

**CHAPTER 7.05**

**INCOME TAX ADMINISTRATION FOR PERSONAL AND BUSINESS TAXES**

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### **7.05.010 Purpose and Applicability**

The purpose of this chapter is to provide consistent, efficient and transparent administration of Metro's Business Income Tax Law and Personal Income Tax Law (collectively, "Metro's Income Tax Laws."). The provisions of this chapter apply to the administration of both the Business Income Tax Law and Personal Income Tax Law, as applicable, unless Chapter 7.06 or Chapter 7.07 specifically exempts a provision.

### **7.05.020 Definitions**

For the purpose of this chapter and Metro Code Chapters 7.06 and 7.07, the terms used are defined as provided in this section unless the context requires otherwise.

**Administrator** means Metro's agent for purposes of administering and enforcing the Business and Personal Income Tax Laws.

**Appeals Board** means the hearings body designated by the Administrator to review taxfiler appeals from final determinations by the Administrator.

**Business** means 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.

**Business Income Tax Law** means the taxes imposed on businesses under the provisions of Metro Code Chapter 7.07.

**Chief Financial Officer** means the Metro Chief Financial Officer and the Officer's designee(s).

**Chief Operating Officer** means the Metro Chief Operating Officer and the Officer's designee(s).

**District** means all the territory within the jurisdictional boundary of Metro as provided by law.

**Doing Business** means 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 their own behalf.

**Domicile** means the place an individual considers to be the individual's true, fixed, permanent home. Domicile is the place a person intends to return to after an absence. A person can only have one domicile at a given time. A person's domicile continues as their domicile until the person demonstrates (1) an intent to abandon the current domicile and acquire a new domicile, and (2) then actually resides in the new domicile. Factors that contribute to determining domicile include family, business activities and social connections. A person is domiciled in the District if the person's domicile is located within the District.

**Employee** means any individual who performs services for another individual or organization and whose compensation is reported by an IRS Form W- 2.

**Gross Receipts** means all income from whatever source derived.

**Individual** means a natural person, including a natural person who reports that person's income to the State of Oregon in a joint personal State income tax return. In such case, Individual refers to the joint taxfiler.

**Metro** means the Metropolitan Service District of the Portland metropolitan area, a municipal corporation established and existing pursuant to Section 14 of Article XI of the Oregon Constitution, ORS Chapter 268 and the Metro Charter.

**Metro Income Tax Laws** means, collectively, the Business Income Tax Law, the Personal Income Tax Law and the code chapters and administrative rules that administer and govern those taxes.

**Metro Taxable Income** means income attributable to sources within the District less deductions from income attributable to sources within the District. This includes, but is not limited to:

- (a) Wages received by a nonresident taxfiler attributable to work performed within the District;
- (b) Items reported to a nonresident taxfiler attributable to the taxfiler's ownership interest in a pass-through entity that does business in the District and reports tax items attributable to that ownership interest to the taxfiler on a Schedule K-1; and
- (c) Income and expenses from a sole proprietorship or disregarded entity attributable to business in the District and reported on a nonresident taxfiler's individual return.

**Net Operating Loss** means 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** means income not created in the course of the taxfiler's business activities.

**Nonresident** means an individual who is not a resident of the District.

**Oregon Taxable Income** means the taxable income of residents or part year residents as reported or as reportable to the State of Oregon for personal income tax purposes.

**Part-year Resident** means a taxfiler who changes status during a tax year from resident to nonresident or from nonresident to resident.

**Person** means, but is not limited to, an individual, a natural person, married couple filing jointly, proprietorship, partnership, limited partnership, family limited partnerships, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business. Each person who is not a natural person must designate a natural person in writing as its designated representative who is authorized to act and testify on behalf of such person.

**Personal Income Tax Law** means the personal income taxes imposed on District residents and nonresidents under the provisions of Metro Code Chapter 7.06.

