

**ORDINANCE NO. 1391**

**AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 3.24 PUBLIC TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX.**

**WHEREAS**, the City of Canby desires to change its current Public Transportation Payroll and Self-Employment Tax ordinance to reflect correction of errors and changes in suggested best practices; and


**WHEREAS**, the Canby Municipal Code is currently silent regarding waiving or adjusting penalties, interest , the use of non-filing fees and record keeping requirements; and

**WHEREAS**, clarifying the process to adjust penalties, interest and the use of non-filing fees will ensure all taxpayers are treated in a fair and consistent manner; now therefore

**THE CITY OF CANBY, OREGON, ORDAINS AS FOLLOWS:**

**Section 1.** The Canby Municipal Code (CMC) is hereby amended to include amendments to Chapter 3.24 Public Transportation Payroll and Self-Employment Tax. A copy of Chapter 3.24 with changes identified is attached hereto as Exhibit "A".

**SUBMITTED** to the Canby City Council and read the first time at a regular meeting therefore on Wednesday, November 20, 2013, and ordered posted in three (3) public and conspicuous places in the City of Canby as specified in the Canby City Charter and scheduled for second reading before the City Council for final reading and action at a regular meeting thereof on Wednesday, December 4, 2013, commencing at the hour of 7:30 pm at the Council Meeting Chambers located at 155 NW 2<sup>nd</sup> Avenue, Canby, Oregon.

  
Kimberly Scheafer, MMC  
City Recorder

**PASSED** on the second and final reading by the Canby City Council at a regular meeting thereof on December 4, 2013 by the following vote:

YEAS 6      NAYS 0

  
Brian Hodson  
Mayor

ATTEST:

  
Kimberly Scheafer, MMC  
City Recorder

## EXHIBIT A

### CHAPTER 3.24: PUBLIC TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX

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#### § 3.24.010 Definitions.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Association means any club, group or organization, whether organized for business purposes, civic purposes, religious purposes or other purposes.

Business Entity means any sole proprietorship, self-employed person, partnership, limited partnership, corporation including nonprofit corporations engaged in any business enterprise, and any firm, association or entity of any kind engaged in business. This term shall also include any personal representative or assignee of any Business Entity.

City means the City of Canby.

Collector means the ~~city-tax~~ Collector of the city. This may be an employee of the city or a contract agent or agency as the City Council shall from time to time determine. The City ~~Administrator~~ Finance Director shall have supervisory responsibilities over the Collector.

Commission Merchant or Commission Employee means any person who engages in the sale of goods for compensation in the form of a commission only and is subject to withholding under

O.R.S. Chapter 316. This also includes any person who buys and resells goods if the person does not maintain a retail store or wholesale sales floor and does not store goods except during a short period before transportation to the buyer.

Corporation means any business corporation and any nonprofit corporation organized under the laws of this state, or under the laws of any jurisdiction.

Employee means any individual employed by another, for wages. This also includes all real estate salespeople employed by a real estate broker and paid on a commission basis, and all mechanics who perform services for customers of an auto repair shop and who are paid by the owner of the auto shop for each repair or maintenance job done, provided that the remuneration is subject to withholding under O.R.S. Chapter 316.

Employer has the meaning prescribed by O.R.S. 267.380.

Firm means any sole proprietorship, partnership, corporation, joint venture, limited partnership or other form of organization formed for the purpose of doing business.

Individual means a natural person.

Local Transit Area means designated areas within ~~a boundary established by the city~~ and the Canby Urban Growth Boundary which will receive benefits of operation, management or delivery of a transit system.

Net Earnings from Self-Employment has the definition as prescribed by O.R.S. 267.380.

Payroll Expense means the wages paid by any employer to any employee. Payroll Expenses also include the commission received by a commission merchant or a commission employee, if that person is subject to withholding under O.R.S. Chapter 316.

Personal Representative means any trustee, receiver, executor, administrator, guardian, conservator or similar Personal Representative of any person, firm, association or corporation.

Taxpayer means any person, firm, corporation or association required by this chapter to file a return or to pay a payroll and/or self-employment tax.

