in cases in which the Administrator has not adopted a rule regarding the apportionment of that industry or income. When gross sales as reported to Oregon are used for apportionment purposes, those gross sales are defined as gross income for apportionment purposes under this chapter. All apportionment methodologies directed under this subsection will be a single factor gross income apportionment as directed under subsection 7.07.080 (c) and subsection 7.07.080 (d). In those specific cases where the state has directed allocation of income, that income will be apportioned for purposes of this chapter, unless allocation is otherwise allowed in this chapter.
- (f) If the apportionment provisions of subsection (c) do not fairly represent the extent of the taxfiler's business activity in the District and result in the violation of the taxfiler's rights

under the Oregon Constitution or the United States Constitution, the taxfiler may petition the Administrator to permit the taxfiler to:

1. Use the method of apportionment used by the taxfiler under the applicable laws of the state imposing taxes upon or measured by net income; or
2. Use any other method to effectuate an equitable apportionment of the taxfiler's income.

7.07.090 Presumptive Tax

- (a) If a person fails to file a return, a rebuttable presumption exists that the tax payable amounts to \$500 for every tax year for which a return has not been filed.
- (b) Nothing in this section prevents the Administrator from assessing a tax due that is less than or greater than \$500 per tax year.
- (c) If the taxfiler filed a tax return the previous tax year, then presumptive taxes assessed under this section will be considered a tax return. Presumptive taxes assessed under this section are considered filed documents and are subject to the time limitations for deficiencies and refunds as described in Metro Code Section 7.05.150.
- (d) Taxes determined under this section are subject to penalties and interest from the date the taxes should have been paid as provided in Section 7.05.170 in accordance with Sections 7.05.260 and 7.05.280. The Administrator will send notice of the determination and assessment to the taxfiler.

7.07.100 Reporting for Pass-through Through Entities

- (a) Chapter 7.06, Personal Income Tax, allows a deduction for pass-through income subject to tax under this chapter. For purposes of this section, pass-through income subject to tax means income from a business whose net income is taxed on the owners' or partners' personal tax returns. This includes, but is not limited to, entities taxed as partnerships and S-corporations.

(b) A business must ~~calculate and~~ report to the owners or partners with the Schedule K-1 that:

1. It was subject to the Metro Business Income Tax for the stated tax year; and

2. The Metro apportionment percentage as determined under Section 7.07.080. ~~the amount allowed in subsection (a) to the owners or partners. The~~

~~total amount of pass-through income subject to tax an entity reports to owners or partners on Schedule K-1 cannot exceed the taxable income of the business for that tax year.~~

7.07.110 Severability

If a court of competent jurisdiction finds that any part, section or provision of this chapter is unconstitutional, illegal or invalid, that finding affects only that part, section or provision of the chapter and the remaining parts, sections or provisions remain in full force and effect.

IN CONSIDERATION OF

- ORDINANCE 21-1465, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTERS 7.05, 7.06 AND 7.07 TO ADD CERTAIN CLARIFICATIONS AND MAKE HOUSEKEEPING CHANGES

Date: August 23, 2021
Department: Planning and Development
Meeting Date: September 9, 2021

Prepared and Presented by: Rachael
Lembo
Length: 10 minutes

ISSUE STATEMENT

In December 2020, the Metro Council adopted Metro Code Chapters 7.05, "Income Tax Administration for Personal and Business Taxes", 7.06 "Personal Income Tax", and 7.07 "Business Income Tax". These chapters codified certain provisions of the Supportive Housing Services Measure approved by the voters, and established code to implement the taxes imposed by the measure in an effective and efficient manner.

After adoption of the income tax code, Metro continued work on implementation of the tax collection system with our tax administrator, the City of Portland Revenue Division. Administrative rules were developed with a subsection of our Tax Implementation Advisory Table, posted for public comment and hearing, and adopted by our COO in July 2021.

As we referred to our code throughout this process we identified areas for housekeeping updates or certain clarifications. The proposed amendments do not change the intent of the code as adopted by Council, but clarify that intent.

ACTION REQUESTED

Staff requests adoption of Ordinance No. 21-1465.

IDENTIFIED POLICY OUTCOMES

The proposed amendments to Metro income tax codes clarify the intent of the code adopted in December 2020. These codes established rules to implement the taxes imposed by the measure in an effective and efficient manner.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

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

STAFF RECOMMENDATIONS

Staff recommend that Metro Council adopt Ordinance No. 21-1465.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Metro staff formed a tax implementation advisory table in June 2020 to advise on technical aspects of tax implementation, technical issues, and provide recommendations to ensure a smooth, legal and easy tax collection process. Members included experts in taxation, tax policy, tax implementation and business stakeholders. The table met with staff multiple times and provided input on development of the tax codes.

Council provided direction on code development at a November 2020 work session, and three Council meetings in December 2020. The code was adopted on December 17, 2020.

Tax collection began in April 2021. Collections are expected to begin slowly, as is common with any new tax. Through July 2021 total collections are \$2 million, and \$1.8 million has been distributed to our local implementation partners.

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.

Other Metro programs and projects are funded through bond measures or property tax levies. This is the first program at Metro that uses personal and business income taxes, and it is the first local personal income tax in the region since Multnomah County's personal income tax ended in 2006.