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

**Resident** means (1) an individual whose domicile is within the District for the entire taxable year unless the individual maintains no permanent place of abode in the District, does maintain a permanent place of abode outside of the District, and spends on aggregate not more than 30 days per tax year in the District; or, (2) an individual who is not domiciled in the District but maintains a permanent place of abode in the District and spends in the aggregate more than 200 days or any part of a day of the tax year in the District unless the individual proves that the individual is in the District for only a temporary or transitory purpose. Resident does not include: an individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year; the spouse of a qualified individual under Section 911(d)(1) of the Internal Revenue Code, if the spouse is not a resident of the District; a resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under Section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States; a member of the Armed Forces who performs active service as defined in 10 U.S.C. 101(d)(3), other than annual training duty or inactive-duty training, if the member's residency as reflected in the payroll records of the Defense Finance and Accounting Service is outside the District.

**Tax Year** means the taxable year of a person for Federal or State income tax purposes.

**Taxfiler** means any person whose income in whole or in part is subject to Metro Income Tax Laws and is required to file a return under Metro Income Tax Laws.

#### **7.05.030 Conformity to State Income Tax Laws; Tax Guidance**

- (a) The Administrator will construe the Business Income Tax Law, when applicable, in conformity with the laws and regulations that govern the Multnomah County Business Income Tax as those laws existed for that tax year. The Administrator will construe the Personal income Tax Law, when applicable, in conformity with the laws and regulations of the State of Oregon imposing taxes on or measured by net income as those laws existed for that tax year.
- (b) Any interpretation under subsection (a) may not conflict with any provision of this chapter, Chapter 7.06, or Chapter 7.07.
- (c) The Administrator has the authority by written policy to connect to or disconnect from any legislative enactment regarding income or excise taxation or the definition of income.

#### **7.05.040 Nexus**

The taxes imposed by Chapter 7.06 and Chapter 7.07 apply to all taxpayers that have substantial nexus with the District, subject only to constitutional limitation on Metro's authority.

#### **7.05.050 Tax as a Debt; Collection Authority**

- (a) The taxes imposed by Chapter 7.07 and Chapter 7.06 become a debt due to Metro at the time such liability for the tax is incurred. This includes any penalties and interest.
- (b) The Chief Financial Officer or Administrator is authorized to collect any deficient taxes, interest and penalties owed. This includes initiating and defending any civil actions and other legal proceedings.
- (c) Metro or the Administrator, as appropriate, may assign a delinquent tax account to a collection agency for collection.
- (d) Any assignment to an outside collection agency is subject to a reasonable collection fee, as allowed by law, above and beyond any amount owed to Metro.

#### **7.05.060 Administration**

- (a) The Administrator is the administrator of record and has the authority to administer and enforce the Metro Income Tax Laws including, 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 Metro); and protests and appeals.

- (b) The Administrator has access to and maintains all tax filings and records under this chapter and the Metro Income Tax Laws on behalf of Metro. The Administrator may, upon taxfiler's written request and at the sole discretion of the Administrator, interpret how this chapter or the Metro Income Tax Laws apply to taxfiler's facts and circumstances. Nothing in this chapter or Chapters 7.06 and 7.07 preclude or is intended to preclude, the informal disposition of controversy by stipulation or agreed settlement, through correspondence or a conference with the Administrator.

#### **7.05.070 Administrative Authority**

- (a) The Administrator may implement procedures, forms, and written policies for administering the provisions of the Business Income Tax Law and Personal Income Tax Law.
- (b) The Administrator will coordinate with Metro to adopt administrative rules relating to matters within the scope of this chapter to administer compliance with the Business Income Tax Law and Personal Income Tax Law.

#### **7.05.080 Ownership of Taxfiler Information**

Metro is the sole owner of all taxfiler information under the authority of the Metro Income Tax Laws. The Chief Operating Officer, Metro Attorney, Chief Financial Officer, Administrator, and their agents have the right to access all taxfiler information for purposes of administration.

