

**Date:** December 9, 2020

**To:** Board of Directors

**From:** Doug Kelsey

**Subject:** **ORDINANCE NO. 361 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING CHAPTER 14 OF THE TRIMET CODE TO REVISE THE DEFINITION OF “NET EARNINGS FROM SELF-EMPLOYMENT” (FIRST READING)**

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**1. Purpose of Item**

This Ordinance contains an update of the TriMet Code definition for “net earnings from self-employment.” This Ordinance brings TriMet Code Chapter 14 concerning the tax on net earnings from self-employment into conformity with the Internal Revenue Code.

**2. Type of Agenda Item**

- Initial Contract
- Contract Modification
- Other: Ordinance

**3. Reason for Board Action**

State laws require the TriMet Board of Directors (Board) to act by ordinance on tax matters.

**4. Type of Action**

- Resolution
- Ordinance 1<sup>st</sup> Reading
- Ordinance 2<sup>nd</sup> Reading
- Other \_\_\_\_\_

**5. Background**

TriMet’s self-employment and payroll taxes are required to conform to the state laws that govern transit district taxes. State law defines most of the terms used in the TriMet tax ordinances. In addition, ORS 267.380(1)(d) freezes the meaning of “net earnings from self-employment” to the definition under Section 1402 of the Internal Revenue Code of 1986, as in effect on December 31, 1988. However, ORS 267.380(1)(d) also gives TriMet the authority to adopt its own definitions of the terms that are used in the federal definition of “net earnings from self-employment.”

TriMet historically has chosen to incorporate by reference the federal definitions of the terms used in defining “net earnings from self-employment” in nearly all cases. Federal tax law changes frequently, however, and Oregon’s Constitution prohibits any local government from simply adopting future amendments of federal law in local ordinances. Therefore, it is necessary to update TriMet’s ordinance to “reconnect” to the federal definitions of the terms used in the definition of “net earnings from self-employment” as of a specific date.

TriMet’s tax counsel, Stoel Rives LLP, reviews recent federal tax legislation on TriMet’s

behalf to determine whether there have been significant changes to federal tax law that could affect TriMet's self-employment tax. Tax counsel has determined that, with the exception of certain provisions in the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Congress has not passed legislation to date in 2020 that potentially affects the measurement of net earnings from self-employment.

One provision of the CARES Act increases for 2019 and 2020 taxable years the amount of interest expenses a business can deduct from 30% to 50%. While that particular change could conceivably be carved out from the definition of "net earnings from self-employment," because no changes were made when the limitation was enacted as part of the Tax Cuts and Jobs Act, a change in the current circumstances appears unwarranted. Other CARES Act changes either involve relatively small amounts, such as adjustments to small charitable contribution deductions, or entail timing differences, such as an immediate write-off of certain real estate interior improvements that otherwise would be deducted over a 15-year period. Accordingly, no "carve out" changes are proposed in this Ordinance No. 361.

As in past years, tax counsel believes it is prudent for the Board to update the current reconnection date, and the new ordinance extends the date from December 31, 2019 to December 31, 2020 so that taxpayers can more readily understand that the amounts shown on their 2020 federal income tax returns generally apply for purposes of the TriMet self-employment tax for 2020.

Consistent with the prior Ordinance No. 357, the new ordinance retains an express "carve-out" of the deduction allowed to owners of partnership interests or sole proprietorships by Section 199A of the Internal Revenue Code of 1986, as amended. This deduction is not allowed for federal self-employment tax purposes and retaining this express carve-out in the ordinance should continue to make it clear that the deduction is also not allowed for TriMet self-employment tax purposes.

Congress also could enact changes to federal tax law before the end of 2020 or in early 2021 that could apply retroactively to the 2020 tax year. In particular, legislation is pending that would allow taxable deductions for expenses funded with Payment Protection Program loans made pursuant to the CARES Act that are forgiven. At TriMet's request, Stoel Rives is monitoring those developments, and TriMet's General Counsel will advise the General Manager about any further recommended Board action if appropriate.

6. **Financial/Budget Impact**

This ordinance does not have a direct budgetary impact, but would be expected to contribute to the efficient administration of TriMet's self-employment tax.

7. **Impact if Not Approved**

Because this matter is a required housekeeping item to keep our tax ordinance in line with changes to the Internal Revenue Code, the only realistic option available to the Board is to reconnect by ordinance, as in prior years.

## ORDINANCE NO. 361

### **ORDINANCE NO. 361 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING CHAPTER 14 OF THE TRIMET CODE TO REVISE THE DEFINITION OF “NET EARNINGS FROM SELF-EMPLOYMENT” (FIRST READING)**

THE BOARD OF DIRECTORS OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET), pursuant to the authority granted to it under ORS 267.380 and 267.385, does hereby ordain and decree the following ordinance:

#### Section 1 – Amendment of Chapter 14 of the TriMet Code.

Revision of Definition of “Net Earnings from Self-Employment”. Section 14.05C of the TriMet Code is amended in its entirety to read as follows:

“Net Earnings from Self-Employment” has the same meaning as the term “net earnings from self-employment” in Section 1402 of the Internal Revenue Code of 1986 (the “IRC”), as that section was in effect and operative on December 31, 1988. In applying IRC Section 1402 for purposes of this Chapter, the words “gross income,” “deductions” and “distributive share,” and any other words used in IRC Section 1402 to define “net earnings from self-employment,” shall have the same meaning that those words had for purposes of IRC Section 1402 under federal income tax laws in effect and operative as of December 31, 2020, provided, however, that the phrase “deductions allowed by this subtitle which are attributable to such trade or business” shall not include the deduction contained in IRC Section 199 (related to domestic production activities) and shall not include the deduction contained in IRC Section 199A (related to qualified business income). The purpose of these definitions is to incorporate any relevant changes in the Internal Revenue Code of 1986 made and in effect on or before December 31, 2020 except for changes in IRC Section 1402 made after December 31, 1988. For the purposes of this Section, the term “net earnings from self-employment” is not limited in any way by IRC Section 1402(b).

Notwithstanding the foregoing, “net earnings from self-employment” does not include income which would be wages under Section 3121 of the Internal Revenue Code, as amended and in effect on December 31, 1990, but for the provisions of Section 3121(b)(8)(A) of the Internal Revenue Code.

Section 2 – Effective Date

This Ordinance shall take effect thirty days after the date of its adoption. This ordinance shall apply to individuals' taxable years starting on or after January 1, 2020.

Dated: December 9, 2020

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Presiding Officer

Attest:

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Recording Secretary

Approved as to Legal Sufficiency

**Gregory E. Skillman**

Legal Department