

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

ORDINANCE NO. 1104

Amending MCC Chapter 12, Business Income Tax

(Language ~~stricken~~ is deleted; double underlined language is new.)

Multnomah County Ordains as follows:

Section 1. §12.020 is amended as follows:

12.020 Conformity To State Income Tax Laws.

———(A)——The Business Income Tax Law shall be construed in conformity with the laws and regulations of the state imposing taxes on or measured by net income as those laws existed for that particular tax year~~they are amended on or before December 31, 1997.~~ The Administrator shall have the authority by written policy~~administrative rules adopted in accordance with § 12.210,~~ to connect to or disconnect from any legislative enactment that deals with income or excise taxation or the definition of income. _

———(B)——Should a question arise under the Business Income Tax Law on which this chapter is silent, the Administrator may look to the laws of the State of Oregon for guidance in resolving the question, provided that the determination under state law is not in conflict with any provision of this chapter or the state law is otherwise inapplicable.

Section 2. § 12.100 is amended as follows

12.100 Definitions.

For the purpose of this chapter, the terms used in this chapter shall be defined as provided in this chapter or in Administrative Rules, adopted under § 12.210 of this chapter, unless the context requires otherwise.

ADMINISTRATOR. The ~~Bureau of Licenses, City of Portland,~~ Revenue Bureau along with its employees and agents.

APPEALS BOARD. The hearings body designated by the Board to review taxfiler appeals from final determinations by the Administrator.

BUSINESS. 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.

CONTROLLING SHAREHOLDER. Any person, either alone or together with that person's spouse, parents, and/or children, who, directly or indirectly, owns more than 5% of any class of outstanding stock or securities of the taxfiler. The term **CONTROLLING SHAREHOLDER** may mean the controlling shareholder individually or in the aggregate.

DAY. A calendar day unless otherwise noted.

DIRECTOR. Multnomah County Chief Financial Officer.

DIVISION. The Finance Budget & Tax Office of the county.

DOING BUSINESS. 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 his or her own behalf.

EMPLOYEE. Any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance.

INDIVIDUAL. A natural person.

NET OPERATING LOSS. 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. Income not created in the course of the taxfiler's business activities.

NOTICE. A written document mailed first class by the Administrator or division to the last known address of a taxfiler as provided to the Administrator or division in the latest tax return on file with the Administrator.

OWNERSHIP OF OUTSTANDING STOCK OR SECURITIES. The incidents of ownership which include the power to vote on the corporation's business affairs or the power to vote for the directors, officers, operators or other managers of the taxfiler.

PERSON. Includes, but is not limited to Aa natural person, proprietorship, partnership, limited partnership, family limited partnerships, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.

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

TAX YEAR. The taxable year of a person for federal or state income tax purposes.

TAXFILER. A person doing business in the county and required to file a return under the Business Income Tax Law.

Section 3. § 12.110 is amended as follows

12.110 Income Defined.

For the purpose of this chapter, the following definition shall apply unless the context requires a different meaning.

INCOME. The net income arising from any business, as reportable to the State of Oregon for personal income, 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.

(A) Partnerships, S corporations, limited liability companies, limited liability partnerships, family limited partnerships, estates, ~~and trusts, and joint ventures~~ shall be liable for the business tax and not the individual partners, shareholders, members, ~~or beneficiaries or owners~~. The income of these entities shall 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 or personal income tax purposes in a consolidated, combined or joint return, a single return shall be filed by the person filing such return. In such cases, **INCOME** means the net income of the consolidated, combined or joint group of taxfilers before any allocation or appointment for operation out of the state, or deduction for a net operating loss carrying-forward or carry-back.

(C) The absence of report income to the Internal Revenue Service or the state shall not limit the ability of the Administrator to determine the correct income of the taxfiler through examination under § 12.260 of this chapter.

Section 4. § 12.200 is amended as follows

12.200 Administration.

(A) The City of Portland, ~~Revenue Bureau of Licenses~~ shall be the Administrator of record and shall have the authority to administer and enforce this chapter effective January 1, 1994 to include, but not limited to, administrative return processing, auditing, determinations, collection of taxes, penalties and interest (including instituting legal action in any court of

competent jurisdiction by or on behalf of the Division or Administrator), protests and appeals that occur on or after January 1, 1994.

