

**Ordinance No. 184597**

Amend the Business License Law to make housekeeping changes to certain definitions and the presumption of doing business. (Ordinance; amend Code Chapter 7.02)

The City of Portland ordains:

Section 1. The Council finds:

1. In August 2008, the City Council changed the Business License Law under Chapter 7.02 to become an after the fact tax by Ordinance No. 182137. This change simplified many previously confusing provisions as well as brought complete conformity between the Business License Law and the Multnomah County Business Income Tax.
2. During 2008, revisions were made to Oregon Revised Statutes that govern income taxation, specifically regarding the concept of "jurisdiction to tax". Generally, it is desirable for the Business License Law to be in conformity with the Oregon Revised Statutes on income taxes.
3. Apportionment rules are critical to businesses when they do business both within the City and outside and clear guidance assists the Revenue Bureau administer the law.
4. It is necessary to amend the apportionment section of the Business License Law to achieve needed conformity with the State of Oregon statutes, especially with the change to an after the fact tax.
5. Following the decisions in a recent appeal case before the Business License Appeals Board and a Writ of Review to the Circuit Court of Oregon, clarification is needed regarding property and the presumption of doing business that it creates to ensure there are no misunderstandings by businesses and their advisors.
6. Additional housekeeping changes are needed to clarify the code to reduce confusion on how exemptions are applied to individuals who file joint tax returns.

NOW, THEREFORE, the Council directs:

a. Portland City Code Subsection 7.02.100 L. is amended as follows:

**L.** "Individual" means a natural person, including natural persons who report their income to the State of Oregon in a joint personal state income tax return. In such case, the term "individual" shall refer to the joint taxfiler.

b. Portland City Code Subsection 7.02.100 R. is amended as follows:

**R.** "Person" includes, but is not limited to, an individual, a natural person, sole proprietorship, partnership, limited partnership, family limited partnership, joint venture (including tenants-in-

common arrangements), association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business.

c. Portland City Code Subsection 7.02.220 C is amended as follows:

**C.** ~~Owning, leasing, or renting personal or real property within the City which is used in a trade or business.~~

d. Portland City Code Section 7.02.610 is amended as follows:

**7.02.610 Apportionment of Income.**

**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. Public Law 86-272 applies to interstate sales of tangible personal property. For purposes of the Business License Law, the limits imposed by Public Law 86-272 for interstate jurisdiction to tax shall also be presumed to apply on an intrastate basis. If a taxpayer’s business is based in Portland, a taxpayer must have business activity outside Portland that results in a jurisdiction to tax outside Portland to apportion the income of the business. Without jurisdiction to tax outside Portland, all income of a business is taxable by Portland.

**B.** “Business activity” means any of the elements of doing business. However, a person is not considered to have engaged in business activities solely by reason of sales of tangible personal property in any state or political subdivision, or solely the solicitation of orders for sales of tangible personal property in any state or political subdivision. Business activities conducted on behalf of a person by independent contractors are not considered business activities by the person in any state or political subdivision. The income reportable as income earned from business activity within the City of Portland will include all business incomes from sources within the City of Portland that are taxable incomes under Oregon tax laws and regulations unless otherwise exempted or excluded in this Chapter.

**BC.** In computing the business license tax, taxfilers that have income from business activity both within and without the City may determine the income apportioned to the City by multiplying the total net income from the taxfiler’s business by a fraction, the numerator of which is the total gross income of the taxfiler from business activity in the city during the tax year, and the denominator of which is the total gross income of the taxfiler from business activity everywhere during the tax year.

**CD.** In determining the apportionment of gross income within the City under Subsection 7.02.610 BC.:

1. 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.

2. Sales other than sales of tangible personal property are deemed to take place in the City if the income producing activity is performed in the City.

**DE.** Certain industries or incomes are subject to specific apportionment methodologies. Such methodologies are described in administrative rules adopted in accordance with Section 7.02.210. Industry specific or income specific apportionment methodologies required by Oregon Revised Statutes for apportionment of gross sales, will be used in cases where no rule has been adopted by the Bureau regarding the apportionment of such industry or income. When gross sales as reported to Oregon are used for apportionment purposes, such gross sales ~~shall~~ will be defined as gross income for apportionment purposes herein. All apportionment methodologies directed under this Subsection ~~shall~~ will be a single factor gross income apportionment as directed under Subsections 7.02.610 **B C** and 7.02.610 **E D**. In those specific cases where Oregon has directed allocation of income, such income will be apportioned for purposes of this Chapter, unless allocation is otherwise allowed in this Chapter.

**EF.** If the apportionment provision of Subsection **BC**, do not fairly represent the extent of the taxfiler's business activity in the City and results in the violation of the taxfiler's rights under the Constitution of this State or the United States, the taxfiler may petition the Bureau to permit the taxfiler to:

1. Utilize the method of ~~allocation and~~ apportionment used by the taxfiler under the applicable laws of the State of Oregon imposing taxes upon or measured by net income; or
2. Utilize any other method to effectuate an equitable apportionment of the taxfiler's income.

Passed by the Council: **MAY 18 2011**

Mayor Sam Adams  
Prepared by: Terri Williams  
Date: January 11, 2011

**LaVonne Griffin-Valade**  
Auditor of the City of Portland

By:   
Deputy

Agenda No.  
**ORDINANCE NO. 184597**  
Title

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<p style="text-align: center;"><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Adams</b></p>	<p style="text-align: right;">CLERK USE: DATE FILED <u>MAY 06 2011</u></p>
<p style="text-align: center;"><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Adams <i>[Signature]</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p>	<p style="text-align: right;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p>
<p style="text-align: center;"><b>BUREAU APPROVAL</b></p> <p>Bureau: Revenue Bureau Head: Thomas Lannon <i>[Signature]</i></p>	<p><b>ACTION TAKEN:</b></p> <p style="text-align: center;"><b>MAY 11 2011 PASSED TO SECOND READING MAY 18 2011 9:30 A.M</b></p>
<p>Prepared by: Terri Williams Date Prepared: 1/27/11</p>	
<p>Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>Council Meeting Date <u>5-11-11</u></p>	
<p><input checked="" type="checkbox"/> <b>City Attorney Approval</b> <i>[Signature]</i></p>	

**AGENDA**

**TIME CERTAIN**   
Start time: \_\_\_\_\_

**Total amount of time needed:** \_\_\_\_\_  
(for presentation, testimony and discussion)

**CONSENT**

**REGULAR**   
**Total amount of time needed: 5 minutes**  
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	✓	