Wages ~~has the meaning means as~~ prescribed by O.R.S. 267.380.

§ 3.24.020 Application; doing business in the city.

A. The payroll and self-employment tax shall apply only to persons, firms, corporations and associations doing business within the ~~boundaries of the city~~ local transit area.

B. A person, firm, corporation or association is doing business within the boundaries of the local transit area if the entity does any of the following:

1. Employs ~~+~~ one or more employees, commission merchants or commission employees to work in the local transit area;

2. Maintains a place of business in the local transit area;

3. Owns, manages or leases property in the local transit area. Managing rental property owned by the entity or by others is included;

4. Solicits any business within the local transit area, provided that solicitation is by mail or telephone contacts only, and solicitation by advertising only shall not subject any entity to the payroll and self-employment tax;

5. Uses the streets within the local transit area for any reason in connection with the work of any employee, commission merchant or commission employee; or

6. Maintains any place of business in the city, provided that any employer not maintaining a place of business in the city, but doing any of the acts described in divisions B.1. through B.5. of this section shall be subject to the payroll and self-employment tax.

7. Conducts business in a residence within the local transit area.

8. Received taxable income due to business activity in the local transit area.

§ 3.24.030 Payroll and self-employment tax imposed.

To carry out the purposes set forth herein, an excise tax is hereby imposed and levied on every person, firm, corporation or association doing business within the boundaries of the local transit area, which employs one+ or more employees, or contracts orally or in writing with any commission merchant or commission employee. For the same purposes, a tax is imposed on each individual's net earnings from self-employment and hereinafter shall be included when there is a reference to payroll and self-employment tax. The amount of the tax shall be 0.6% of the total payroll expense of each taxpayer or of the individual's net earnings from self-employment, as the case may be. The payroll and self-employment tax shall be in full force and effect from and after January 1, 2002, and shall apply to payroll expense and net earnings from self-employment incurred after that date. This tax is imposed for the provision of public transportation services within the local transit area in order to provide for the business community to carry a share of the costs of local government in return for the benefits and opportunities available because of the city government and services.

§ 3.24.040 Apportionment of tax.

A. The payroll and self-employment tax applies to the gross taxable payrolls of employees ~~either working or being paid within the local transit area or doing business for work performed within the local transit area, unless a portion of or all of the payroll is subject to a like type tax by Tri-Met.~~ If an employer employs or pays some individuals within the local transit area and employs or pays some individuals outside of the local transit area who are subject to Tri-Met tax or a like tax, then the tax shall apply only to the payroll covering employees working or being paid within the local transit area ~~who are not subject to Tri-Met tax.~~

B. If any employee spends part of his or her working hours within the city local transit area and part outside of the city local transit area, the fraction or percentage of the payroll of that employee to be taxed shall be determined as follows:

-1. If the employee's compensation depends on the amount of sales or volume of repair work or other services done, only the payroll attributable to sales made or services done in the local transit area shall be subject to the payroll tax.

-2. If the employee is paid on any other basis, the fraction or percentage of the payroll concerning that employee to be taxed shall equal the fraction or percentage of the employee's working hours spent in the local transit area. The same apportionment is applicable to net earnings from self-employment if any of the earnings are subject to the Tri-Met payroll and self-employment tax or any like tax.

§ 3.24.050 Alternate method of apportioning tax.

Any taxpayer may, at the taxpayer's sole option, propose an alternate method to the methods of apportioning the payroll tax set out in the preceding section of this chapter. If, due to the circumstances of the taxpayer's business, the methods set out in the preceding section result in more of the taxpayer's payroll being taxed than can reasonably be attributed to the connection of the taxpayer and the employees, commission merchants or commission employees within the local transit district, and if the proposed alternate method does provide for a reasonably accurate proportion of the taxpayer's payroll to be subject to the tax, the Collector may approve the

alternate method and the amount of payroll and self-employment tax owed by the taxpayer shall be the amount determined by the alternate method.

§ 3.24.060 Fixed percentage.