(B) The Administrator shall have access to and maintain all tax filings and records, under this chapter, on behalf of the county. The Administrator may, upon request, interpret how this chapter applies, in general or for a certain set of circumstances. Nothing in this chapter shall preclude the informal disposition of controversy by stipulation or agreed settlement, through correspondence or a conference with the Administrator.

Section 5. § 12.230 is amended as follows

12.230 Confidentiality.

Except as provided in this chapter or otherwise required by law, it shall be unlawful for the division or the Administrator, or any elected official, employee, or agent of the county, or for any person who has acquired information pursuant to § 12.240(A) and (C) to divulge, release, or make known in any manner any financial information submitted or disclosed to the county under the terms of the Business Income Tax Law. Nothing in this section shall be construed to prohibit:

(A) The disclosure of the names and addresses of any persons who have ~~filed a tax account with the Administrator~~~~return~~; or

(B) The disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;:

(C) The filing of any legal action by or on behalf of the Division or Administrator to obtain payment on unpaid accounts or the disclosure of information necessary to do so; or:

(D) The assignment to an outside collection agency of any unpaid account balance receivable provided that the Division or Administrator notifies the taxfiler of the unpaid balance at least 60 days prior to the assignment of the claim. Any assignment to an outside collection agency is subject to a reasonable collection fee, above and beyond any amount owed to the County.

Section 6. § 12.240 is amended as follows

12.240 Persons To Whom Information May Be Furnished.

(A) ~~(4)~~—The division or Administrator may disclose and give access to information described in § 12.230 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) ~~(a)~~—To inspect the tax return of any taxfiler;

- (2) ~~(b)~~—To obtain an abstract or copy of the tax return;
- (3) ~~(c)~~—To obtain information concerning any item contained in any return; or
- (4) ~~(d)~~—To obtain information of any financial audit of the tax returns of any taxfiler.

(2)—Such disclosure and access shall be granted only if the laws, regulations or practices of such other jurisdiction maintain the confidentiality of such information at least to the extent provided by the Business Income Tax Law.

(B) Upon request of a taxfiler, or authorized representative, the Administrator shall provide copies of any tax return information filed by the tax filer in the Administrator's possession.

(C) The division or Administrator may also disclose and give access to information described in § 12.230 to:

(1) The County Attorney, his or her assistants and employees, or other legal representatives of the County, to the extent the division deems disclosure or access necessary for the performance of the duties of advising or representing the division.

(2) The City Attorney, his or her assistants and employees, or other legal representatives of the City, 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.

(23) Other county employees and agents, to the extent the division deems disclosure or access necessary for such employees or agents to perform their duties under contracts or agreements between the division and any other department, division, agency or subdivision of the county relating to the administration of the Business Income Tax Law.

(4) City of Portland employees, agents and officials of the City, 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 any other department, bureau, agency or subdivision of the City relating to the administration of the Business Income Tax Law; or

(c) Aid in determining whether a Business Income Tax account is in compliance with all City, State and Federal laws or policies.

(D) All employees and agents of the division or county, prior to the performance of duties involving access to financial information submitted to the county under the terms of the

Business Income Tax Law, shall be advised in writing of the provision of § 12.730 relating to penalties for the violation of §§ 12.240 and 12.255. Such employees and agents shall execute a certificate in a form prescribed by the division, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of §§ 12.230, 12.240 and 12.255.

(E) Prior to any disclosures permitted by this section, all persons described in subsection (A), to whom disclosure or access to financial information is given, shall:

(1) Be advised in writing of the provisions of § 12.730 relating to penalties for the violation of § 12.230; and

(2) Execute a certificate in a form prescribed by the division, stating these provisions of law have been reviewed and they are aware of the penalties for the violation of § 12.230.

(F) The director's signature on the certificate, required by subsection (E)(2), shall constitute consent to disclosure to the persons executing the certificate.

Section 7. § 12.260 is amended as follows

12.260 Examination Of Books, Records Or Persons.

(A) The Administrator may 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 shall have the authority, after notice, to:

(1) Require the attendance of any person required to file a tax return under the Business Income Tax Law, 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; and

(4) Require the property manager of a tenant-in-common arrangement to provide financial information related to the arrangement as well as information regarding the owners, including, but not limited to, the name and last known addresses of the owners.

