

**Date:** December 15, 2021

**To:** Board of Directors

**From:** Sam Desue, Jr.

**Subject: ORDINANCE NO. 365 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 AND PUBLIC HEARING)**

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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 Agenda Item**

- 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 Consolidated Appropriations Act ("CAA") and the American Rescue Plan Act ("ARPA") extending or modifying provisions of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Congress has not passed legislation to date in 2021 that potentially affects the measurement of net earnings from self-employment.

One provision of the CAA confirms that a taxpayer may take a deduction from gross income for otherwise deductible expenses paid with the proceeds of a Paycheck Protection Program ("PPP") loan that is forgiven. Similarly, for 2020 only, ARPA excludes from an individual's gross income up to \$10,200 of unemployment compensation received in 2020 if the individual has an adjusted gross income of less than \$150,000 per year. While these changes conceivably could be carved out from the definition of "net income from self-employment," because both federal law and Oregon law allow taxpayers to deduct these amounts from gross income, a change in the current circumstances seems unwarranted. Furthermore, tax counsel believes those tax provisions that have expired for tax years beginning in or before 2021 are unlikely to have a measurable effect on TriMet's self-employment tax base for the 2021 tax year. Accordingly, no "carve out" changes are proposed in this Ordinance No. 365

Nonetheless, as in past years, tax counsel believes it is prudent for the Board to update the current reconnection date. Therefore, this new Ordinance No. 365 extends the reconnection date from December 31, 2020, to December 31, 2021, so that taxpayers can more readily understand that the amounts shown on their 2021 federal income tax returns generally apply for purposes of the TriMet self-employment tax for 2021.

Consistent with the prior Ordinance No. 361, 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 during the remainder of 2021, or retroactively in early 2022 that could apply to the 2021 tax year. 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 TriMet's 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. 365

### 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” (FIRST READING AND PUBLIC HEARING)

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, 2021, 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, 2021, 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, 2021.

Dated: December 15, 2021

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Presiding Officer

Attest:

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Recording Secretary

Approved as to Legal Sufficiency:

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Legal Department