

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

**ORDINANCE NO. 1310**

**Amending MCC Chapter 12 – Business Income Tax**

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

**The Multnomah County Board of Commissioners Finds:**

1. Under Multnomah County Code Chapter 12, the County collects a tax on a portion of a business' income that results from conducting business in Multnomah County (the "County BIT").
2. By agreement between City and County, City of Portland collects and administers the County BIT; the City also collects and administers Metro BIT. To simplify the administration of the three taxes (including City BIT) and to align the County's BIT code with the City/Metro BIT codes, the County proposes amending the County BIT code for tax years beginning January 1, 2023.
3. To maintain tax code conformity between the three jurisdictions, the proposed amendments will be substantially identical. The County BIT code amendments will align apportionment provisions more closely with the State of Oregon's business income tax apportionment provisions; conform to the State's market-based sourcing of sales. Reducing apportionment and allocation differences will ease the preparation of business tax returns. Changes are intended to apply to tax years beginning on or after January 1, 2023.
4. In addition, and periodically, there is a need to amend Multnomah County Code to make technical corrections to address typos, ambiguity, inconsistent terms, and citations updates ("Administrative and Housekeeping Changes"). The proposed code amendments incorporate various changes around forms, timing of communications, and citation updates.
5. In calendar year 2022, the County in coordination with the City of Portland and Metro has analyzed various impact elements in conforming to the State's market-based sourcing of sales. The Division of Finance and Risk management of the Department of County Management recommends the adoption of this ordinance to the Board of County Commissioners to amend certain portions of Multnomah County Code (MCC) Chapter 12.
6. The County now wishes to amend certain portions of MCC §§ 12.100-12.290, 12.550-12.840.

**Multnomah County Ordains as Follows:**

**Section 1.** MCC § 12.100 is amended as follows:

## § 12.100 – DEFINITIONS.

**BUSINESS INCOME.** Has the same meaning as “apportionable income” defined in Oregon Revised Statutes 314.610.

**NONBUSINESS INCOME.** ~~Income not created in the course of the taxfiler’s business activities.~~ Has the same meaning as “nonapportionable income” defined in Oregon Revised Statutes 314.610.

**NOTICE.** A written document mailed by 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. Alternatively, notice may be delivered in person, by facsimile, email, or other means with taxfiler consent.

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**Section 2.** MCC § 12.290 is amended as follows:

### § 12.290 – PROTESTS AND APPEALS.

(A) Taxfiler may protest any determination by the Administrator. Written notice of the protest must be received by the Administrator within 30 days after the Administrator mailed or delivered the initial notice of determination to the taxfiler. Failure to file such a written statement within the time permitted will be deemed a waiver of any objections, and the appeal will be dismissed. The protest must state the name and address of the taxfiler and an explanation of the grounds for the protest. The Administrator must respond within 30~~30~~180 days after the protest is filed with ~~either a revised determination or~~ a final determination. The Administrator’s final determination must include the reasons for the determination and state the time and manner for appealing the final determination. The time to file a protest or the time for the Administrator’s response may be extended by Administrator, for good cause. Requests for extensions of time must be received prior to the expiration of the original 30-day protest deadline. Written notice will be given to the taxfiler if the Administrator’s deadline is extended.

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

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

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**Section 3.** MCC § 12.550 is amended as follows:

### § 12.550 – PRESUMPTIVE TAX.

(C) ~~If the taxfiler filed a tax return the previous tax year, then presumptive taxes assessed under this section will be considered a tax return. Presumptive taxes assessed under this section~~

are considered filed documents and subject to the time limitations for deficiencies and refunds as described in subsection § 12.280.

~~(C)~~(D) Taxes determined under this 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 sections §§ 12.700 and 12.710. The Administrator will send notice of the determination and assessment to the taxfiler.

\* \* \*

**Section 4.** MCC § 12.600 is amended as follows:

**§ 12.600 – INCOME DETERMINATIONS FOR TAX YEARS BEFORE JANUARY 2023.**

This section applies to tax years beginning prior to January 1, 2023. For tax years beginning on or after January 1, 2023, see § 12.601

**Section 5.** MCC § 12.601

**§ 12.601 – INCOME DETERMINATIONS FOR TAX YEARS AFTER JANUARY 2023.**

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

(A) *Owners Compensation Deduction.* **Owners Compensation Deduction** is defined as the additional deduction allowed in subsections (B), (C) and (D) below.

(1) For tax years beginning on or after January 1, 1999, the owners compensation deduction is indexed by the Consumers Price Index - All Urban Consumers (CPI-U) U.S. City Average as published by the U.S. Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Administrator determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Administrator's discretion.

(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 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.

(6) For tax years beginning on or after January 1, 2020, the owners compensation deduction cannot exceed \$127,000 per owner as defined in subsections (B), (C) and (D)

below. For tax years beginning on or after January 1, 2021, the owners compensation deduction will be indexed as described in (A)(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.

(C) Partnerships. In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:

(1) For general partners or members, 75% of income determined without such deductions is allowed as an additional deduction, not to exceed the amount as determined in subsection (A) above per general partner or member.

(2) For limited partners or members of limited liability corporations who are deemed partners by administrative rule or policy, 75% of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amount determined in subsection (A) above per compensated limited partner.

(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 determined in subsection (A)(1) above.

(1) For purposes of this subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.

(2) For purposes of this subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than 5% ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than 5% of stock is deemed to be an additional controlling shareholder.

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

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

(F) Tax based on or measured by net income. In determining income, no deduction is allowed for taxes based on or measured by net income. No deduction is allowed for the federal built-in gains tax. No deduction is allowed for the Clean Energy Surcharge.

(G) Ordinary gain or loss. In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under §12.400(G) and §12.400(H) must be included as ordinary gain or loss.

(H) 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 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 §12.611. A net operating loss may not 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 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) In computing the net operating loss for any tax year, no compensation allowance deduction is allowed to increase the net operating loss. **Owners Compensation Deduction** is defined as the deduction allowed by subsection (A).

(4) 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.

(5) The net operating loss in any tax year is allowed as a deduction in the five succeeding 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.

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**Section 6.** MCC § 12.610 is amended as follows:

**§ 12.610 – APPORTIONMENT OF INCOME FOR TAX YEARS BEFORE JANUARY 2023.**

This section applies to tax years beginning prior to January 1, 2023. For tax years beginning on or after January 1, 2023, see § 12.611

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**Section 7.** MCC § 12.611

**§ 12.611 – APPORTIONMENT OF INCOME FOR TAX YEARS AFTER JANUARY 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 are not protected from taxation by Public Law 86-272 (15 U.S.C. §§ 381-384). The County’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 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.

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

(C) The County 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 county. All business income must be apportioned to the county by multiplying business income by the sales factor only.

(D) In determining the sales factor numerator under subsection 12.611(C): 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.

(E) 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 and Oregon Administrative Rules for the sales factor, will be used in cases where no rule has been adopted by the Administrator regarding the apportionment of such industry or income. All apportionment methodologies directed under this subchapter will be a single factor sales apportionment as directed under §§ 12.611(C) and 12.611(D).

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**Section 8.** MCC § 12.840 is amended as follows:

**§ 12.840 – Frivolous Filing**

A \$500.00 penalty will be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return 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 are hereby adopted by direct reference.

FIRST READING: 9/29/2022

SECOND READING AND ADOPTION: 10/13/2022



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

*Deborah Kafoury*

Deborah Kafoury, Chair

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