

## Chapter 7.02 Business License Law

1. Amend Code Section 7.02.100 Definitions as follows:

**A.** unchanged.

~~**B.** “Bank” has the same meaning as used in ORS 706.008(1).~~

**B.** “Business income” has the same meaning as “apportionable income” defined in Oregon Revised Statutes 314.610.

**C. – P.** unchanged.

~~**Q.** “Non-business income” means income not created in the course of the taxfiler’s business activities.~~

**Q.** “Non-business income” has the same meaning as “nonapportionable income” defined in Oregon Revised Statutes 314.610.

**R. – GG.** unchanged.

2. Amend Code Section 7.02.600 Income Determinations as follows:

This Section applies to tax years beginning prior to January 1, 2023. For Tax years beginning on or after January 1, 2023, see Section 7.02.601.

**A. – I.** unchanged.

3. Add Code Section 7.02.601 Income Determinations as follows:

This Section applies to tax years beginning on or after January 1, 2023.

**A. Owners Compensation Deductions.** “Owners Compensation Deduction” is defined as the additional deduction allowed in Subsections B., C. and D. below. The owners compensation deduction is indexed (beginning in January 1999) by the Consumers Price Index - All Urban Consumers (CPI-U) US City Average as published by the US Department of Labor, Bureau of Labor Statistics, using the September to September index, not seasonally adjusted (unadjusted index). The Division determines the exact deduction amount and publishes the amount on forms. Any increase or decrease under this paragraph that is not a multiple of \$500 will be rounded up or down to the next multiple of \$500 at the Division’s discretion.

1. For tax years beginning on or after January 1, 2007, the Owners Compensation Deduction cannot exceed \$80,000 per owner as defined in Subsections B., C. and D.

below. For tax years beginning on or after January 1, 2008, the Owners Compensation Deduction will be indexed as described above.

2. For tax years beginning on or after January 1, 2013, the Owners Compensation Deduction cannot exceed \$90,500 per owner as defined in Subsections B., C. and D. below.

3. For tax years beginning on or after January 1, 2014, the Owners Compensation Deduction cannot exceed \$100,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2015, the Owners Compensation Deduction will be indexed as described above.

4. For tax years beginning on or after January 1, 2018, the Owners Compensation Deduction cannot exceed \$125,000 per owner as defined in Subsections B., C. and D. below. For tax years beginning on or after January 1, 2019, the Owners Compensation Deduction will be indexed as described above.

**B. Sole Proprietorships.** In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, owners. However, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per owner.

**C. Partnerships.** In determining income, no deductions are allowed for any compensation for services rendered by, or interest paid to, owners of partnerships, limited partnerships, limited liability companies, limited liability partnerships, or family limited partnerships. Guaranteed payments to partners or members are deemed compensation paid to owners for services rendered. However:

1. For general partners or members, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the amounts listed in Subsection A. per general partner or member.

2. For limited partners or members of LLCs who are deemed limited partners by administrative rule or policy, 75 percent of income determined without such deductions is allowed as an additional deduction, not to exceed the lesser of actual compensation and interest paid or the amounts listed in Subsection A. per compensated limited partner.

**D. Corporations.** In determining income, no deduction is allowed for any compensation for services rendered by, or interest paid to, controlling shareholders of any corporation, including but not limited to, C and S corporations and any other entity electing treatment as a corporation, either C or S. However, 75 percent of the corporation's income, determined without deduction of compensation or interest, is allowed as a deduction in addition to any other allowable deductions, not to exceed the lesser of the actual compensation and interest paid or the amounts listed in Subsection A. for each controlling shareholder.

1. For purposes of this Subsection, to calculate the compensation for services rendered by or interest paid to controlling shareholders that must be added back to income, wages, salaries, fees or interest paid to all persons meeting the definition of a controlling shareholder must be included.

2. For purposes of this Subsection, in determining the number of controlling shareholders, a controlling shareholder and that person's spouse, parents and children count as one owner, unless such spouse, parent or child individually control more than 5 percent ownership of outstanding stock or securities in their own name. In that case, each spouse, parent or child who owns more than 5 percent of stock is deemed to be an additional controlling shareholder.