#### **7.05.090 Confidentiality**

- (a) No Metro elected official, employee, or agent, nor any person who has acquired information pursuant to the Metro Income Tax Laws, may divulge, release, or make known in any manner any financial information, social security numbers or any other elements of a tax return or tax account, including fact of filing and collection activity submitted or disclosed to Metro or the Administrator under the provisions of this chapter, the Metro Income Tax Laws, and any applicable administrative rules, unless otherwise provided in this chapter or as required by law.
- (b) Nothing in this section prohibits:
  1. The disclosure of general statistics in a form that would prevent the identification of financial information or social security numbers regarding an individual taxfiler;

2. The filing of any legal action by or on behalf of the Administrator or Metro to obtain payment on unpaid accounts or the disclosure of information necessary to do so; or
  3. The assignment to an outside collection agency of any unpaid account balance receivable provided that the Administrator notifies the taxfiler of the unpaid balance at least 60 days before the assignment of the claim.
- (c) Any person that violates this section may be subject to criminal penalties as set forth in Section 7.05.240.

#### **7.05.100 Persons to Whom Information May Be Furnished**

- (a) The Administrator and Metro Chief Operating Officer may disclose and give access to information described in Section 7.05.090 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. To inspect the tax return of any taxfiler;
  2. To obtain an abstract or copy of the tax return;
  3. To obtain information concerning any item contained in any return;
  4. To obtain information of any financial audit of the tax returns of any taxfiler; or
  5. To maintain compliance with State or Federal Law (such as providing social security numbers to the Internal Revenue Service with 1099G filings for refunds issued).

Disclosure and access will be granted only if the laws, regulations or practices of the other jurisdiction maintain the confidentiality of this information at least to the extent provided by the Business Income Tax Law or Personal Income Tax Law, as applicable.

- (b) Upon request of a taxfiler, or authorized representative, the Administrator will provide copies of any tax return information filed by the taxfiler in the Administrator's possession to the taxfiler or authorized representative.
- (c) If a court of competent jurisdiction issues a court order requiring the disclosure of a taxfiler's tax return information, the Administrator will comply with the terms of that court order after providing written notice to the taxfiler at taxfiler's last known address.
- (d) The Administrator may also disclose and give access to information described in Section 7.05.090 to:

1. The Metro Attorney, the Attorney's assistants and employees, or other legal representatives of Metro, to the extent disclosure or access is necessary for the performance of the duties of advising or representing Metro.
  2. The Administrator's Attorney, the Attorney's assistants and employees, or other legal representatives of the Administrator, 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.
  3. Other Metro employees and agents, to the extent disclosure or access is necessary for such employees or agents to perform their duties regarding or under contracts or agreements between Metro and the Administrator.
  4. The Administrator's employees, agents and officials, 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 Metro or between the Administrator and any other department, bureau, agency or subdivision of the Administrator relating to the administration of the Metro Income Tax Laws; or
    - C. Aid in determining whether a Metro Income Tax Law account is in compliance with all City, County, State and Federal laws or policies.
- (e) All employees and agents specified in Section 7.05.100(d) above, prior to the performance of duties involving access to financial information submitted to Metro or the Administrator under the terms of the Personal Income Tax Law or Business Income Tax Law, must be advised in writing of Section 7.05.240 relating to penalties for the violation of Sections 7.05.090 and 7.05.100. Such employees and agents must execute a certificate in a form prescribed by the Chief Operating Officer 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 Sections 7.05.090 and 7.05.100.
- (f) No person described in subsection (a) to whom disclosure or access to financial information has been given may make a disclosure under this section unless that person:
1. Is advised in writing of Section 7.05.240 relating to penalties for the violation of Section 7.05.090; and
  2. Executes a certificate in a form prescribed by the Chief Operating Officer or Administrator, stating these provisions of law have been reviewed and that person is aware of the penalties for the violation of Section 7.05.090. The Chief Operating



Officer's or Administrator's signature on the certificate, required by this subsection, constitutes consent to disclosure to the persons executing the certificate.

- (g) Any person that violates this section may be subject to criminal penalties as set forth in Section 7.05.240.

#### **7.05.110 Taxfiler Representation**

Third parties, such as attorneys or certified public accountants, may represent taxfilers before the Administrator. The Administrator may establish procedures for taxfilers to authorize a third party to represent the taxfiler, which may include a written authorization submitted to the Administrator. The Administrator is not required to recognize a third party who claims to represent a taxfiler if that third party does not comply with the established procedures.