If the Collector finds that the percentage of any taxpayer's payroll required to be apportioned to business done in the local transit area remains stable with little variation, the Collector may notify the taxpayer that a fixed percentage has been established and that the percentage does not have to be calculated when each return is filed. If the taxpayer objects within 30 days of receiving the notice, the fixed percentage shall not be put into effect and the percentage shall continue to be determined as before. If the taxpayer does not object, the fixed percentage shall remain in effect until changed by action of the Collector, or changed by the taxpayer as follows: At any time the use of the fixed percentage may be discontinued, at the sole option of the taxpayer, by the taxpayer giving 30 days' written notice to the Collector. Each taxpayer whose payroll tax is determined by use of a fixed percentage under this section has a continuing duty to notify the Collector immediately of any significant change in conditions which would change the proportion of the payroll reasonably attributable to business done or work done in the local transit district. The Collector may change or discontinue the use of a fixed percentage at any time.

§ 3.24.070 Employer located outside of local transit ~~district~~area.

Employers located outside of the local transit area are subject to the payroll and self-employment tax if any employee, commission merchant or commission employee of the employer does business in the local transit area in any way designated in § 3.24.020 of this chapter. Each employer shall contact the city Collector to obtain forms and shall file all returns required by this chapter.

§ 3.24.080 Exceptions.

A. Wages which are excluded as remuneration paid under O.R.S. 267.380.

B. Any payroll of any employer subject to the Tri-Met payroll or self-employment tax or any like tax. Refer to section 3.24.040.

§ 3.24.090 Nature of the tax.

The tax imposed by this chapter is a tax on persons, firms, corporations and associations doing business in the local transit area. It is not a tax on employees. The payroll and self-employment tax shall not be withheld by the employer from the employee's compensation.

§ 3.24.100 Date due, returns, payments, prepayments and extensions.

A. Taxpayers shall comply with the following requirements concerning returns, payments, prepayments and extensions.

B. Taxes shall be determined for:

1. —1.— Payroll: each quarter of the calendar year, and the tax due for each quarter of the calendar year shall be paid on or before April 30, ~~July~~June 30, ~~September 30~~October 31 and January 31.

2. Annual Payroll: The Collector may authorize annual payroll tax reporting for a taxpayer whose reporting history indicates the business does occasional work within the local transit area resulting in tax due of \$120.00 or less per year, or an average of \$30.00 or less per quarter. The tax due for each calendar year shall be paid on or before January 31 of the

following year. It is the responsibility of the taxpayer to notify the Collector and increase the reporting frequency to quarterly when the tax due exceeds the maximum limits for the annual reporting frequency. Failure to do so may be deemed negligence or evasion, and penalties may apply. Failure to file returns timely, without good cause shown to the satisfaction of the Collector, is sufficient cause for the Collector to deny future annual filings by the taxpayer.

~~—32. Self-employment: each quarter of the calendar year annually, and the tax due for each quarter of the~~ calendar year shall be paid on or before

~~April 15, June 15, September 15 and January 15.~~

C. Each taxpayer shall file a return, on a form to be furnished by the Collector, and file the same along with payment of the tax, on or before the date payment is due. Taxpayers are required to file a zero tax due return if no tax is owed.

DC. Extensions for filing may be granted by the Collector for good and sufficient cause shown, such as events outside the control of the taxpayer and which could not have been avoided by prudent business practices. To be eligible for an extension, requests must be received in writing prior to the tax payment due date. These extensions shall be for not more than 30 days for quarterly and annual payroll taxpayers or six months for self-employment taxpayers. Extensions are for more time to file a return only. A payment must be made based on an estimated return by the original due date to avoid penalty and interest charges. If the Collector grants an extension under this division section, the taxpayer shall pay interest at the rate of 1.5% per month on the balance of any unpaid payroll and self-employment tax due and shall pay no other penalty if filed and account made current by the extension deadline; otherwise penalties, fees and interest could be accrued from the original filing deadline or late charge.

