

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

ORDINANCE NO. _____

Amending MCC Chapter 12 – Business Income Tax to reflect changes made by the City of Portland in recent years and certain technical changes.

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

The Multnomah County Board of Commissioners Finds:

- a. The Multnomah County Business Income Tax Law (“BIT”) is in need of amendment for the purposes of correcting technical errors and improving the administration of the BIT.
- b. Pursuant to Ordinance 901, the County began indexing the maximum owners compensation deduction allowed under the BIT (“County Maximum”) to inflation in order to maintain conformity with the maximum owners compensation deduction allowed under the City of Portland’s Business License Law (“City Maximum”).
- c. Pursuant to Resolution 07-054, the Board expressed its intention to increase the County Maximum to align with the City Maximum.
- d. Pursuant to Ordinance 1104, the County Maximum was increased from \$63,000 for tax year 2007 to \$84,000 for tax year 2008 in order to align with the City Maximum and maintain alignment between the two systems.
- e. The County Maximum and the City Maximum were \$90,500 in tax year 2013, and while the County Maximum increased with inflation to \$92,000 for tax year 2014, the City of Portland increased the City Maximum to \$100,000 for tax year 2014.
- f. Increasing the County Maximum to align with the City Maximum is likely to have minimal impact (less than 1%) on the County’s BIT revenues and the County’s ability to provide needed services to residents.
- g. Because the BIT is collected and administered by the City of Portland, aligning the BIT with the City of Portland Business License Law, including aligning the County Maximum with the City Maximum, will reduce confusion for Multnomah County small businesses, simplify the tax filing process for these businesses, and foster administrative efficiencies within the two tax systems.

Multnomah County Ordains as Follows:

Section 1. MCC § 12.100 is amended as follows:

§ 12.100 – DEFINITIONS.

The terms used in this chapter are 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 or Division of the City of Portland Revenue Bureau along with that is responsible for administering the Portland Business License Law, and its duly appointed employees and agents.

* * *

DIRECTOR. Multnomah County Chief Financial Officer and his or her designees.

DIVISION. The Finance and Risk Management Division of the county Multnomah County.

* * *

INCOME. The net income arising from any business, as reportable to the State of Oregon (State) 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, trusts and joint ventures (including tenants-in-common arrangements) 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. For income purposes, a limited liability company is deemed to be the tax entity that includes the income of the limited liability company in its federal tax return if the limited liability company will be disregarded as a separate tax 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 must 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 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 § 12.260 of this chapter.

INDIVIDUAL. A natural person, including natural persons who report their income to the State of Oregon in a joint personal state income tax return. In such case, **INDIVIDUAL** shall refer to the joint taxfiler.

INVESTMENT MANAGEMENT FIRM. A taxfiler ~~entitled to receive a taxpayer that~~ satisfies each of the following requirements during the tax year that the credit against the City of Portland business license tax is sought pursuant to Portland City Code 7.02.870 § 12.615:

(A) At least 90 percent of the firm's gross income for the tax year consists of fees that are:

(1) Received from a Diversified Investing Fund, as such term is defined by administrative rules adopted in accordance with § 12.210, or from persons unrelated to the firm, and

(2) Determined as a percentage of the value of assets managed by the firm (including payments to the firm from third parties if the payments are credited against or offset such fees in whole or in part).

(B) At least 90 percent of the assets managed by the firm consist of Qualifying Investment Securities, as such term is defined by administrative rules adopted in accordance with § 12.210.

(C) A majority of the voting interests in the firm are owned by persons who receive compensation from the firm that is subject to the Owners Compensation Deduction in § 12.600.

(D) The firm was physically located within the Multnomah County boundaries at the end of the tax year.

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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.

* * *

PERSON. Includes, but is not limited to an individual, a natural person, proprietorship, partnership, limited partnership, family limited partnerships, joint venture (including tenants-in-common arrangements), association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.