#### **7.05.120 Representation Restrictions**

- (a) No employee or official of Metro, the Administrator, or any public agency authorized to collect taxes imposed by this chapter may represent any taxfiler in any matter before the Administrator. This restriction against taxfiler representation continues for two years after termination of employment or official status.
- (b) Members of the appeals board may not represent a taxfiler before the appeals board. No member of the appeals board may participate in any matter before the board if the appellant is a client of the member or the member's firm.

#### **7.05.130 Information Request; Examination of Books, Records or Persons**

- (a) The Administrator may require a taxfiler to produce documents. The Administrator may also 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 has the authority, after notice, to:
1. Require the attendance of any person required to file a tax return under the Metro Income Tax Laws, 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.

- (b) The Administrator will designate the employees who have the power to administer oaths under this section.

#### **7.05.135 Subpoena Powers**

- (a) The Administrator may subpoena and examine witnesses, administer oaths, and require the production of any books or papers in the hands of any person, company or corporation, whenever necessary for the prosecution of any inquiries deemed necessary or proper.
- (b) If any person fails to comply with any subpoena of the Administrator or refuses to testify when the Administrator requires that person to testify, the Administrator may apply to a court of competent jurisdiction for an order to the person to produce the books and papers or attend and testify, or otherwise comply with the demand of the Administrator.
- (c) The Administrator will apply to the court by ex parte motion, upon which the court will make an order requiring the person against whom it is directed to comply with the Administrator's request or demand within 10 days after the service of the order, or within the additional time granted by the court, or to justify the failure within that time. The order will be served upon the person to whom it is directed in the manner required by the State of Oregon or other applicable jurisdiction for service of process, which is required to confer jurisdiction upon the court.
- (d) Upon petition of the person subpoenaed, the court will make an order determining if the evidence sought by the subpoena is relevant to the pending proceeding and, if requested by the person subpoenaed, an order as required in the interests of justice to protect the confidentiality of the information subpoenaed. Upon failure of the subpoenaed person to show cause for noncompliance, the court will make an order requiring the person to comply with the demand of the Administrator within such time as the court directs.
- (e) Failure to obey any order issued by the court under this section is contempt of court. The remedy provided by this section is in addition to other remedies, civil or criminal, that may exist.
- (f) The Administrator will designate the employees who have the power to administer oaths under this section.

#### **7.05.140 Taxfiler Records Retention**

Every person required to file a return under the Business Income Tax Law or Personal Income

Tax Law must keep and preserve for not less than seven years such documents and records, including State and Federal income and excise tax returns, accurately supporting the information reported on the taxfiler's return and calculation of tax for each year.

#### **7.05.150 Deficiencies and Refunds**

- (a) The Administrator may assess deficiencies and grant refunds any time within the periods set forth for deficiencies or refunds under ORS Chapter 314. The Administrator may by agreement with the taxfiler extend the time periods to the same extent as provided by statute.
- (b) When no tax return has been filed, there is no time limit for a notice of deficiency 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 for any tax period 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 30 days before the Administrator (or its designee) filed a lawsuit for those particular taxable years.

#### **7.05.160 Protests and Appeals; Penalty Waiver**

- (a) A taxfiler may protest any determination by the Administrator. The Administrator must receive written notice of the protest within 30 days after the Administrator mailed or delivered the notice of determination to the taxfiler. The protest must state the name and address of the taxfiler and an explanation of the general grounds for the protest. The Administrator must respond within 30 days after the protest is filed with either a revised determination or a final determination. The Administrator's determination must 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 before the original 30-day protest deadline expires. The Administrator will give written notice to the taxfiler if the Administrator's deadline is extended.

(b) A taxfiler may appeal any final determination by the Administrator to the appeals board. The Administrator must receive written notice of the appeal within 30 days after the Administrator mailed or delivered the final determination to the appellant. The notice of appeal must state the name and address of the appellant and include a copy of the final determination.

(c) Within 90 days after the Administrator mails or delivers the final determination to the appellant, the appellant must file with the appeals board a written statement containing:

1. The reasons the Administrator's determination is incorrect; and
2. What the correct determination should be.

Failure to file this a written statement within the time permitted is a waiver of any objections, and the appeal will be dismissed.

(d) Within 150 days after the Administrator mails or delivers the final determination to the appellant, the Administrator will file with the appeals board a written response to the appellant's statement. A copy of the Administrator's response must be mailed to the address provided by the appellant within 10 days after the Administrator files it with the appeals board.

(e) The Administrator must provide the appellant written notice of the hearing date and location at least 14 days before the hearing. The appellant and the Administrator may present relevant testimony, evidence, and oral argument at the hearing. The appeals board may request additional written comment and documents as the board deems appropriate.

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

(g) The decision of the appeals board is final as of the issue date and no further administrative appeal will be provided.

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

(i) Penalty waiver or reduction requests are not subject to the protest/appeal process or timeline outlined in subsections 7.05.160(a) through 160(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 or waive penalties within 60 days from the date the written request is

received. As provided in subsections 7.05.260(f) and 7.05.270(e), the 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.

#### **7.05.170 Return Due Date; Extensions**

- (a) Tax returns must be on forms provided or approved by the Administrator. All tax returns must be filed together with payment of the specified tax by the fifteenth day of the fourth month following the end of the tax year. If the due date falls on a weekend or Federal or State holiday, the due date is the first business day following the weekend or holiday. With respect to the Business Income Tax Law, 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.
- (b) The Administrator may, for good cause, grant extensions for filing returns. However, no extension may be granted for more than six months beyond the initial due date. This extension does not extend the time to pay the tax. Payments made after the due date may be subject to interest and penalties as provided in this chapter.
- (c) The tax return must contain a written declaration, verified by the taxfiler, to the effect that the statements made therein are true.
- (d) The Administrator will prepare blank tax returns and make them available upon request. Failure to receive a form does not relieve any person from the obligation to pay a tax under either the Business Income Tax Law or Personal Income Tax Law.

#### **7.05.180 Payment of Estimated Tax**

- (a) Every taxfiler expecting to have a tax liability under Chapter 7.06 or Chapter 7.07 of \$1,000 or greater must estimate and pay the taxfiler's tax liability for the current tax year as follows:
  - 1. Quarterly payments as provided in Section 7.05.190; or
  - 2. Employer provided withholding from taxfiler's wages as provided in Section 7.06.120.

- (b) If a taxfiler is required to remit estimated tax payments, such amounts remitted must total either the lesser of ninety percent of the taxfiler's current year tax liability or one hundred percent of the taxfiler's reported prior year tax liability.
- (c) The Administrator will not impose underpayment interest for failure to make quarterly estimated payments for tax year 2021 (tax year beginning on or after January 1, 2021). For tax years beginning on or after January 1, 2022, the Administrator will impose penalties and interest as provided in this chapter.

#### **7.05.190 Schedule for Payment of Estimated Tax**

- (a) A taxfiler required under Section 7.05.180 to make payments of estimated tax must make the payments in installments as follows:
  - 1. One quarter or more of the estimated tax on or before the fifteenth day of the fourth month of the tax year;
  - 2. One quarter or more of the estimated tax on or before the fifteenth day of the sixth month of the tax year;
  - 3. One quarter or more of the estimated tax on or before the fifteenth day of the ninth month of the tax year; and
  - 4. For business income taxfilers, the balance of the estimated tax must be paid on or before the fifteenth day of the twelfth month of the tax year;
  - 5. For personal income taxfilers, the balance of the estimated tax must be paid on or before the fifteenth day of the first month of the subsequent tax year.
- (b) Any payment of the estimated tax received by the Administrator for which the taxfiler has made no designation of the quarterly installment to which the payment is to be applied, will first be applied to underpayments of estimated tax due for any prior quarter of the tax year. Any excess amount will be applied to the installment that next becomes due after the payment was received.

#### **7.05.200 Tax Return Payment; Minimum**

- (a) Business Income Tax. Each business income tax return must be accompanied by a tax payment at the rate established in Metro Code Section 7.07.030, provided that each tax return must be accompanied by a minimum tax of \$100. The minimum payment may have previously been paid by quarterly payments, an extension payment, or credit available from a prior tax year.

