Chapter 7.07 Business Income Tax

New language for Chapter 7.07 is indicated by underlined text.

1. *Amend the title of Section 7.07.070 “Income Determinations” as follows:*

7.07.070 Income Determination for Tax Years Prior to January 1, 2023.

2. *Amend Section 7.07.070 “Income Determinations” by inserting the following language as the new first paragraph:*

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

The remainder of Section 7.07.070 is unchanged.

3. *Add a new Section 7.07.071 “Income Determinations for Tax Years on or after January 1, 2023” as follows:*

7.07.071 Income Determinations for Tax Years on or after January 1, 2023

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

The net income arising from any business, as reportable to the State of Oregon (State) for corporation, S-corporation, partnership, or trust excise or income tax purposes, before any allocation or apportionment for operation out of state, or deduction for a net operating loss carry-forward or carry-back is subject to the Metro Business Income Tax.

(a) Partnerships, S-corporations, limited liability companies (excluding disregarded entities), limited partnerships, limited liability partnerships, family limited partnerships, estates, and trusts are liable for the business tax and not the individual partners, shareholders, members, beneficiaries, or owners. The income of these entities must include all income received by the entity including ordinary income, interest and dividend income, income from sales of business assets, and other income attributable to the entity.

(b) If one or more persons are required or elect to report their income to the State for corporation excise or income tax purposes in a consolidated, combined, or joint return, a single return must be filed by the person filing such return. In such cases, net income means the net income of the consolidated, combined or joint group of taxfilers before any allocation or apportionment for operation out of the state, or deduction for a net operating loss carry-forward or carry-back.

(c) The absence of reporting income to the Internal Revenue Service or the State of Oregon does not limit the ability of the Administrator to determine the correct income of the taxfiler through examination under Section 7.05.130.

(d) Estates and trusts. In determining income for estates and trusts, income is measured after distribution of profits to beneficiaries. No additional deduction is allowed.

(e) Certain Deductions Not Allowed. In determining income, no deduction is allowed for:

1. Taxes based on or measured by net income;
2. The federal built-in gains tax; or
3. The City of Portland Clean Energy Surcharge.

(f) Ordinary gain or loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property must be included as ordinary gain or loss.

(g) Net operating loss. In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75% of the income determined for the current tax year before this deduction but after all other deductions from income allowed by this section and apportioned for business activity both within and without the District.

1. When the operations of the taxfiler from doing business both within and without the District result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.07.080. A net operating loss may not be carried forward from any tax year during which the taxfiler conducted no business within the District or the taxfiler was otherwise exempt from payment of the Business Income Tax unless specifically provided for by administrative rule or written policy.

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

3. The net operating loss of the earliest tax year available must be exhausted before a net operating loss from a later tax year may be deducted.

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

4. *Amend the title of Section 7.07.080 "Apportionment of Income" as follows:*

7.07.080 Apportionment of Income for Tax Years Prior to January 1, 2023

5. *Amend Section 7.07.080 "Apportionment of Income" by inserting the following language as the new first paragraph:*

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

The remainder of Section 7.07.080 is unchanged.

6. *Add a new Section 7.07.081 "Apportionment of Income for Tax Years Beginning on or after January 1, 2023" as follows:*

7.07.081 Apportionment of Income for Tax Years Beginning on or after January 1, 2023

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

(a) "Jurisdiction to tax" occurs when a person engages in business activities in a jurisdiction that is not protected from taxation by Public Law 86-272 [15 U.S.C. Section 381-384]. The District's standard for jurisdiction to tax, or nexus, is the same as the State of Oregon's found in the Oregon Revised Statutes and Oregon Administrative Rules related to taxation. If a taxfiler's business is based in the District, a taxfiler must have business activity outside the District that results in a jurisdiction to tax outside the District to apportion the income of the business. Without jurisdiction to tax outside the District, all income of a business is taxable by Metro.

(b) "Business activity" means any of the elements of doing business. The income reportable as income earned from business activity within the District will include all business incomes from sources within the District that is taxable income under Oregon tax laws and regulations unless otherwise exempted or excluded in this chapter.

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

(d) In determining the sales factor numerator under subsection (c): Sales of tangible personal property are deemed to take place in the District if the property is delivered or shipped to a purchaser within the District regardless of the f.o.b. point or other conditions of sale. If sales of tangible personal property are shipped from the District to a purchaser located where the taxfiler is not taxable, those sales are not apportioned to the District.

(e) Certain industries or incomes are subject to specific apportionment methodologies. These methodologies are described in administrative rules adopted in accordance with section 7.05.070 or Metro ordinance. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes and Oregon Administrative Rules for the sales factor, will be used in cases in which the Administrator has not adopted a rule regarding the apportionment of that industry or income. All apportionment methodologies directed under this subsection will be a single sales factor as directed under subsection 7.07.081 (c) and subsection 7.07.081 (d).