(B) The Administrator shall designate the employees who shall ~~designate the employees who shall~~ have the power to administer oaths hereunder. Such employees shall be notaries public of the State of Oregon.

Section 8. § 12.280 is amended as follows

12.280 Deficiencies And Refunds.

(A) Deficiencies may be assessed and refunds granted any time within the period provided under ORS 314.410, 314.415, and 317.950. The Administrator may by agreement with the taxfiler extend such time periods to the same extent as provided by statute.

~~_____(B) Notwithstanding subsection (A), if no tax return is filed, the Administrator may determine taxes due under this chapter at any time based on the best information available to the Administrator. Taxes determined under this subsection shall be assessed and subject to penalties and interest from the date the taxes should have been paid as provided in § 12.510 of this in accordance with §§ 12.700 and 12.710. The Administrator shall send notice of the determination and assessment to the person doing business in the county.~~

(~~B~~) Consistent with ORS 314.410(3), in cases where no tax return has been filed, there shall be no time limit for a notice of deficiency and/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 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 60 days before the Administrator (or its designee) filed a lawsuit for those particular taxable years.

Section 9. § 12.290 is amended as follows

12.290 Protests And Appeals.

(A) Any determination by the Administrator may be protested by the taxfiler. Written notice of the protest must be received by the Administrator within 30 days after the notice of determination was mailed or delivered to the taxfiler. The protest shall state the name and address of the taxfiler and an explanation of the grounds for the protest. The Administrator shall respond within 30 days after the protest is filed with the Administrator with either a revised determination or a final determination. The Administrator's determination shall 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 prior to the expiration of the original 30-day protest deadline. Written notice shall be given to the taxfiler if the Administrator's deadline is extended.

(B) Any final determination by the Administrator may be appealed by the taxfiler to the appeals board. Written notice of the appeal must be received by the Administrator within 30 days after the final determination was mailed or delivered to the appellant. The notice of appeal shall state the name and address of the appellant and include a copy of the final determination.

(C) ~~(1)~~—Within 90 days after the final determination was mailed or delivered to the taxfiler, the appellant shall file with the appeals board a written statement containing:

(1) ~~(a)~~—The reasons the Administrator's determination is incorrect; and

(2) ~~(b)~~—What the correct determination should be.

~~(2)~~—Failure to file such a written statement within the time permitted shall be deemed a waiver of any objections, and the appeal shall be dismissed.

(D) Within 150 days after the final determination was mailed or delivered to the taxfiler, the Administrator shall file with the appeals board a written response to the appellant's statement. A copy of the Administrator's response shall be promptly mailed to the address provided by the appellant.

(E) The appellant shall be given not less than 14 days prior written notice of the hearing date and location. The appellant and the Administrator shall have the opportunity to present relevant testimony and oral argument. The appeals board may request such additional written comment and documents as it deems appropriate.

(F) Decisions of the appeals board shall be in writing, state the basis for the decision and be signed by the appeals board chair.

(G) The decision of the appeals board shall be final on the date it is issued and no further administrative appeal shall be provided.

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

(I) Penalty waiver and/or reduction requests are not subject to the protest/appeal process until the taxfiler receives written notice from the Administrator that the taxfiler's request was either denied or only approved in part. The Administrator shall respond to requests to reduce and/or waive late and/or underpayment penalties within 60 days from the date that the written request is received by the Administrator.

Section 10. § 12.400 is amended as follows

12.400 Exemptions.

To the extent set forth below, the following persons or incomes are exempt from tax requirements imposed by the Business Income Tax Law:

(A) Persons whom the county is prohibited from taxing under the Constitution or laws of the United States or the Constitution or laws of the State of Oregon or County Charter.

(B) Income arising from transactions which the county is prohibited from taxing under the Constitution or the laws of the United States or the Constitution or laws of the State of Oregon or County Charter.

(C) Persons whose gross receipts from all business, both within and without the county, amount to less than \$50,000 (\$25,000 for in any tax years that begin prior to January 1, 2008). The Administrator may demand a statement that the person's gross receipts for any tax year were less than the stated exemption amount for the tax year for which exemption is claimed \$25,000.

(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 shall 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) shall be subject to the tax under this chapter based solely on that income.

