

1 **BEFORE THE BOARD OF COUNTY COMMISSIONERS**

2 **FOR MULTNOMAH COUNTY, OREGON**

3 **ORDINANCE NO. 779**

4
5 An ordinance amending Multnomah County Code Chapter 5.60, Business
6 Income Tax Law for minor clarification changes and declaring an emergency.

7 Multnomah County ordains as follows:

8 Section I. Findings

9 The Board of County Commissioners finds that:

10 (A) The Board of County Commissioners adopted MCC Chapter 5.60, Multnomah
11 County Business Income Tax Law in June 1993 to be effective for tax years beginning
12 on or after January 1, 1993.

13 (B) Staff of the Multnomah County Finance Division and the City of Portland
14 Bureau of Licenses analyzed the Multnomah County Business Income Tax Law and the
15 City of Portland Business License Law in preparation for consolidated administration of
16 both programs and the pending adoption of Administrative Rules and discovered minor
17 "housekeeping" changes needed to clarify the intent of the two laws.

18 (C) The Finance Division, MCBIT Program staff and County Counsel staff have
19 reviewed these changes to ensure Multnomah County's best interests are being served,
20 intent of the law is being met and to ensure code conformity with the City of Portland
21 Business License Law.

22 Section II. Amendments to Business Income Tax Law

23 Chapter 5.60 is amended to as set forth in Exhibit A attached hereto.

24 Section III. Emergency Clause

25 This Ordinance being necessary for the health, safety, and general welfare
26 of the people of Multnomah County, an emergency is declared, and this Ordinance shall
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1 take effect immediately upon its execution by the County Chair, pursuant to Section
2 5.50 of the Multnomah County Charter.

3 Adopted this 9th day of December, 1993, being the date of its first
4 reading before the Board of County Commissioners of Multnomah County, Oregon.



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13 By Beverly Stein
14 Beverly Stein, Chair
15 MULTNOMAH COUNTY, OREGON

16 REVIEWED:

17 Laurence Kressel for
18 Laurence Kressel, County Counsel
19 of Multnomah County, Oregon
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EXHIBIT A

[Brackets indicate deletion] and underlines indicate additions.

Section I. MCC 5.60 is amended to read:

MULTNOMAH COUNTY BUSINESS INCOME TAX

5.60.005	Title
5.60.010	[Fees] <u>Taxes</u> for Revenue
5.60.020	Conformity to State Income Tax Laws
5.60.030	Presumption of Doing Business
5.60.100	Definitions
5.60.110	Income Defined
5.60.200	Administration
5.60.210	Administrative Authority
5.60.220	Ownership of Taxfiler Information
5.60.230	Confidentiality
5.60.240	Persons to Whom Information May be Furnished
5.60.250	Taxfiler Representation
5.60.255	Representation Restrictions
5.60.260	Examination of Books, Records or Persons
5.60.270	Records
5.60.280	Deficiencies and Refunds
5.60.290	Protests and Appeals
5.60.400	Exemptions
5.60.500	Imposition and Rate of Tax
5.60.510	Return <u>and Tax</u> Due Date
5.60.520	Quarterly Estimates
5.60.530	Schedule for Payment of Estimated Tax
5.60.550	Presumptive Tax
5.60.600	Income Determinations
5.60.610	Apportionment of Income
5.60.620	Changes to Federal or State Tax Returns
5.60.700	Penalties
5.60.710	Interest
5.60.715	Payments Applied
5.60.720	Interest on Refunds
5.60.730	Criminal Penalties For Violations of Business Income Tax Law By County Employees or Agents
5.60.800	Severability
5.60.820	Operative Date
5.60.840	Participation of Cities
5.60.850	MCC Chapter 5.70 Superseded By MCC Chapter 5.60

Section II. MCC 5.60.010 is amended to read:

5.60.010 [Fees] Taxes for Revenue.

The Board of Multnomah County Commissioners finds: 1) it is necessary to raise additional revenues to provide those County services required for the health, safety and welfare of the people of Multnomah County; 2) the purpose of the taxes imposed by this Chapter is to raise funds to provide those services within Multnomah County and, 3) in accordance with this finds, all proceeds collected under this Chapter shall be general fund revenue. This Chapter is intended to establish a unified system for collection and allocation of taxes based upon business net income by the County and by cities within the County.

