

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 (Applies to tax years beginning on or after January 1, 2023)

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 (Applies to tax years beginning prior to January 1, 2023)

This section applies to tax years beginning prior to January 1, 2023. For Tax years beginning on or after January 1, 2023, see Section 7.07.071.

The net income arising from any business, as reportable to the State of Oregon (State) for corporation 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.

7.07.071 Income Determinations (Applies to tax years beginning on or after January 1, 2023)

This section applies to tax years beginning on or after January 1, 2023.

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 carry-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) 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.

(f) 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.

(g) 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, such 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 license 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 (Applies to tax years beginning prior to January 1, 2023)

This section applies to tax years beginning prior to January 1, 2023. For Tax years beginning on or after January 1, 2023, see Section 7.07.081.

- (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.

7.07.081 Apportionment of Income (Applies to tax years beginning on or after January 1, 2023)

This section applies to tax years beginning on or after January 1, 2023

(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]. The District's standard for jurisdiction to tax, or nexus, is the same as the State of Oregon's found in the Oregon Revised Statutes and Oregon Administrative Rules related to taxation. 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

incomes from sources within the District that is taxable income under Oregon tax laws and regulations unless otherwise exempted or excluded in this chapter.

(c) The District adopts the apportionment and allocation provisions found in the Oregon Revised Statutes, Chapters 314, 317, and 318 and related Oregon Administrative Rules unless otherwise provided in this chapter or by administrative rule. All references to Oregon or the state should be read as referring to the District. All business income must be apportioned to the District by multiplying business income by the sales factor only.

(d) In determining the sales factor numerator under subsection (c): 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.

(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 and Oregon Administrative Rules for the sales factor, will be used in cases in which the Administrator has not adopted a rule regarding the apportionment of that industry or income. All apportionment methodologies directed under this subsection will be a single sales factor as directed under subsection 7.07.081 (c) and subsection 7.07.081 (d).

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 report to the owners or partners with the Schedule K-1 that:

- a. It was subject to the Metro Business Income Tax for the stated tax year; and
- b. The Metro apportionment percentage as determined under Section 7.07.080.

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.