Section 2. MCC § 12.200 is amended as follows:

§ 12.200 – ADMINISTRATION.

(A) ~~The City of Portland, Revenue Bureau is the Administrator~~ is the administrator of record and has the authority to administer and enforce this chapter effective January 1, 1994, to include, but not limited to, administrative return processing, auditing, and determinations, collection of taxes, penalties and interest (including instituting legal action in any court of competent jurisdiction by or on behalf of the Division or Administrator); and protests and appeals that occur on or after January 1, 1994.

Section 3. MCC § 12.210 is amended as follows:

§ 12.210 – ADMINISTRATIVE AUTHORITY.

(D) At the public hearing, the Administrator, or designee, will receive oral and written testimony concerning the proposed rule. The Administrator will either adopt the proposed rule, modify it, or reject it, taking into consideration the testimony received during the public hearing. If a substantial modification is made, additional public review will be conducted, but no additional public notice is 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 are effective upon adoption by the Administrator. All rules adopted by the Administrator will be filed in the ~~d~~Division's office. Copies of all current rules will be made available to the public upon request.

Section 4. MCC § 12.220 is amended as follows:

§ 12.220 – PRESUMPTION OF DOING BUSINESS.

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

* * *

(C) ~~Owning, leasing or renting personal or real property within the county which is used in a trade or business.~~

* * *

Section 5. MCC § 12.225 is amended as follows:

§ 12.225 – OWNERSHIP OF TAXFILER INFORMATION.

The county is the sole owner of all filer information under the authority of this chapter. The Director ~~or~~ and anyone designated by the ~~d~~Director's has access to all taxfiler information at all times.

Section 6. MCC § 12.230 is amended as follows:

§ 12.230 – CONFIDENTIALITY.

Except as provided in this chapter or otherwise required by law, it is unlawful for ~~the division or any County employee, any agent, including without limitation~~ 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~~ or (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. Additionally, it is unlawful to divulge, release or make known in any manner identifying information about any taxpayer applying for tax amnesty, including, but not limited to, the name and address of the taxpayer, unless otherwise required by law. Nothing in this section should be construed to prohibit:

Section 7. MCC § 12.240 is amended as follows:

§ 12.240 - PERSONS TO WHOM INFORMATION MAY BE FURNISHED.

(A) ~~The division~~ In addition to the Administrator's obligation to provide access pursuant to § 12.225, the Director 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:

* * *

(C) ~~The division~~ Director 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~~ Director deems disclosure or access necessary for the performance of the duties of advising or representing the ~~d~~Division or the County.

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(3) Other county employees and agents, to the extent the ~~division~~ Director deems disclosure or access necessary for such employees or agents to perform their duties regarding or under contracts or agreements between the division County and the Administrator or 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 the County or 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, County, State and Federal laws or policies.

(D) All employees and agents ~~of the division or county specified in § 12.240(C) above,~~ prior to the performance of duties involving access to financial information submitted to the county or Administrator under the terms of the Business Income Tax Law, must be advised in writing of the provision of § 12.730 relating to penalties for the violation of §§ 12.230 and 12.255. Such employees and agents must execute a certificate in a form prescribed by the ~~d~~Division or Administrator, stating that the person has reviewed these provisions of law, has had them explained, and is aware of the penalties for the violation of §§ 12.230 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, must:

* * *

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

(F) The ~~d~~Director's or Administrator's signature on the certificate, required by subsection (E)(2), will constitute consent to disclosure to the persons executing the certificate.

Section 8. MCC § 12.280 is amended as follows:

§ 12.280 – DEFICIENCIES AND REFUNDS.

(B) Consistent with ORS 31.410(~~34~~), in cases where no tax return has been filed, there is no time limit for a notice of deficiency and/or the assessment of taxes, penalty and interest due.

Section 9. MCC § 12.290 is amended as follows:

§ 12.290 – PROTESTS AND APPEALS.