#### § 3.24.110 Rebates.

A. The Collector may request approval from the City Council to grant tax rebates or credits based on the financial performance of the transportation fund, giving due consideration to projected operating expenses and prudent reserves.

B. Rebates will be returned to taxpayers on a pro-rata basis less costs of administration of the rebates and any incentive charges.

#### § 3.24.120 Collector's duties.

The Collector shall have the following duties in connection with the payroll and self-employment tax:

A. Keep accurate records of all returns and of all sums received for payroll and self-employment tax. The records shall contain the names and addresses of each taxpayer, and the dates and amounts of payments. The nature of installment payments shall be indicated on the records. The Collector shall keep the original returns on file for a period of not less than 3 years after filing;

B. Enforce the provisions of this chapter;

C. Prepare forms and instructions for the returns and payments required by this chapter;

D. Examine returns and, for any returns appearing to be incorrect, make inquiries, investigations and adjustments in the amount of tax due;

E. Where necessary to determine accurate figures for determining the amount of tax due, examine books, records and information stored in computers of any taxpayer, provided that each city officer or employee acting under this chapter shall identify himself or herself and request the information desired. If the officer or employee is refused admission to any place of business or

refused access to any records or computer memory, the Collector or employee shall leave the premises and shall seek an appropriate court order, with the assistance of the City Attorney, to obtain access to the information needed;

F. The Collector may delegate duties assigned to the Collector in this chapter to any officer or employee under the Collector's supervision, provided that the Collector shall approve the form of all returns and written instructions;

G. The Collector shall prepare pamphlets for distribution to the public, clearly explaining the payroll and self-employment tax and the returns and payments required; and

H. The Collector shall perform all of the other duties assigned to the Collector by this chapter.

§ 3.24.130 Penalties, ~~and~~ interest ~~and~~ fees.

A. Original Delinquency. Any ~~operator-taxpayer~~ who has not been granted an extension of time for filing a return or remittance of tax due and who fails to remit any tax imposed by §§ 3.24.030 *et seq.* prior to delinquency, shall pay a penalty of 10% of the amount of tax due in addition to the amount of the tax unless the taxpayer shows that the failure to file timely is due to reasonable cause and not due to negligence.

B. Continued Delinquency. Any ~~taxpayer-operator~~ who has not been granted an extension of time for filing a return or remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance ~~first~~ became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax due plus the amount of the tax and the 10% penalty first imposed unless the taxpayer shows that the failure to file timely is due to reasonable cause and not due to negligence.

C. Fraud. If the Collector determines that the failure to file a return or that the nonpayment of any remittance due under §§ 3.24.030 *et seq.* is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of the tax shall be added thereto in addition to the penalties stated in divisions A. and B. of this section.

D. Interest. In addition to the penalties imposed, any operator who fails to remit a tax imposed by §§ 3.24.030 *et seq.* shall pay interest at the rate of 1.5% per month or a fraction thereof, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid. Said interest cannot be waived by the Collector.

E. Payment submitted without Return. A fee, set by resolution, shall be charged should a taxpayer remit a payment without a return unless said return is received by the Collector within five business days of receiving the payment.

~~FE.~~ Penalties Merged with Tax. Every penalty and fee imposed and such interest as accrues under provisions of this section shall be merged and become a part of the tax herein required to be paid. Payments shall first be applied to penalties and fees imposed, then to interest accrued, then taxes due.

~~GF.~~ Attorney Fees. In the event it becomes necessary for an enforcement of the provisions of this chapter for the city to incur attorney fees' expense and cost, the taxpayer shall be assessed that expense and/or cost. It shall be due and owing upon billing and shall bear interest at the rate of 1.5% per month.

HG. Imposition of Civil Penalties. An imposition of any civil penalties, interest, fees or costs by this section shall not be a bar for any prosecution under § 3.24.240.