(F) Any individual whose only business transactions are exclusively limited to the renting or leasing of residential real property dwelling units provided that the beneficial owner rents or leases less than ten total units, regardless of whether the units are located inside or outside of the County. For purposes of this subsection, payments to foster care and other service providers shall be considered payments for "services" and not for "rent". If a building contains more than one residential living quarter, the term "dwelling unit" refers to each separate living quarter. This exemption does not apply if any income is recognized from the sale of residential property following activities:

~~_____ (1) Sales, exchanges or involuntary conversions of real property not held for sale in the ordinary course of a trade or business, unless the real property is used in the trade or business in connection with the production of income; or~~

~~_____ (2) The sale of personal property acquired for household or other personal use by the seller; or~~

~~_____ (3) (a) Interest and dividend income earned from investments if the income is not created in the course of or related to the taxfiler's business activities; or~~

~~_____ (b) Gains or losses incurred from the sale of assets which are not a part of a trade or business; or~~

~~_____ (4) The renting or leasing of residential real property, if the beneficial owner of such real property does not rent or lease more than nine dwelling units, at least one of which is within the county.~~

_____ (G) Income of an individual from:

_____ (1) Sales, exchanges or involuntary conversions of a primary or secondary residence;

_____ (2) Sale of personal property acquired for household or other personal use by the seller;

_____ (3) Interest and dividend income earned from investments, if the income is not created in the course of or related to the taxfiler's business activities; and

_____ (4) Gains and losses incurred from the sale of investments (other than real property) that are not a part of a business.

(GH) Any person whose only business transactions are exclusively limited to the following activities:

(1) Raising, harvesting and selling of the person's own crops, or the feeding, breeding, management and sale of the person's own livestock, poultry, furbearing animals or honeybees, or sale of the produce thereof, or any other agricultural, horticultural or animal husbandry activity carried on by any person on the person's own behalf and not for others, or dairying and the sale of dairy products to processors. This exemption shall not apply if, in addition to the farm activities described in this subsection, the person does any processing of the person's own farm products which changes their character or form, or the person's business includes the handling, preparation, storage, processing or marketing of farm products raised or produced by others; or the processing of milk or milk products whether produced by said person or by others for retail or wholesale distribution.

(2) 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.

Section 11. § 12.500 is amended as follows

12.500 Imposition And Rate Of Tax.

(A) Except as otherwise provided in this chapter, a tax is imposed upon each person doing business within the county equal to 1.45% of the net income from the business within the county effective with tax years beginning on or after January 1, 1993. For tax years beginning on or after January 1, 2008 each taxfiler not otherwise exempt shall determine their tax at the rate established in this section, provided that each shall pay at least a minimum tax of \$100.00.

(B) The payment of a tax required hereunder and the acceptance of such tax shall not entitle a taxfiler to carry on any business not in compliance with all the requirements of this code and all other applicable laws.

(C) For the business year beginning on or after January 1, 1998, if the tax imposed by this section exceeds \$100, each person doing business within Multnomah County shall pay, in addition, a Temporary Education Surcharge equal to one half percent (.50%) of the net income from the business within the County. This surcharge shall be in effect only for 1998 and shall not apply to business years beginning on or after January 1, 1999.

(D) The receipts from the surcharge imposed by subsection (C) shall be used only to benefit public schools in Multnomah County. Receipts from the Temporary Educational BIT surcharge shall only be used to maintain or reduce class size by preventing teacher layoffs in FY 1998-99. The public school districts with projected budget shortfalls in FY 98-99 shall only spend surcharge revenues to pay for salaries of teacher positions or other state certified personnel, which would otherwise be eliminated. To be eligible for BIT surcharge funds, school districts with projected budget shortfalls in FY 98-99 shall submit a list of positions for state certified positions subject to elimination from the budget and their accompanying salary, to Multnomah County no later than May 30, 1998. Districts without budget shortfalls in FY 98-99 shall submit a list of additional teaching positions and other staff certified positions and materials directly related to instruction. Multnomah County will allocate the BIT surcharge revenues to each public school to pay for teacher positions or other state certified positions, based upon the list submitted by each school district.

(E) The Temporary Education Surcharge receipts shall be distributed to every public school district in Multnomah County according to a formula approved by the Board of County Commissioners.

