

Date: January 25, 2017

To: Board of Directors

From: Neil McFarlane *Neil McFarlane*

Subject: **ORDINANCE NO. 344 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)**

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 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. Federal tax law changes continually, 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.

6. Financial/Budge Impact

Stoel Rives LLP, on behalf of TriMet, reviews recent federal tax legislation to determine whether there have been significant changes to federal law that could affect TriMet’s self-employment tax. Since the Board’s adoption of Ordinance No. 341 (adopting a reconnection date of December 31, 2015), no significant federal tax legislation has been adopted that is likely to measurably affect TriMet’s self-employment tax. However, Stoel Rives advises that it is prudent to update the current reconnection date from December 31, 2015 to December 31, 2016 so that taxpayers can readily understand that the amounts shown on their 2016 federal income tax returns generally apply for purposes of the TriMet self-employment tax for 2016.

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. 344

AN ORDINANCE 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"

THE BOARD OF DIRECTORS OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON, 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 to read in its entirety 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 on December 31, 2016, 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). 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, 2016 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 apply to individuals' taxable years starting on or after January 1, 2016.

Date Adopted: January 25, 2017

Attest:

Recording Secretary

Presiding Officer

Approved as to Legal Sufficiency:

Legal Department