I. The Collector may waive or adjust penalties and fees imposed by (A), (B), (C) and (E) above upon a finding that:

1. In the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter

- in a timely manner;
2. The amount of the penalties or fees are greatly disproportionate to the amount of the tax;
  3. The failure of a taxpayer to file a return and/or pay any tax by the due date was caused by any of the following circumstances:
    - a) The return was timely filed but was inadvertently forwarded to another taxing jurisdiction.
    - b) Erroneous or insufficient information was furnished the taxpayer by the Collector or their employee or agent.
    - c) Death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.
    - d) Unavoidable absence of the taxpayer immediately prior to the due date.
    - e) Destruction by fire or other casualty of the taxpayer's place of business or records.
    - f) Prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.
    - g) The taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.
    - h) The taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter, and after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.
    - i) The taxpayer has never been audited by a City for the tax or on the issue in question and relied, in good faith, on a State exemption or interpretation.
    - j) The taxpayer can provide some public record (court case; report in a periodical, professional journal, or publication; etc.) stating that the transaction is not subject to tax.
    - k) The Oregon Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period.
  4. A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.
- J. No request for waiver of penalty under Subsection (I) above may be granted unless written request for waiver is received by the Collector within sixty (60) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under Subsection (I) above may appeal under the provisions of Section 3.24.250 provided that a petition of appeal or request for an extension is submitted to the Collector within sixty (60) days of the taxpayer's receipt of notice by the City that waiver has been denied.
- K. For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity in this City.
- L. For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake." Examples of negligence include:
1. The taxpayer's failure to maintain records in accordance with Section 3.24.260 of this Chapter;



2. Repeated failures to file returns timely; or

3. Gross ignorance of the law.

§ 3.24.140 Failure to file, failure to pay, underpayment.

The following rules apply when a taxpayer fails to file a return, fails to pay the payroll and self-employment tax when due, or pays less than the amount due:

A. If a taxpayer fails to make a return, the Collector shall prepare an estimate of the amount of payroll and self-employment tax due from the taxpayer, based on the best information available to the Collector. The Collector may make investigations to assist in making the estimate. The Collector may consider the number of employees, the wages or other compensation customarily paid in the type of business, the volume of business done and customary commissions or bonuses paid to employees in the same type of business, and any other relevant matters. The Collector may estimate the compensation customary in the business by comparing returns filed by other taxpayers in the same business or similar businesses. When the Collector estimates the payroll and self-employment tax, the amount of the interest and late charge provided by this chapter shall be added to the taxes due. The Collector shall notify the taxpayer in writing of the amount due. The notification shall be in writing in the form of a pre-collection notice and shall containing a brief description of the method and estimated figures used in arriving at the estimated tax. ~~Any taxpayer may dispute the amount of the estimated tax by filing.~~ The taxpayer shall respond within 30 days of notification of the estimated tax by:

1. Filing ,—a tax return accompanied by payment of the entire balance due, together with interest and late charge due. The return shall be processed like any late return, and shall establish the payroll tax liability of the taxpayer in place of the estimated tax prepared by the Collector. The Collector may, however, later determine that the amount shown on the return is insufficient, so there is a deficiency, in the same manner as in the case of other returns.
2. Contacting the Collector or Finance Director to set up a payment plan.
3. If the taxpayer fails to respond to the notification within 30 days a collection notice will be mailed informing said taxpayer of the estimated balance, interest and late charges being turned over to a collection agency.

B. If the Collector determines, by examining available evidence that the amount of payroll and self-employment tax paid by any taxpayer is less than the amount required by this chapter, the Collector shall notify the taxpayer of the deficiency. The Collector may use any of the methods authorized by §§ 3.24.010*et seq.* of this chapter to determine whether a deficiency exists and to determine the amount of the deficiency. The Collector shall thereupon notify the taxpayer of the deficiency. The notice shall be in writing and shall state not only the amount of the deficiency, but also the methods and estimates used in arriving at the amount of deficiency. If the taxpayer does not object within 30 days of the date of receiving the notice, the taxpayer shall be deemed to have accepted the revised figures for payroll tax liability. If the taxpayer does file a written objection within the time specified, the taxpayer shall pay the tax, together with penalties and interest, under protest, and may thereupon, pursue administrative and judicial remedies as provided by ordinance and by state law, to seek a refund.

C. If the eCollector finds that any taxpayer has overpaid, the Collector shall notify the taxpayer of the taxpayer's overpayment and shall refund the amount of the overpayment to the taxpayer in accordance with § 3.24.180.

D. When the Ceollector notifies any taxpayer of any estimated tax, alleged overpayment or refund, the Ceollector shall include in the notice clear instructions on how, when and where the taxpayer may protest or appeal the decision.

E. If a taxpayer or any person, firm, association or corporation required by this chapter to pay a tax or to file a return shall fail to file any return for any year, the failure to file shall constitute a continuing offense against the city and the Ceollector may proceed to estimate and collect the payroll and self-employment tax at any time. In all other cases, no increase shall be made in any taxpayer's payroll tax liability unless the first notice of the increase is received by the taxpayer within 3 years of the time the return was first due.

§ 3.24.150 Tax as debt; termination of taxable period and immediate assessment of tax.

A. Every tax imposed upon employers measured by wages paid to employees and upon self-employed persons measured by net earnings from self-employment, and all increases, interest and penalties thereon shall become, from the time the liability is incurred, a personal debt due the city from the person or persons liable therefor.

B. If the Ceollector finds that the taxpayer designs to depart quickly from the state or to remove his or her property therefrom, or to do any other act tending to prejudice or to render wholly or partially ineffectual proceedings to collect the tax for any past quarter or the tax quarter then current, unless the proceedings be brought without delay, the Ceollector shall declare the current taxable period for the taxpayer immediately terminated and shall cause notice of the finding and declaration to be given the taxpayer. Simultaneously, the Ceollector, on the basis of the best information available to it, shall assess a tax for the terminated period and for the preceding tax quarter (if no return has been filed ~~therefor~~, whether or not the time otherwise allowed by law for filing the return and paying the tax has expired), and shall assess additional tax for any quarters open to assessment under provisions of the applicable law. The Ceollector shall give notice to the taxpayer of all taxes so assessed. The taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his or her last known address. In any proceeding in court brought to enforce payment of taxes made due and payable by virtue of the provisions of this section, the findings of the Ceollector, made as provided in this section, whether made after notice to the taxpayer or not, shall be for all purposes presumptive evidence of the taxpayer's design, and the certificate of the Ceollector if the mailing or issuing of the notice and findings specified in this section is presumptive.

§ 3.24.160 Warrant for collection of taxes.

A. If any tax imposed upon employers by wages paid to employees or any portion of the tax is not paid within 30 days after it becomes due (or within 5 days, in the case of the termination of the tax quarter by the Ceollector under the provisions of § [3.24.150](#) of this chapter), and no provision is made to secure the payment of this by bond, deposit or otherwise pursuant to regulations promulgated by the Ceollector, the Ceollector, pursuant to O.R.S. 267.385 and/or the City Charter and the city code, the city shall issue a warrant under its hand and official seal directed to the sheriff of any court of the state commanding him or her to levy upon and sell real and personal property of the taxpayer found within his or her county, for the payment of the amount of the tax, with the added penalties, interest and the sheriff's cost of executing the warrant, and to return the warrant to the Ceollector and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the day of the warrant.

B. The sheriff shall, within 5 days after the receipt of the warrant, file with the Clerk of this county a copy thereof, and thereupon the Clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns the amount of the tax proportion thereof and penalties for which the warrant is issued and the date when the copy is filed. Thereupon the amount of the warrant so docketed shall become a lien upon the title to and interest in property of the taxpayer against whom it is issued in the same manner as a judgment duly docketed in the office of the Clerk. The sheriff, thereupon, shall proceed upon the same in all respects, with like effect and in the same manner prescribed by law in respect to executions issued property upon judgment of a court of record, and shall be entitled to the same fees for his or her services in executing the warrant, to be added to and collected as a part of the warrant liability.

C. In the discretion of the Collector a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect ~~exercise~~ taxes, and in the execution thereof the agent shall have all the powers conferred by law upon sheriffs, but is entitled to no fee or compensation in excess of actual expenses paid in the performance of that duty.