* * *

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

* * *

(I) Penalty waiver and/or reduction requests are not subject to the protest/appeal process or timeline outlined in ~~Sections~~ subsections 12.290(A) through 12.290(H). The taxfiler must file a written request with the Administrator detailing why a penalty should be waived within 30 days of receipt of a billing notice that assesses a penalty. The Administrator must respond to requests to reduce and/or waive penalties within 60 days from the date the written request is received. As provided in ~~Section~~ subsection 12.700(G), Administrator may waive or reduce penalties in certain situations. If the taxfiler has requested that penalties be waived and the Administrator denies the taxfiler's request for this discretionary waiver of penalties, the taxfiler may request a conference with the Administrator (or Administrator's designee) within 30 days of the date of the Administrator's notice of denial. If the conference with the Administrator results in a denial of the penalty waiver request, that decision is final and may not be appealed to the Appeals Board.

Section 10. MCC § 12.400 is amended as follows:

§ 12.400 – EXEMPTIONS.

The Administrator may require the filings of tax returns or other documentary verification of any exemption claimed under this section. To the extent set forth below, the following persons or incomes are exempt from payment of the business income tax:

* * *

(C) Persons whose gross receipts from all business, both within and without the county, amount to less than \$50,000 (\$25,000 for 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.~~

* * *

(G) The following ~~incomes~~ of an individual and any individual whose only business income is from the following:

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

Section 11. MCC § 12.510 is amended as follows:

§ 12.510 – RETURN DUE DATE.

(A) Tax returns must be on forms provided or approved by the Administrator. All tax returns must be filed, together with the specified tax by the fifteenth day of the fourth month following the end of the tax year. For cooperatives and non-profit corporations that have later due dates under Oregon tax law, the due date for filing tax returns with the Administrator must conform to the due date under Oregon tax law.

Section 12. MCC § 12.520 is amended as follows:

§ 12.520 – QUARTERLY ESTIMATES.

For tax years beginning on or after January 1, 1993, every taxfiler who incurred a tax liability, under § 12.500(A) of \$1,000 or greater must estimate the taxfiler's tax liability for the current tax year under this chapter and pay the amount of tax determined as provided in § 12.530.

Section 13. MCC § 12.550 is amended as follows:

§ 12.550 – PRESUMPTIVE TAX.

* * *

(D) Taxes determined under this ~~subsection~~ section are subject to penalties and interest from the date the taxes should have been paid as provided in subsection 12.510 in accordance with ~~subsections~~ sections 12.700 and 12.710. The Administrator will send notice of the determination and assessment to the taxfiler.

Section 13. MCC § 12.560 is amended as follows:

§ 12.560 – PAYMENT PLAN FEE.

If a person fails to pay the Multnomah County Business Income ~~§~~Tax when due, the Administrator may establish a payment plan pursuant to written policy. The Administrator may charge a set up fee for each payment plan established.

Section 14. MCC § 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.

* * *

(2) 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~~ subsections (B), (C) and (D) below.

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

(4) For tax years beginning on or after January 1, 2013, the owners compensation deduction cannot exceed \$90,500 per owner as defined in subsections (B), (C) and (D) below.

(5) For tax years beginning on or after January 1, 2015, the owners compensation deduction cannot exceed \$100,000 increased or decreased, as applicable, by the change in CPI-U for September 2014 to September 2015 per owner as defined in subsections (B), (C) and (D) below. For tax years beginning on or after January 1, 2016, the owners compensation deduction will be indexed as described in (1) above.

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

* * *

(D) *Corporations.* In determining income, no deduction is 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, is 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.

* * *

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

* * *

(l) *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 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 will be apportioned in the same manner as the net income under § 12.600. However, in no case may 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 payment of the Business Income Tax filing requirements.

* * *

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

Section 15. MCC § 12.610 is amended as follows:

§ 12.610 – APPORTIONMENT OF INCOME.

