

IN CONSIDERATION OF

- ORDINANCE 23-1492, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 7.05 TO IMPROVE CLARITY REGARDING PENALTIES AND INTEREST AND OTHER HOUSEKEEPING UPDATES AND DECLARING AN EMERGENCY

Date: March 9, 2023
Department: Finance & Reg. Services
Meeting Date: March 23, 2023

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Length: 20 minutes

ISSUE STATEMENT

Through the course of enforcement activities following the first year of Supportive Housing Services (SHS) tax collection, it became apparent that there were significant numbers of potential taxpayers that were unaware of the personal income tax. A similar outcome was experienced by Multnomah County in reference to its Preschool for All (PFA) tax. In response, both Metro and Multnomah County agreed to waive penalties and interest for personal income taxes for tax year 2021. Furthermore, no penalties or interest will be assessed for underpayment of estimated personal income taxes¹ for tax year 2022.

For FY 2021-22, over \$240 million was collected in personal and business taxes. In order to collect the taxes in the most efficient, cost-effective manner possible, Metro entered into an intergovernmental agreement with the City of Portland Revenue Division to administer the taxes. Meanwhile, the Division executed a data-sharing agreement with the Oregon Department of Revenue that would ease enforcement and compliance activities by identifying those taxpayers that filed state returns suggesting that they may owe SHS and/or PFA personal income taxes as well, but had not filed an SHS return by the due date.

Because the personal income tax is new and a significant number of taxpayers appear to have not been aware of the tax, staff is proposing code amendments to codify administrative actions already in place that eliminate personal income tax penalties and interest associated with tax years 2021 and 2022. In addition, staff proposes to eliminate the additional 20% penalty added for delinquent payments over four months, and, finally, make minor housekeeping revisions. Additionally, Metro staff will coordinate with the Portland Revenue Division to regularly update the interest rate charged on delinquent taxes to that which the state assesses – currently 6% versus Metro code, which has a statutory 10% interest rate but allows for adjustment by administrative rule.

ACTION REQUESTED

Staff requests that Metro Council adopt Ordinance No. 23-1492.

¹ Taxpayers that owe at least \$1,000 in SHS taxes must either have taxes withheld or make estimated payments. The process is similar to state and federal income taxes.

IDENTIFIED POLICY OUTCOMES

The proposed amendments to the Metro personal income tax code sections codify the administrative actions taken by the chief operating officer, chief finance officer, and the City of Portland to waive all penalties and interest for personal income taxes for tax year 2021 and for non-payment of estimated or withholding taxes for tax year 2022. The proposed code changes do four things related to the personal income tax code:

- 1) Waive all penalties and interest assessed for tax year 2021 (the first year the tax was in place);
- 2) Waive penalties and interest related to underpayments of taxes for tax year 2022. This eliminates charges that accrue due to underpayment of taxes either through inadequate withholdings or estimated payments;
- 3) Eliminate the additional 20% penalty that accrues after four months of delinquency (an initial 5% penalty is assessed for late filing/payment. This penalty is overly punitive for personal income taxes and, due to timing, will often be triggered because the data that is received from the State Department of Revenue that support enforcement actions can be delayed by more than four months; and,
- 4) Minor housekeeping amendments and revision related to plan and inclusive language.

POLICY OPTIONS FOR COUNCIL TO CONSIDER

- Adopt this ordinance. This codifies the administratively enacted relief to taxpayers that would otherwise be charged penalties and interest.
- Adopt this ordinance with revisions or modifications as described by Council.
- Reject this ordinance with other direction to staff. The existing income tax code would remain in place and proposed amendments would not be made.

STAFF RECOMMENDATIONS

Staff recommend that Metro Council adopt Ordinance No. 23-1492.

STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION

Tax collection began in April 2021, but the first tax filings were not due until April 2022. As of March 3, 2023, nearly \$400 million in total has been collected for Supportive Housing Services, with more than \$225 million of that coming from personal income taxes.

To date, roughly 20,000 non-filer letters have been sent by the Portland Revenue Division (Metro's tax administrator) to potential taxpayers. It is important to note that not all the notices will result in taxes owed. The information that triggered the letter to taxpayers only includes the income amount from the Oregon tax return, not the comprehensive federal and state tax information necessary to determine with certainty that someone is liable for the tax.

In response to taxpayer and Council concerns, Metro directed the City of Portland Revenue Division to waive penalties and interest for tax year 2021 and underpayment penalties and interest for estimated taxes for the 2022 tax year. Subsequently, staff have worked with the Portland Revenue Division and Multnomah County to implement the waivers and provide refunds for those that have already paid penalty and/or interest for tax year 2021.

BACKGROUND

In May 2020 voters in greater Portland approved a measure to raise money for supportive housing services for people experiencing homelessness or at risk of experiencing homelessness. The program is funded by two separate taxes: a 1% personal income tax on taxable income above \$125,000 for individuals and \$200,000 for those filing jointly, and a 1% business income tax on net income for businesses with gross receipts above \$5 million.

During the development of the tax code and intergovernmental agreement with the Portland Revenue Division, the Portland Revenue Division reached a data sharing agreement with State of Oregon Department of Revenue that enhances enforcement activities by identifying those taxpayers whose state tax return indicates they may also be liable for SHS personal income tax, but failed to file a SHS tax return. In fall 2022, the Revenue Division received the first data for tax year 2021. Subsequently approximately 20,000 potential taxpayers were identified and the process for notifying those taxpayers began.

After passage of the measure in May 2020, Metro and the City of Portland's Revenue Division made several efforts to educate impacted taxpayers. Staff also coordinated this work with Multnomah County because Multnomah County passed a similar personal income tax to fund early childhood education.

One challenge is that, of the nearly one million state income tax filers, only about 5% will be liable for the SHS personal income taxes in a given year. Furthermore, many taxpayers will have a one-time event that may make them liable for the tax only once. Similar to state and federal income taxes, but unlike property taxes, there is not a database of high-income earners to identify ahead of the tax due date. Below is a brief list of efforts made to reach both businesses and households prior to the tax due date.

Business Letters. In Winter 2021, a letter was sent to all registered businesses in the Metro jurisdiction. The letter detailed both the business and personal income taxes, as well as any employer responsibilities regarding employee payroll withholding. While we cannot mandate businesses outside of the Metro jurisdiction to withhold, opt-in forms are available for those employees to use with their employer. Staff is also looking at opportunities for additional outreach to local employers to expand income tax withholding compliance.

CPA/Tax Preparation Organizations. Metro and the Portland Revenue Division contacted the following organizations and who subsequently notified their membership:

- Oregon Society of CPAs
- Portland Business Alliance
- Prosper Portland
- Oregon Association of Minority Entrepreneurs
- Council on State Taxation
- Oregon State Bar
- Oregon Association of Tax Consultants
- Oregon Association of Independent Accountants

Software Vendors. The Portland Revenue Division is in regular contact with software providers and repeated requests have been made to have SHS forms included in tax software. Many software providers – particularly those with consumer products like Turbo Tax and H&R Block – will not upload forms for the first year of a tax because there can be significant changes once a tax is in place. While we do not expect significant changes, every effort is being made to encourage inclusion in the software packages. For tax preparers, this includes pending action to mandate efilings for those tax preparers completing at least ten returns. By instituting this mandate, software providers will be encouraged to include the forms in order to meet the needs of its clients.

Webinar/Conferences. Staff provided conference seminars and a webinar for interested parties.