Section III. MCC 5.60.110 is amended to read:

5.60.110 Income Defined.

"Income" means the net income arising from any business, as required to be reported to the State of Oregon for personal income, corporation excise [tax], 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, estates and trusts, shall be liable for the business tax and not the individual partners, shareholders or beneficiaries. The income of partnerships, S corporations, estates and trusts shall include all income passing through the entity including ordinary income, interest and dividend income, income from sales of business assets and other income attributable to the partnership, S corporation, estate or trust.

(B) If one or more persons are required to report their income to the State of Oregon for corporation excise or income tax purposes in a consolidated return, a single return shall be filed by the person filing such return. In such cases, "income" means the net income of the affiliated group of taxfilers who are carrying on a single unitary business 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 shall not limit the ability of the Administrator to determine the correct income of the taxfiler through examination under Section 5.60.260.

Section IV. MCC 5.60.200 is amended to read:

5.60.200 Administration.

The City of Portland, Bureau of Licenses shall be the Administrator of record effective [for tax years beginning on or after] January 1, 199[3]4 and shall have the authority to administer and enforce this Chapter to include, but not limited to, administrative return

processing, auditing, determinations, collection of taxes, penalties and interest, protests and appeals that occur on or after January 1, 1994.

The Administrator shall have access to and maintain all tax filings and records, under this Chapter, on behalf of the County.

Section V. MCC 5.60.210 is amended to read:

5.60.210 Administrative Authority.

(A) The Administrator may implement procedures, [and] forms, **and written policies** for administering the provisions of the Business Income Tax Law.

(B) The Administrator may adopt rules relating to matters within the scope of this Chapter to administer compliance with the Business Income Tax Law.

(C) Before adopting a new rule, the Administrator shall hold a public hearing. Prior to the hearing, the Administrator shall publish a notice in a newspaper of general circulation in the County. The notice shall be published not less than ten (10) nor more than 30 days before the hearing. Such notice shall include the place, time and purpose of the public hearing, a brief description of the subjects covered by the proposed rule, and the location where copies of the full text of the proposed rule may be obtained.

(D) At the public hearing, the Administrator, or designee, shall take oral and written testimony concerning the proposed rule. The Administrator shall either adopt the proposed rule, modify, or reject it, taking into consideration the testimony received during the public hearing. If a substantial modification is made, additional public review shall be conducted, but no additional public notice shall be required if an announcement is made at the hearing of a future hearing for a date, time and place certain at which the modification will be discussed. Unless otherwise stated, all rules shall be effective upon adoption by the Administrator. All rules adopted by the Administrator shall be filed in the Division's office. Copies of all current rules shall be made available to the public upon request.

(E) Notwithstanding [paragraphs] **subsections** (C) and (D) of this Section, the Administrator may adopt an interim rule without prior public notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, stating the specific reasons for such prejudice. Any interim rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

Section VI. MCC 5.60.230 is amended to read:

5.60.230 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 Section 5.60.240[(B)] **(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 [s]Section shall be construed to prohibit:

(A) The disclosure of the names and addresses of any persons who have filed a return; or

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

Section VII. MCC 5.60.255(B) is amended to read:

5.60.255 Representation Restrictions.

(B) Members of the Appeals Board[, as described in Section 5.60.290 of this Chapter,] shall not represent a taxfiler before the Appeals Board. No member of the Appeals Board shall participate in any matter before the Board if the appellant is a client of the member or the member's firm.

Section VIII. MCC 5.60.280(B) is amended to read:

5.60.280 Deficiencies and Refunds.

(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 [paragraph] subsection shall be assessed and subject to penalties and interest from the date the taxes should have been paid as provided in Section 5.60.510 in accordance with Sections 5.60.700 and 5.60.710. The Administrator shall send notice of the determination and assessment to the person doing business in the County.

Section IX. MCC 5.60.400(D) is amended to read:

5.60.400 Exemptions.

(D) Corporations exempt from the Oregon Corporation Excise Tax under ORS 317.080, provided that any such corporation subject to the tax on unrelated business income under ORS [317.910] 317.920 to [317.950] 317.930 shall pay a tax based solely on such income.

Section X. MCC 5.60.400(E) is amended to read:

5.60.400 Exemptions.

(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 [s]Section 501[(c)]b shall be subject to the tax under this [c]Chapter based solely on that income.

Section XI. MCC 5.60.500(A) is amended to read:

5.60.500 Imposition and Rate of Tax.

(A) Except as otherwise provided in this [c]Chapter, a tax is hereby imposed upon each person doing business within Multnomah County equal to 1.45 percent (.0145) of the net income from the business within the County effective with tax years beginning on or after January 1, 1993.

Section XII. MCC 5.60.510 is amended to read:

5.60.510 Return and Tax Due Date.

(A) Tax returns shall be on forms provided or approved by the Administrator. All tax returns shall be filed, together with the specified tax by the 15th day of the 4th month following the end of the tax year.

(B) The Administrator may, for good cause, grant extensions for filing returns, except that no extension may be granted for more than six (6) months beyond the initial filing due date. **This extension does not extend the time to pay the tax.**

(C) The tax return shall contain a written declaration, verified by the taxfiler, to the effect that the statements made therein are true.

(D) The Administrator shall prepare blank tax returns and make them available upon request. Failure to receive or secure a form shall not relieve any person from the obligation to pay a tax under the Business Income Tax Law.

Section XIII. MCC 5.60.550(B) is amended to read:

5.60.550 Presumptive Tax.

(B) Nothing in this Section shall prevent the Administrator from assessing, under Sections 5.60.280(B) or 5.60.710(B) a tax [payable] **due** in excess of \$500 per tax year.

Section XIV. MCC 5.60.600(E) is amended to read:

5.60.600 Income Determinations.

(E) Nonbusiness Income.

In determining income under this Section, a deduction shall be allowed for nonbusiness income. 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 [outside] non-unitary business functions shall be considered nonbusiness income. The taxfiler shall have the burden of showing that income is nonbusiness income.

Section XV. MCC 5.60.600(G) is amended to read:

5.60.600 Income Determinations.

(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 not exempt under Section 5.60.400[(E)](F) shall be included as ordinary gain or loss.

Section XVI. MCC 5.60.610(A) is amended to read:

5.60.610 Apportionment of Income.

(A) "Business activity" means any of the elements of doing business. However, a person shall not be considered to have engaged in business activities solely by reason of sales of tangible personal property in any state or political subdivision, or solely the solicitation of orders for sales of tangible personal property in [such] any state or political subdivision. Business activities conducted on behalf of a person by independent contractors are not considered business activities by the person in [such] any state or political subdivision.

Section XVII. MCC 5.60.610(D) is amended to read:

5.60.610 Apportionment of Income.

(D) If the apportionment provisions of subsection (B) do not fairly represent the extent of the taxfiler's business activity in the [c]County and result in the violation of the taxfiler's rights under the Constitution of this State or the United States, the taxfiler may petition the Administrator to permit the taxfiler to:

1. Utilize the method of allocation and apportionment used by the taxfiler under the applicable laws of the State of Oregon imposing taxes upon or measured by net income; or

2. Utilize any other method to effectuate an equitable apportionment of the taxfiler's income.

Section XVIII. MCC 5.60.620 is amended to read:

5.60.620 Changes to Federal or State Tax Returns.

(A) If a taxfiler's reported net income under applicable Oregon laws imposing a tax on or measured by income is changed by the Federal Internal Revenue Service or the Oregon Department of Revenue, or amended by the taxfiler to correct an error in the original Federal or State return, a report of such change shall be filed with the Administrator within 60 days after the [taxfiler receives] date of the notice of the final determination of change or after an amended return is filed with the Federal or State agencies. The report shall be accompanied by an amended tax return with respect to such income and by any additional [fee] tax, penalty, and interest due .

(B) The Administrator may assess deficiencies and grant refunds resulting from changes in Federal or State returns within the time periods provided for in Section 5.60.280, treating the report of change in Federal or State returns as the filing of an amended tax return.

(C) The Administrator may assess penalties and interest on the additional tax due as provided in Section 5.60.700 (A) and 5.60.710(A) [on the additional tax due,] or may refuse to grant a refund of taxes as a result of the amended return if the amended return is not filed with the Administrator within the time limits set forth in subsection (A).

Section XIX. MCC 5.60.700 is amended to read:

5.60.700 Penalties.

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

1. a. Fails to file a tax return at the time required under Section 5.60.510 (A) or 5.60.620 (A); or
- b. Fails to pay a tax when due.
2. The penalty under subsection (A) shall be calculated as:
 - a. Five percent (0.05) of the total tax liability if the failure is for a period less than four (4) months;
 - b. An additional penalty of 20 percent (0.20) of the total tax liability if the failure is for a period of four (4) months or more; and
 - c. An additional penalty of 100 percent (1.00) of the total tax liability of all tax years if the failure to file is for three (3) or more consecutive tax years.