(A) “Jurisdiction to tax” occurs when a person engages in business activities in a jurisdiction that are not protected from taxation by Public Law 86-272 (15 U.S.C. §§ 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 shall also be presumed to apply on an intrastate basis. If a taxpayer’s business is based in Multnomah County, a taxpayer must have business activity outside the county that results in a jurisdiction to tax outside Multnomah County to apportion the income of the business. Without jurisdiction to tax outside the county, all income of a business is taxable by Multnomah County.

(AB) Business activity means any of the elements of doing business. ~~However, a person is 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 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 any state or political subdivision.~~ The income reportable as income earned from business activity within Multnomah County will include all business income from sources within the county that is taxable income under Oregon tax laws and regulations unless otherwise exempted or excluded in this Chapter 12.

(BC) In computing the tax, taxfilers that have income from business activity both within and without the county must determine the income apportioned to the county 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 county 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.

(CD) In determining the apportionment of gross income within the county under subsection (BC):

(1) Sales of tangible personal property are deemed to take place in the county if the property is delivered or shipped to a purchaser within the county regardless of the f.o.b. point or other conditions of sale. If sales of tangible personal property are shipped from the county to a purchaser located where the taxfiler is not taxable, those sales are not apportioned to the county.

* * *

(DE) Certain industries or incomes are subject to specific apportionment methodologies. Such methodologies are described in administrative rules adopted in accordance with § 12.210. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes for apportionment of gross sales will be used in cases where no rule has been adopted by the Administrator regarding the apportionment of such industry or income. When gross sales as reported to Oregon are used for apportionment purposes, such gross sales will be defined as gross income for apportionment purposes herein. All apportionment methodologies directed under this subsection will be a single factor gross income apportionment as directed under § 12.210(BC) and § 12.210(CD). In those specific cases where the state has directed allocation of income, such income will be apportioned for purposes of this chapter, unless allocation is otherwise allowed in this chapter.

(~~EF~~) If the apportionment provisions of subsection (~~BC~~) do not fairly represent the extent of the taxfiler's business activity in the 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 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 16. MCC § 12.615 is amended as follows:

§ 12.615 – BUSINESS RETENTION CREDIT FOR INVESTMENT MANAGEMENT FIRMS.

(A) ~~Subject to the limitations in subsection (C) below, for the four years commencing January 1, 2009 a~~An Investment Management Firm is entitled to a credit against the total amount of its business income tax due. The business retention credit is determined by subtracting from the business income tax due the greater of:

(1) \$4,000 times the number of owners, not including limited partners, subject to the ~~Owner's Compensation D~~eduction allowed in ~~Section §~~ 12.600; or

* * *

(B) For purposes of this credit, the "first tax year" would be a tax year in which the Investment Management Firm is doing business in Multnomah County and either:

(C) This credit may be claimed as follows:

(4) In the fourth consecutive tax year that the Investment Management Firm is doing business in ~~the~~ Multnomah County, the Investment Management Firm, in addition to the full credit calculated in subsection (A), can claim the 50 percent deferred credit that was calculated in subsection (2) above.

(D) This credit is available for tax years beginning on or after January 1, 2009.

Section 17. MCC § 12.850 is amended as follows:

§ 12.850 – HACKING.

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

~~ADMINISTRATOR'S COMPUTER DATABASE.~~ Computer application(s) used by the Division or the Administrator to calculate ~~and~~ or 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~~ County or the Administrator, including but not limited to the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

* * *

(B) Any individual who intentionally accesses the ~~Administrator's eComputer dDatabase~~ without authorization will be fined:

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

* * *

(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 eComputer dDatabase~~, and, as a result of such conduct, causes damage to the Computer dDatabase.

FIRST READING: _____ *(type in meeting date)*

SECOND READING AND ADOPTION: _____ *(type in meeting date)*

**BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

Deborah Kafoury, Chair

**REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON**

By _____
Jacqueline A. Weber, Deputy County Attorney

SUBMITTED BY: