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Portland, Oregon Area Voters Approve New 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 May 19, 2020, Metro voters approved Ballot Measure 26-210. The measure imposes new local personal and business income taxes in the tri-county Metro region, beginning with the 2021 tax year.

- **One-Percent Business Profits Tax.** A one percent tax on the *net income of each person doing business in the Metro district that has total gross receipts over \$5 million*. The measure refers to this tax a “business profits tax.” *This tax applies to the entire net income of businesses subject to the tax, not just net income over the \$5 million.*
- **Metro to look to Multnomah County business income tax rules and procedures for guidance.** For the business profits tax, the measure states that it will be Metro’s policy to use the *Multnomah County business income tax rules and procedures* as guidance.
- **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*. Unlike the business profits tax, the personal income tax applies only to a taxpayer’s net income above the stated dollar thresholds. For nonresidents, taxable income would be limited to income derived from sources within Metro.
- **Conformity to state personal income tax rules.** For the personal income tax, the measure states that it is Metro’s policy to follow Oregon state laws and administrative rules adopted by the Department of Revenue related to the *Oregon personal income*

tax.

Proceeds from the taxes will be used to combat homelessness within the Metro district.

Key Open Issues

The measure leaves numerous questions regarding the taxes unanswered.

- **Pass-Through Entities and Possible Double Taxation.** The *Multnomah County business income tax* is paid at the *entity level*, including entities such as partnerships and S corporations. The Oregon personal income tax, on the other hand, generally follows federal income law regarding the inclusion of income distributions from pass-through entities on personal returns. 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.
- **Consolidated/Combined Returns.** The measure does not address whether combined or consolidated returns will be permitted or required. Corporations that file consolidated Oregon corporation excise or income tax returns are required to file consolidated returns for the Multnomah County business income tax. We anticipate that Metro will adopt similar rules.
- **Small Business Exemption.** The measure does not address whether the exemption for small businesses (those with total gross receipts “from all business income” of \$5 million or less), will be applied on (i) an entity-by-entity basis, or (ii) a consolidated or combined basis. The term “business income” is also not defined.
- **Apportionment of Income.** Nothing in the measure explicitly limits the business profits tax to Metro district-source net income, although the Multnomah County business income tax does so. To avoid federal constitutional issues, and in light of the measure’s reference to the rules 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, the tax will be based on income apportioned to the Metro district.

- **Sourcing Rules.** The measure lacks rules for sourcing income for either tax. Based on the wording of the measure, we anticipate that Metro will adopt the sourcing rules used for the Multnomah County business income tax for the Metro business income tax, and the sourcing rules used for the Oregon personal income tax for the Metro personal income tax. The Multnomah County business income tax sourcing rules differ in some material respects from the sourcing rules for the Oregon corporation excise tax.
- **Deductions in Computing Net Income.** The measure does not address what deductions will be allowed in computing taxable income for either tax. However, the Multnomah County business income tax rules for computing net income differ in some material respects from those applicable under the Oregon corporation excise tax or Oregon personal income tax.
- **Estimated Taxes/Wage Withholding.** The measure does not address whether Metro may require payment of estimated taxes or personal income tax withholding. The Multnomah County business income tax requires estimated tax payments, and withholding on wages is required for the Oregon personal income tax.

We anticipate that Metro will issue guidance this year regarding the implementation of the new taxes. Metro may also address some of these issues by ordinance.

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.