- (b) Personal Income Tax. Each personal tax return must be accompanied by a tax payment at the rate established in Metro Code Section 7.06.040.

#### **7.05.210 Payment Plan; Fee**

If a person fails to pay the Business Income Tax or Personal Income Tax when due, the Administrator may establish a payment plan pursuant to written policy. The Administrator may charge a setup fee for each payment plan established.

#### **7.05.220 Settlement Offers and Agreements**

- (a) The Administrator may, upon good and sufficient cause, make settlement agreements with taxfilers in the recomputation of taxes payable or in the collection of those taxes. These agreements must be consistent with ORS 305.150 and 305.155 and corresponding OARs. The Administrator will provide applications for settlement offers to taxfilers proposing settlement offers.
- (b) In addition to the general power granted under this section, the Administrator may, upon a showing of good and sufficient cause, grant a taxfiler's request when the Oregon Department of Revenue has granted relief to a taxfiler under ORS 316.368 or ORS 316.369. In such case, a taxfiler who is granted relief will be treated as a single taxfiler for purposes of the tax imposed under this Chapter.

#### **7.05.230 Changes to Federal or State Tax Returns**

- (a) If a taxfiler's reported income under applicable State laws imposing a tax on or measured by income is changed by the Federal Internal Revenue Service or the State Department of Revenue, or amended by the taxfiler to correct an error in the original Federal or State return, the taxfiler must file a report of that change with the Administrator within 60 days after the 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 must be accompanied by an amended tax return with respect to such income and by any additional tax, penalty, and interest due.
- (b) The Administrator may assess deficiencies and grant refunds resulting from changes to any relevant Federal, State or local income tax return within the time periods provided for in Section 7.05.150, treating the report of change in Federal, State or business income tax return as the filing of an amended tax return.
- (c) The Administrator may assess penalties and interest on the additional tax due as provided in Sections 7.05.260, 7.05.270, and 7.05.280 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).

#### **7.05.240 Criminal Penalties**

A violation of Section 7.05.090 or Section 7.05.100 is punishable, upon conviction thereof, by a fine not exceeding \$500 or by imprisonment for a period not exceeding six months, or by both fine and imprisonment. In addition, any Metro employee convicted for violation of Section 7.05.090 or Section 7.05.100 is subject to possible dismissal from employment and a possible prohibition from employment for a period of five years thereafter. Any agent of Metro who is convicted is ineligible for participation in any Metro contract for a period of five years thereafter.

#### **7.05.250 Civil Penalty for Unauthorized Access of Tax Information**

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

*Computer Database* means any computer application(s) used by the Administrator to calculate or store business, personal, and financial data collected under the authority granted by Metro Income Tax Laws.

*Loss* means any reasonable cost incurred by Metro 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 Computer Database without authorization will be fined:

1. \$10,000 if the individual acquires any information regarding any business or personal account found in the Computer Database;
2. \$10,000 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. \$10,000 or the cost of the loss (whichever is greater) if the individual causes the transmission of a program, information, code, or command to the Computer Database, and, as a result of such conduct, causes damage to the Computer Database.

#### **7.05.260 Penalties for Violations of Business Income Tax Law**



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

1. Fails to file a tax return or extension request at the time required under Section 7.05.170(a) or 7.05.230(a); or
2. Fails to pay a tax when due.
3. The penalty under subsection (a) is:
  - A. Five percent of the total tax liability if the failure is for a period less than four months;
  - B. An additional penalty of twenty percent of the total tax liability if the failure is for a period of four months or more; and
  - C. An additional penalty of one hundred percent of the total tax liability of all tax years if the failure to file is for three or more consecutive tax years.

(b) A penalty will be assessed if a person who has filed an extension request:

1. Fails to file a tax return by the extended due date; or
2. Fails to pay the tax liability by the extended due date.
3. The penalty under subsection (b) is:
  - 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 twenty percent of the total tax liability if the failure is for a period of four months or more.