3. For purposes of this Subsection, joint ownership of outstanding stock or securities is not considered separate ownership.

**E. Estates and Trusts.** In determining income for estates and trusts, income is measured before distribution of profits to beneficiaries. No additional deduction is allowed.

**F. Nondeductible Taxes and Surcharges.** In determining income, no deduction is allowed for taxes based on or measured by net income. No deduction is allowed for the federal built-in gains tax. No deduction is allowed for the Clean Energy Surcharge.

**G. Ordinary Gain or Loss.** In determining income, gain or loss from the sale, exchange or involuntary conversion of real property or tangible and intangible personal property not exempt under Subsections 7.02.400 G. and H. must be included as ordinary gain or loss.

**H. Net Operating Loss.** In determining income, a deduction is allowed equal to the aggregate of the net operating losses incurred in prior years, not to exceed 75 percent of the income determined for the current license tax year before this deduction, but after all other deductions from income allowed by this Section and apportioned for business activity both within and without the City of Portland.

1. When the operations of the taxfiler from doing business both within and without the City result in a net operating loss, such loss will be apportioned in the same manner as the net income under Section 7.02.610. A net operating loss may not be carried forward from any license tax year during which the taxfiler conducted no business within the City or the taxfiler was otherwise exempt from payment of the business license tax unless specifically provided for by administrative rule or written policy.

2. In computing the net operating loss for any license tax year, the net operating loss of a prior year is not allowed as a deduction.

3. In computing the net operating loss for any license or tax year, no compensation allowance deduction is allowed to increase the net operating loss. "Compensation allowance deduction" is defined in Subsection 7.02.600 A.

4. The net operating loss of the earliest license tax year available must be exhausted before a net operating loss from a later year may be deducted.
5. The net operating loss in any license tax year is allowed as a deduction in the 5 succeeding license tax years until used or expired. Any partial license tax year will be treated the same as a full license tax year in determining the appropriate carry-forward period.

4. Amend Code Section 7.02.610 Apportionment of Income as follows:

This Section applies to tax years beginning prior to January 1, 2023. For Tax years beginning on or after January 1, 2023, see Section 7.02.611.

**A. – F.** unchanged.

5. Add Code Section 7.02.611 Apportionment of Income as follows:

This Section applies to tax years beginning on or after January 1, 2023

**A.** “Jurisdiction to tax” occurs when a person engages in business activities in a jurisdiction that are not protected from taxation by Public Law 86-272. The City of Portland’s (City) standard for jurisdiction to tax, or nexus, is the same as the State of Oregon’s found in the Oregon Revised Statutes and Oregon Administrative Rules related to taxation. If a taxpayer’s business is based in the City, a taxpayer must have business activity outside the City that results in a jurisdiction to tax outside the City to apportion the income of the business. Without jurisdiction to tax outside the City, all income of a business is taxable by the City.

**B.** “Business activity” means any of the elements of doing business. The income reportable as income earned from business activity within the City will include all business incomes from sources within the City that are taxable income under Oregon tax laws and regulations unless otherwise exempted or excluded in this Chapter.

**C.** The City adopts the apportionment and allocation provisions found in the Oregon Revised Statutes, Chapters 314, 317, and 318 and related Oregon Administrative Rules unless otherwise provided in this chapter or by administrative rule. All references to Oregon or the state should be read as referring to the City. All business income must be apportioned to the City by multiplying business income by the sales factor only.

**D.** In determining the sales factor numerator under Subsection 7.02.611 C: Sales of tangible personal property are deemed to take place in the City if the property is delivered or shipped to a purchaser within the City regardless of the f.o.b. point or other conditions of sale. If sales of tangible personal property are shipped from the City to a

purchaser located where the taxfiler is not taxable, those sales are not apportioned to the City.

**E.** Certain industries or incomes are subject to specific apportionment methodologies. Such methodologies are described in the code and administrative rules adopted in accordance with Section 7.02.210. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes and Oregon Administrative Rules for the sales factor, will be used in cases where no rule has been adopted by the Division regarding the apportionment of such industry or income. All apportionment methodologies directed under this Chapter will be a single factor sales apportionment as directed under Subsections 7.02.611 C. and Subsection 7.02.611 D.