BUSINESS INCOME TAX
ADMINISTRATIVE RULES AR 7.07-1000 through 1115

Income Tax Administration

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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.

Effective: August 8, 2021

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.

Effective: August 8, 2021

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.

Effective: August 8, 2021
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.

Example 1:
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.

Example 2:
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.

Effective: August 8, 2021
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.

Example:
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).

Effective: August 8, 2021
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

Effective: August 8, 2021
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.

Effective: August 8, 2021
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.

Effective: August 8, 2021
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

Effective: August 8, 2021
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.

Effective: August 8, 2021
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. Distributions of partnership assets can also create basis disparities. IRC Section 754 allows some remedy for these disparities 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 partners. 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 partners' 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 734 and 743 adjustments) is not allowed for the Business Income Tax. The stepped-up basis applies to the transferee individual partners(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 754 adjustments.

<u>Example 1:</u>
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 X as equal partners (each owning 50%). Corporation C bought its interest (50%) in Partnership X solely from Corporation A. Corporation C does business in the Metro district in addition to its ownership percentage of Partnership X. Corporation C sells its interest in Partnership X three years later. Corporation C can include its stepped-up basis in determining the reportable gain from the sale of the interest in Partnership X when determining Metro taxable income because Partnership X did not get to claim any of the additional depreciation from Corporation C's stepped up basis.

Effective: January 30, 2023
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.

Effective: August 8, 2021
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.

Effective: August 8, 2021
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.

Effective: August 8, 2021
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.

Effective: August 8, 2021
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.

Effective: August 8, 2021
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.

Example 4:
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.

Effective: August 8, 2021
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).

Example 1:
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.

Example 2:
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.

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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.

Example 3:
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.

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.

Example 5:
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.

Example 6:
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.

Effective: August 8, 2021
Metro Code 7.07.080

7.07 – 1095 Apportionment for Banking Income
Bank has the same meaning as used in ORS 706.008(1). “Banking activities” are defined as the receiving or accepting 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 City/County gross banking income and City or County gross income from other non-banking business income.

The formula to determine Metro district banking gross income is:

Metro district Deposits		Total		Metro district
----------	x	Banking	=	Banking Gross Deposits
Everywhere Receipts[1]		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 Rental 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%

Note: This rule applies to tax years beginning prior to January 1, 2022. It does not apply to tax years beginning on or after January 1, 2022.

Effective: August 8, 2021
Metro Code 7.07.080

Amended: March 14, 2022
Metro Code 7.07.080

7.07 – 1096 Apportionment for Financial Institutions

"Financial institution" has the same meaning as defined in ORS 314.610(4). Financial institutions having income that is taxable both within and without the Metro district will apportion income according to the

provisions of OAR 150-314-0088. Where OAR 150-314-0088 refers to state, a taxpayer should interpret that as the Metro district unless context requires otherwise.

Effective: April 13, 2022
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.

Effective: August 8, 2021
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.

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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.

Example:
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.

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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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Metro Code 7.07.080