(c) A penalty will be assessed if a person:

1. Fails to pay at least ninety percent of the total tax liability by the original due date; or
2. Fails to pay at least one hundred percent of the prior year's total tax liability by the original due date.
3. The penalty under subsection (c) is five percent of the tax underpayment, but not less than \$5.

- (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 60 days of the Administrator's original written notice to file; or
  2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment; or
  3. Failure to provide either documents or information as required by this chapter or Chapter 7.07 within 60 days of the Administrator's original written notice to provide the documents or information; or
  4. Failure to fully complete any form required under the Business Income Tax Law; or
  5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.07 unless the section has a separate penalty calculation.
- (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.
- (g) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.07. For purposes of this subsection, a tax return position 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 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.
- (h) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Business Income Tax Law.

#### **7.05.270 Penalties for Violations of Personal Income Tax Law**

The Administrator will assess the following penalties upon personal income taxfilers:

- (a) Failure to File a Return; Failure to Pay Tax When Due. If a taxfiler fails to file a return or fails to pay a tax by the date on which the filing or payment is due, the Administrator will add a delinquency penalty of:
1. Five percent of the amount of the unpaid tax if the failure is for a period less than four months;
  2. An additional penalty of twenty percent of the unpaid tax if the failure is for a period of four months or more; and
  3. An additional penalty of one hundred percent of the unpaid tax of all tax years if the failure to file is for three or more consecutive tax years.
  4. For purposes of this section, unpaid tax is the taxfiler's tax liability reduced by payment of tax and any credit against tax that is claimed on the return.
- (b) Underpayment of Tax. A penalty will be assessed if a person:
1. Fails to pay at least ninety percent of the total tax liability by the original due date; or
  2. Fails to pay at least one hundred percent of the prior year's total tax liability by the original due date.
  3. The penalty under subsection (b) is five percent of the tax underpayment, but not less than \$5.
- (c) Intent to Evade. If a taxfiler fails to file a return with the intent to evade the tax imposed under this chapter or Chapter 7.06, or a taxfiler prepares or causes to be prepared a return and files that return with the intent to evade the tax imposed under this chapter or Chapter 7.06, the Administrator will impose a penalty in the amount of one hundred percent of any deficiency that the Administrator determines is due.
- (d) Substantial Understatement of Tax. If the Administrator determines that there is a substantial understatement of tax due under this chapter or Chapter 7.06, the Administrator will add to the amount of tax required to be shown on the return a penalty equal to twenty percent of the amount of any underpayment of tax attributable to the understatement.
1. For purposes of this subsection, a substantial understatement of tax exists if the amount of the understatement exceeds \$1,000 of tax otherwise due.
  2. In the case of any item attributable to an abusive tax shelter: no reduction of the amount of the understatement will be made with regard to that item regardless of the existence of substantial authority for the treatment of the item by the taxfiler; and, no

reduction of the amount of the understatement will be made with regard to that item regardless of the disclosure of the facts affecting the tax treatment of the item unless, in addition to the disclosure, the Administrator determines in the Administrator's sole discretion, that the taxfiler reasonably believed that the tax treatment of the item was more likely than not the proper treatment. This chapter expressly adopts the definitions contained in ORS 314.402 and the administrative rules thereunder.

3. The Administrator may waive all or any part of the penalty imposed under this subsection on a showing by the taxfiler that there was reasonable cause for the understatement or any portion thereof, and that the taxfiler acted in good faith.
- (e) Frivolous Return Position. If the Administrator determines that taxfiler has taken a frivolous position in preparing the taxfiler's tax return, the Administrator will add a \$500 penalty to the amount of tax required to be shown on the tax due under this chapter or Chapter 7.06. For purposes of this subsection, a tax return position 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 150-316-0652(2) are adopted by direct reference, but are not a definitive list of those positions.
- (f) Failure of Administrative Compliance. The Administrator may impose a penalty of up to \$500 for the following violations of this chapter:
1. Failure to file any tax return within 60 days of the Administrator's original written notice to file;
  2. Failure to pay any tax within 60 days of the Administrator's original written notice for payment;
  3. Failure to provide either documents or information as required by this chapter or Chapter 7.06 within 60 days of the Administrator's original written notice to provide the documents or information;
  4. Failure to fully complete any form required under the Personal Income Tax Law; or
  5. Failure to fully comply with the requirements of any section of Chapter 7.05 or Chapter 7.06 unless the section has a separate penalty calculation.