Section 12. § 12.550 is amended as follows

12.550 Presumptive Tax.

(A) If a person fails to file a return, a rebuttable presumption shall exist that the tax payable amounts to \$500 for every tax year for which a return has not been filed.

(B) Nothing in this section shall prevent the Administrator from assessing ~~under § 12.280(B)~~ a tax due which 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 subsection shall be considered a tax return. Presumptive taxes assessed

under this subsection shall be considered filed documents and shall be subject to the time limitations for deficiencies and refunds as described in subsection 12.280.

(D) Taxes determined under this subsection shall be assessed and subject to penalties and interest from the date the taxes should have been paid as provided in subsection 12.510 in accordance with subsections 12.700 and 12.710. The Administrator shall send notice of the determination and assessment to the person doing business in the County.

Section 13. § 12.600 is amended as follows

12.600 Income Determinations.

(A) *Owners compensation deduction.* **OWNERS COMPENSATION DEDUCTION** is defined as the additional deduction allowed in subsections (B), (C) and (D) below.

(1) For tax years beginning prior to January 1, 1999, the owner's compensation deduction as defined in this section cannot exceed \$50,000 per owner, as defined in this section.

(2) For tax years beginning on or after January 1, 1999, the owners compensation deduction will be indexed by the Consumer Price Index - All Urban Consumers (CPI-U) U.S. City Average as published by the U.S. Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The initial index will be the September 1998 to September 1999 index. The Administrator will determine the exact deduction amount and publish the amount in written policy and included on forms. Any increase or decrease under this subsection which is not a multiple of \$500 shall be rounded up or down to the next lowest multiple of \$500 at the Administrator's discretion.

(3) For tax years beginning on or after January 1, 2008, the owners compensation deduction cannot exceed \$80,000 plus CPI-U for September 2007 to September 2008 per owner as defined in Sections (B), (C) and (D) below.

(4) For tax years beginning on or after January 1, 2009, the owners compensation deduction will be indexed as described in (2) above.

(B) *Sole proprietorship.* In determining income, no deductions shall be allowed for any compensation for services rendered by, or interest paid to, owners. However, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the amount per owner as determined in subsection (A) above.

(C) *Partnerships.* In determining income, no deduction shall be allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships or family limited partnerships. Guaranteed payments to partners or members shall be deemed compensation paid to owners for services rendered. However:

(1) For general partners or members, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the amount per general partner or member as determined in subsection (A) above.

(2) For limited partners or members of limited liability corporations who are deemed partners by administrative rule or policy, 75% of income determined without such deductions shall be allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amount determined in subsection (A) above per compensated limited partner.

(D) *Corporations.* In determining income, no deduction shall be allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including, but not limited to C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75% of the corporation's income, determined without deduction of compensation or interest, shall be allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amount for each controlling shareholder as determined in subsection (A) above.

(1) For purposes of this subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees, or interest paid to all persons meeting the definition of a controlling shareholder, must be included.

(2) For purposes of this subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually own more than 5% ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than 5% of stock shall be deemed to be an additional controlling shareholder.

(3) For purposes of this subsection (C), joint ownership of outstanding stock or securities shall not be considered separate ownership.

(E) *Estates and trusts.* In determining income for estates and trusts, income shall be measured before distribution of profits to beneficiaries. No additional deduction shall be allowed.

(F) *Nonbusiness income.* In determining income under this section, an allocation shall be 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 shall be 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 intrastate level. The taxfiler shall have the burden of showing that income is nonbusiness income.

(G) *Tax based on or measured by net income.* In determining income, no deduction shall be allowed for taxes based on or measured by net income. No deduction shall be allowed for the federal built-in gains tax.

(H) *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 not exempt under § 12.400(FG) and § 12.400(H) shall be included as ordinary gain or loss.

(I) *Net operating loss.* In determining income, a deduction shall be 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 county.

(1) When the operations of the taxfiler from doing business both within and without the county result in a net operating loss, such loss shall be apportioned in the same manner as the net income under § 12.600. However, in no case shall a net operating loss be carried forward from any tax year during which the taxfiler conducted no business within the county or the taxfiler was otherwise exempt from tax filing requirements.

(2) In computing the net operating loss for any tax year, the net operating loss of a prior tax year shall not be allowed as a deduction.