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

1. 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 (0.05) of the **total** tax **liability** if the failure is for a period less than four (4) months; and
 - b. An additional penalty of 20 percent (0.20) of the **total** tax **liability** if the failure is for a period of four (4) months or more.
- (C) A penalty shall be assessed if a person:
 1. a. Fails to pay at least 90 percent (0.90) of the **total** tax liability by the original due date; or
 - b. Fails to pay at least 100 percent (1.00) 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 (0.05) of the tax **underpayment** if the failure is for a period less than 4 months; and
 - b. An additional penalty of 20 percent (0.20) of the tax **underpayment** if the failure is for a period of four (4) months or more.
- (D) A penalty shall be assessed if a person underpays any quarterly estimated tax under Sections 5.60.520 and 5.60.530. The penalty shall be calculated as:
 1. Five percent (0.05) of the tax **underpayment** if the failure is for a period less than four (4) months; and
 2. An additional penalty of 20 percent (0.20) of the tax **underpayment** if the failure is for a period of four (4) months or more.
- (E) Notwithstanding subsection (D), there shall be no penalty on **any** underpayment of **the** estimated tax if:
 1. The **total** tax liability of the prior tax year was less than \$1,000; or
 2. An amount equal to at least 90 percent (0.90) of the **total** tax liability for the current taxable year was paid in accordance with Section 5.60.530; or
 3. An amount equal to at least 100 percent (1.00) of the prior year's **total** tax liability was paid in accordance with Section 5.60.530.
- (F) The Administrator may impose a civil penalty of up to \$500 for each of the following violations of the Business Income Tax Law:
 1. Failure to file any tax return within 90 days of the Administrator's original written notice to file;
 2. Failure to pay any [fee] **tax** within 90 days of the Administrator's original written notice for payment; or
 3. Failure to provide documents as required by Section 5.60.260 within 90 days of the Administrator's original written notice to provide documents.
- (G) The Administrator may impose a civil penalty, under subsection (F) 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.
- (H) **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 XX. MCC 5.60.710(B) is amended to read:

5.60.710 Interest.

(B) If a person fails to file a tax return on the prescribed date, or any extension thereof granted under Section 5.60.510 (B), the Administrator may determine the tax [payable according to] due based on the best information available to the Administrator. If the Administrator determines the tax [payable] due under this subsection, the Administrator shall assess appropriate penalties and interest and shall send notice to such person of the determination and assessment.

Section XXI. MCC 5.60.820 is amended to read:

5.60.820 Operative Date.

This [c]Chapter shall apply to tax years beginning on or after January 1, 1993. For tax years ending on or before December 31, 1992, this Chapter shall apply to any administrative determination made on or after January 1, 1994.

Section XXII. MCC 5.60.840 is amended to read:

5.60.840 Participation of Cities.

To facilitate a unified system of collection and allocation of all [c]County and municipal taxes upon business net income within Multnomah County, any city the territory of which is in whole or in part within Multnomah 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 XXIII. MCC 5.60.850 is amended to read:

5.60.850 MCC Chapter 5.70. Superseded By MCC Chapter 5.60.

Effective for tax years beginning on or after January 1, 1993, [and while this Chapter remains in effect,] MCC [c]Chapter 5.70 shall be superseded and given no effect until this Chapter is repealed or otherwise ceases to be effective. [However,] For tax years ending on or before December 31, 1992, all determinations of obligations and responsibilities required of any persons under MCC Chapter 5.70, [as of January 1, 1993] made on or before December 31, 1993 shall remain binding upon those persons[,], [and provided further that all remedies and penalties provided by MCC Chapter 5.70 shall remain applicable to any violations or failures to comply with the requirements of MCC chapter 5.70 which occur on or prior to January 1,

1993.] However, on and after January 1, 1994, MCC Chapter 5.60 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 5.70.015;
- (B) Treatment of payments to owners or controlling shareholders under 5.70.025;
- (C) Net operating loss deduction under 5.70.030;
- (D) Ordinary gain or loss under 5.70.035;
- (E) Rate of tax;
- (F) Apportionment of income under 5.70.050
- (G) Partnerships, S corporations, estates and trusts under 5.70.055;
- (H) Exemptions under 5.70.060
- (I) State laws incorporated by reference under 5.70.075
(Except that the City of Portland, Bureau of Licenses shall replace any references to the Oregon Department of Revenue as the Administrator of the Tax.);
- (J) Amendments under 5.70.110.