

Date: January 25, 2023

To: Board of Directors

From: Sam Desue, Jr.

Subject: **ORDINANCE NO. 370 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” (SECOND READING)**

1. Purpose of Item

This Ordinance will update the TriMet Code definition for “net earnings from self-employment.” The adoption of this Ordinance will bring 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 law requires the TriMet Board of Directors (Board) to act by ordinance on tax matters.

4. Type of Agenda Item

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd 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. However, federal tax law frequently changes, and Oregon’s Constitution prohibits any local government from simply adopting future amendments of federal law in local ordinances. Therefore, it is necessary for the Board to update Chapter 14 of the TriMet Code 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 Congress has not passed legislation that potentially affects the measurement of net earnings from self-employment.

As tax counsel noted in its previous letter regarding TriMet’s December 2021 Ordinance No. 365, Congress enacted the American Rescue Plan Act (“ARPA”) into law on March 11, 2021. Among other things, ARPA modified section 108(f) of the Internal Revenue Code to exclude from gross income any amount of federal or private education loans that are discharged between and including 2021 and 2025, without limit.

On August 24, 2022, President Biden announced the United States Department of Education’s (“Department”) student debt relief plan (“Student Debt Relief Plan”) to address the financial harms caused by the COVID-19 pandemic. Subject to certain income thresholds, the Department plans to provide up to \$20,000 in debt relief to Pell Grant recipients with loans held by the Department and up to \$10,000 in debt relief to non-Pell Grant recipients. The Oregon Department of Revenue has announced that debt forgiven under the Student Debt Relief Program is not subject to Oregon state income tax.¹

The Student Debt Relief Plan is currently being challenged in federal court. Regardless of the outcome of this challenge, tax counsel believes the Student Debt Relief Plan does not affect income that is includable in “net income from self-employment” and will therefore have no measurable effect on TriMet’s self-employment tax base for the 2022 tax year. Accordingly, no “carve out” changes are proposed in this Ordinance No. 370.

Nonetheless, as in past years, tax counsel believes it is prudent for the Board to update the current reconnection date. Therefore, Ordinance No. 370 extends the reconnection date from December 31, 2021 to December 31, 2022, so that taxpayers can more readily understand that the amounts shown on their 2022 federal income tax returns generally apply for purposes of the TriMet self-employment tax for 2022.

Consistent with Ordinance No. 365, 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 also is not allowed for TriMet self-employment tax purposes.

Congress also could enact changes to federal tax law in early 2023 that could apply retroactively to the 2022 tax year. At TriMet’s request, StoelRives is monitoring those developments, and TriMet’s General Counsel will advise the General Manager about any further recommended Board action.

6. Financial/Budget Impact

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

¹ See Oregon Department of Revenue, Student Loan Forgiveness – Not Taxable, available at [Student Loan Debt Forgiveness_9_01_2022.pdf \(oregon.gov\)](#) (last accessed November 21, 2022).

7. **Impact if Not Approved**

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

ORDINANCE NO. 370

ORDINANCE NO. 370 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” (SECOND 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, 2022, 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 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, 2022, 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, 2022.

Dated: January 25, 2023

Jida C. Simons

Presiding Officer

Attest:

Kimberly Angove

Recording Secretary

Approved as to Legal Sufficiency:

Gregory E. Skille

Legal Department