(3) In computing the net operating loss for any tax year, no compensation allowance deduction shall be allowed to increase the net operating loss. **COMPENSATION ALLOWANCE DEDUCTION** is defined as the additional deduction allowed by subsection (A).

(4) The net operating loss of the earliest tax year available shall be exhausted before a net operating loss from a later tax year may be deducted.

(5) The net operating loss in any tax year shall be allowed as a deduction in any of the five succeeding tax years until used or expired. Any partial tax year shall be treated the same as a full tax year in determining the appropriate carry-forward period.

Section 14. § 12.700 is amended as follows

12.700 Penalty.

(A) (1) A penalty shall be assessed if a person:

(a) Fails to file a tax return or extension request at the time required under §§ 12.510(A) or 12.620(A); or

(b) Fails to pay a tax when due.

(2) The penalty under subsection (A) shall be calculated as:

(a) Five percent of the total tax liability if the failure is for a period less than four months;

(b) An additional penalty of 20% of the total tax liability if the failure is for a period of four months or more; and

(c) An additional penalty of 100% of the total tax liability of all tax years if the failure to file is for three or more consecutive tax years.

(B) (1) A penalty shall be assessed if a person who has filed an extension request:

(+) (a) Fails to file a tax return by the extended due date; or

(b) Fails to pay the tax liability by the extended due date.

(2) The penalty under subsection (B) shall be calculated as:

(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 20% of the total tax liability if the failure is for a period of four months or more.

(C) (1) A penalty shall be assessed if a person:

(+) (a) Fails to pay at least 90% of the total tax liability by the original due date; or

(b) Fails to pay at least 100% of the prior year's total tax liability by the original due date.

(2) The penalty under subsection (C) shall be calculated as:

~~_____ (a) Five percent~~ 5% of the tax underpayment, but not less than \$5, if the failure is for a period less than four months; and

~~_____ (b) An additional penalty of 20% of the tax underpayment if the failure is for a period of four months or more.~~

(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 90-60 days of the Administrator's original written notice to file;

(2) Failure to pay any tax within 90-60 days of the Administrator's original written notice for payment; or

(3) Failure to provide documents as required by §§ 12.260 within ~~90-60~~ days of the Administrator's original written notice to provide documents.

(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.

Section 15. § 12.710 is amended as follows

12.710 Interest.

(A) Interest shall be collected on any unpaid tax at the rate of .833% simple interest per month or fraction thereof (10% per annum), computed from the original due date of the tax to the fifteenth day of the month following the date of payment.

(B) ~~(1)~~—Interest shall be collected on any unpaid or underpaid quarterly estimated payment required by §§ 12.520 and 12.530 at the rate of .833% simple interest per month or fraction thereof (10% per annum), 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) ~~(2)~~—Notwithstanding subsection (B)~~(1)~~, there shall be no interest on underpayment of quarterly estimated payments if:

(1) ~~(a)~~—The total tax liability of the prior tax year was less than \$1,000;

(2) ~~(b)~~—An amount equal to at least 90% of the total tax liability for the current tax year was paid in accordance with § 12.530; or

(3) ~~(c)~~—An amount equal to at least 100% of the prior year's total tax liability was paid in accordance with § 12.530.

(D) ~~(3)~~—For purposes of subsection (B)~~(1)~~, the amount of underpayment is determined by comparing the 90% of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return. However, if 100% 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.

~~—(C)—If a person fails to file a tax return on the prescribed date, or any extension thereof granted under § 12.510(B), the Administrator may determine the tax due based on the best information available to the Administrator. If the Administrator determines the tax due under this~~

~~subsection, the Administrator shall assess appropriate penalties and interest and shall send notice to such person of the determination and assessment.~~

(~~D~~E) For purposes of subsection (A) , the amount of tax due on the tax return shall be reduced by the amount of any tax payment made on or before the date for payment of the tax in accordance with § 12.510(A) or 12.530.

(~~E~~F) Interest at the rate specified in subsection (A) -shall accrue from the original due date without regard to any extension of the filing date.

(~~F~~G) 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.

Section 16. § 12.715 is amended as follows

12.715 Payments Applied.

Taxes received shall first be applied 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.