The Administrator may impose a civil penalty under this subsection 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. The Administrator may waive all or any part of the penalty imposed under this paragraph on a showing by the taxfiler that there was

reasonable cause for the Failure of Administrative Compliance, and that the taxfiler acted in good faith.

- (g) Penalties cumulative. Each penalty imposed under this section is in addition to any other penalty imposed under this section.
- (h) The provisions set forth in Metro Code Chapter 2.03 do not apply with respect to any penalty that maybe be assessed under this chapter or the Personal Income Tax Law.

#### **7.05.280 Interest**

- (a) Interest will be assessed on any unpaid tax at the rate in subsection (c), computed from the original due date of the tax to the fifteenth day of the month following the date of payment.
- (b) Interest will be assessed on any unpaid or underpaid quarterly estimated payment required by Section 7.05.180 and Section 7.05.190 at the rate in subsection (c), 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) Unless specifically provided otherwise by administrative rule as provided in subsection (d), the interest rate is 0.833% simple interest per month or fraction thereof (ten percent per annum).
- (d) If the Administrator determines that the interest rate provided in subsection (c) is at least one percentage point more or less than the effective interest rate on January 1 charged by the State of Oregon Department of Revenue, the Administrator may adjust the interest rate by administrative rule to match the State of Oregon Department of Revenue interest rate. The Administrator may not adjust the interest rate more than once in a calendar year. The adjusted interest rate applies to unpaid tax or underpaid estimated payments outstanding on or after the effective date of the adjusted interest rate.
- (e) Notwithstanding subsection (b), there is no interest on underpayment of quarterly estimated payments if:
  - 1. The total tax liability of the prior tax year was less than \$1,000;
  - 2. An amount equal to at least ninety percent of the total tax liability for the current tax year was paid in accordance with Section 7.05.190; or
  - 3. An amount equal to at least one hundred percent of the prior year's total tax liability was paid in accordance with Section 7.05.190.

- (f) For purposes of subsection (b), the amount of underpayment is determined by comparing ninety percent of the current total tax liability amount to quarterly estimated payments made prior to the original due date of the tax return. However, if one hundred percent 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.
- (g) For purposes of subsection (a), the amount of tax due on the tax return will be reduced by the amount of any tax payment made on or before the date for payment of the tax in accordance with Section 7.05.170(a) or Section 7.05.190.
- (h) Interest at the rate specified in subsection (a) accrues from the original due date without regard to any extension of the filing date.
- (i) 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.

#### **7.05.290 Payments Applied**

Tax payments received will be applied first 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. The Administrator will apply tax payments received without a designation for a specific period to the oldest periods first in the order set forth above.

#### **7.05.300 Interest on Refunds**

When a taxfiler is entitled to a refund of a portion or all of a tax paid to the Administrator, the taxfiler will receive simple interest on that amount at the rate specified in Section 7.05.280(c), subject to the following:

- (a) Any overpayments will 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, to the date of the refund.
- (b) Any overpayments of taxes that are the result of an amended return being filed will 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. This subsection applies to tax returns that are amended due to a change to any relevant Federal, State or local income tax return.

**7.05.310 Accountability of Funds; Audits**

- (a) Every year a public accounting firm must conduct a financial audit of the revenue generated by the Business Income Tax and Personal Income Tax Laws and the distribution of that revenue. Metro will make the audit public as well as any report to the Metro Council regarding the results of the audit. Metro may use the revenue generated by the taxes to pay for the costs of the audit required under this section.
- (b) The revenue and expenditures from the taxes are subject to performance audits conducted by the Office of the Metro Auditor.

**7.05.320 Severability**

If a court of competent jurisdiction finds that any part, section or provision of this chapter is unconstitutional, illegal or invalid, that finding affects only that part, section or provision of the chapter and the remaining parts, sections or provisions remain in full force and effect.