

March 17, 2020 Publication

Topics

Tax
Oregon Tax

Related People

Lewis M. Horowitz
horowitzl@lanepowell.com

John H. Gadon
gadonj@lanepowell.com

Eric J. Kodesch
kodesche@lanepowell.com

Related Practices & Industries

Business
Tax

Portland-Area Voters Will Vote on Whether to Adopt One Percent Personal and Business Net Income Taxes

Tax Legal Update

Metro is a regional government authority for three counties in the greater Portland, Oregon area: Clackamas County, Multnomah County and Washington County. On February 25, 2020, the Metro Council voted to refer a [ballot measure](#) to voters in these three counties for the **May 19, 2020 election**. If passed, the measure would create two new net income taxes:

- **One-Percent Personal Income Tax:** A one-percent personal income tax on taxable income over \$200,000 for joint filers and over \$125,000 for taxpayers filing singly. For nonresidents, taxable income would be limited to income derived from sources within Metro. The measure would adopt a policy of generally conforming the tax to the Oregon personal income tax. This policy generally should provide guidance for the multitude of issues not addressed in the measure, such as what deductions would be allowed in computing taxable income and sourcing rules for determining a nonresident's Metro district source income.
- **One-Percent Business Profits Tax:** A one percent tax on the net income of each person doing business in Metro that has total gross receipts over \$5 million. The measure refers to this tax a "business profits tax." Unlike the personal income tax which is imposed only on net income

above a dollar threshold, this tax applies to the entire net income of businesses subject to the tax, not just net income over the \$5 million.

Nothing in the measure explicitly limits the tax to Metro district-source net income. However, to avoid federal constitutional issues, and in light of the measure's stated intent to follow the rules that have been adopted for the Multnomah County business income tax, we anticipate that, in the case of an entity that does business both within and outside of the Metro district, this tax would be based on income apportioned to the Metro district.

- **Tax Year 2021 Effective Date.** Both taxes would be effective beginning with the 2021 tax year.
- **2030 Tax Year Sunset.** If adopted by the voters, the measure provides that the taxes would expire after the tax year ending December 31, 2030, unless re-authorized by the voters before that date.

The proceeds from the taxes would fund collection of the taxes and the creation and implementation of plans to combat homelessness within the Metro district.

The measure leaves numerous questions regarding the taxes unanswered, even given the stated policy of following (i) Oregon law and administrative rules with respect to the personal income tax, and (ii) the Multnomah County business income tax rules with respect to the business profits tax. The Multnomah County business income tax, for instance, is paid at the entity level, including by entities that are pass-throughs for state income tax purposes, such as partnerships and S corporations. If the state personal income tax rules are applied to the Metro personal income tax and the Multnomah County business income tax rules applied to the business profits tax, the income of a pass-through entity that flows through to its members could be subject to both taxes. If the measure is adopted by the voters, we anticipate that Metro will issue additional guidance.

If you would like to know more about the proposed taxes, please contact one of our Oregon tax partners: John Gadon, gadonj@lanepowell.com, 503.778.2130, or Eric Kodesch, kodesche@lanepowell.com, 503.778.2107.