Section 17. § 12.720 is amended as follows

12.720 Interest On Refunds.

When, under a provision of the Business Income Tax Law, taxfilers are entitled to a refund of a portion or all of a tax paid to the Administrator, they shall receive simple interest on such amount at the rate specified in § 12.710(A), subject to the following:

(A) Any overpayments shall 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, whichever is later,

to the date of the refund; and

~~_____ (B) Any overpayments of estimated tax shall be refunded with interest for each month or fraction thereof for the period beginning four months after the date the final return was filed.~~

(~~E~~B) Any overpayments of taxes that are the result of an amended return being filed shall 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 ~~was filed~~. This subsection shall apply to tax returns~~applications~~ that are amended due to a change to the federal, state or business income tax return.

Section 18. § 12.730 is amended as follows

12.730 Criminal Penalties.

Violation of §§ 12.230 or 12.240 is punishable, upon conviction thereof, by a fine not exceeding ~~\$1,000~~500 or by imprisonment for a period not exceeding ~~12~~six months, or by both fine and imprisonment. In addition, any county employee convicted for violation of §§ 12.230 or 12.240 shall be dismissed from employment and shall be barred from employment for a period of five years thereafter. Any agent of the county shall, upon conviction, be ineligible for participation in any county contract for a period of five years thereafter.

Section 19. § 12.840 is renumbered as follows

12.840-990 Participation Of Cities.

To facilitate a unified system of collection and allocation of all county and municipal taxes upon business net income within the county, any city the territory of which is in whole or in part within the county may, if authorized by its governing body, participate under and share in the revenue derived from this chapter, upon such terms and conditions as the county and city may agree by written contract.

Section 20. § 12.850 is renumbered as follows

12. 850-995 Former Regulations Superseded By This Subchapter; Exceptions.

Effective for tax years beginning on or after January 1, 1993, '90 MCC Chapter 5.70 shall be superseded and given no effect until this chapter is repealed or otherwise ceases to be effective. For tax years ending on or before December 31, 1992, all determinations of obligations and responsibilities required of any persons under '90 MCC Chapter 5.70, made on or before December 31, 1993 shall remain binding upon those persons. However, on and after January 1, 1994, this chapter [formerly §§ 11.500 et seq.] shall apply to all determinations of obligations and responsibilities for tax years ending on or before December 31, 1992 with the exceptions of:

- (A) Determination of income under '90 MCC 5.70.015;
- (B) Treatment of payments to owners or controlling shareholders under '90 MCC 5.70.025;
- (C) Net operating loss deduction under '90 MCC 5.70.030;

- (D) Ordinary gain or loss under '90 MCC 5.70.035;
- (E) Rate of tax under '90 MCC 5.70.045;
- (F) Apportionment of income under '90 MCC 5.70.050;
- (G) Partnerships, S corporations, estates and trusts under '90 MCC 5.70.055;
- (H) Exemptions under '90 MCC 5.70.060;
- (I) State laws incorporated by reference under '90 MCC 5.70.075 (except that the City of Portland; Revenue Bureau of Licenses shall replace any references to the state Department of Revenue as the Administrator of the Tax.);
- (J) Amendments under '90 MCC 5.70.110.

Section 21. § 12.845 is added as follows

12.845 Frivolous Filing.

A \$500.00 penalty shall be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return 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 150-316.992(5) are adopted by direct reference.

Section 22. § 12.855 is added as follows

12.845 Hacking.

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

ADMINISTRATOR'S COMPUTER DATABASE. Computer application(s) used by the Administrator to calculate and store business and financial data collected under the authority granted by the Business Income Tax Law.

LOSS. Any reasonable cost incurred by the City of Portland, 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.

DAMAGE. Any impairment to the integrity or availability of data, a program, a system, or information.

(B) Any individual who intentionally accesses the Administrator's computer database without authorization shall be fined:

(1) \$500 if the individual acquires any information regarding any business account found in the database;

(2) \$1,000 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) \$5,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Administrator's computer database, and, as a result of such conduct, causes damage to the database.

FIRST READING:

December 13, 2007

SECOND READING AND ADOPTION:

December 20, 2007



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Ted Wheeler

Ted Wheeler, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Stephanie E. Duvall

Stephanie E. Duvall, Assistant County Attorney

SUBMITTED BY:

Mindy Harris, Chief Financial Officer