D. If a warrant is returned not satisfied in full, the Collector shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax, and shall balance his or her assessment record by transferring the unpaid deficiency to his or her delinquent record.

§ 3.24.170 Discontinuing business in the local transit district.

Whenever any person, firm, corporation or association subject to the payroll and self-employment tax ceases to do business in the local transit area, due either to going out of business or to moving all of the business out of the local transit area, the person, firm or corporation shall file forthwith the payroll and/or self-employment tax return and pay the tax required by this chapter, regardless of the time of year. Taxes shall be due and payable only for the actual payroll expense for the part of the year during which the taxpayer did business in the local transit area. Each officer, partner or owner of any taxpayer ~~falling-failing~~ to comply with the terms of this section shall be jointly and severally liable personally for any unpaid amounts of the tax due under this section. The personal liability provided in the preceding sentence shall not be applied to a person solely because of ownership of a minority of stock in a corporation or ownership of any minority interest not involving control of the business entity.

§ 3.24.180 Refunds.

A. When any amount of any payroll and self-employment tax, penalty or interest has been overpaid, the taxpayer who made the overpayment shall be reimbursed under the terms of this section. If the Collector determines that an overpayment has been made, the Collector shall make the refund whether a claim for the refund has been filed or not. Any taxpayer may make a claim for the refund by filing a statement signed by the taxpayer or by a person with actual knowledge of the facts, stating the reasons for the claim for refund. The Collector shall examine each claim, and may require additional information and evidence from the taxpayer. The Collector may make an investigation to determine the facts as to whether a refund is due. The investigation may include examining the books, records and information in computer storage of the taxpayer.

B. If any sum is due from the taxpayer to the city for any reason, the amount of the refund shall be applied first to offset the sum owed by the taxpayer to the city. ~~-Any balance remaining~~

~~thereafter may, at the option of the taxpayer, be held by the collector to apply on future payroll tax payments.~~ Any sum not used for this offset ~~and not held at the taxpayer's request to apply on future payroll tax payments~~ shall be returned to the taxpayer as soon as practicable. The Collector shall notify the taxpayer in writing of the Collector's decision approving a claim for refund, denying the claim or approving a refund for a smaller amount than the taxpayer claimed. If the Collector shall deny all or part of the refund claim, the taxpayer may, within 30 days, file a written protest. If the taxpayer fails to file a written protest within 30 days, the taxpayer shall be deemed to have waived any objections to the action of the Collector. Any taxpayer who has filed a written protest in accordance with this section may pursue the administrative remedies and judicial remedies available under city ordinances and state law, to obtain review of the decision denying all or part of the refund. Any action by the Collector under this section, except an action fully approving a claim for refund, shall be accompanied by a set of clear instructions on how to file an administrative appeal or court action and shall make it clear that failure to file a timely administrative appeal or court action will cause the Collector's decision to stand.

§ 3.24.190 Sale or other transfer of business.

A. If any owner or group of owners acting together transfers a majority of ownership interest or controlling interest in any business entity that is subject to the payroll and self-employment tax, the seller or transferor must furnish to the buyer or transferee a complete record of payments, accompanied by receipts, showing past payments of the payroll expense tax for the past 3 years or the period of time since the business was subject to the tax, whichever period is shorter.

B. The buyer and seller, or transferor and transferee, must also furnish written evidence to the Collector that the steps described in at least 1 of the following paragraphs have been taken:

1. The seller has filed a payroll and self-employment tax return covering the period up to the date of sale of the business entity, accompanied by payment of all payroll and self-employment tax accrued to the date of sale. This is due not later than 10 days after the sale is closed by transfer of ownership, regardless of the payment schedule;

2. The buyer or transferee has filed a written agreement with the city, undertaking to pay all payroll taxes to become due, including those accrued during the part of the year before the sale or transfer;

3. The buyer has furnished evidence to the city that the funds of the business entity are sufficient and will be sufficient to pay all payroll and self-employment tax anticipated to be due when the next payment is due, that the business entity has acknowledged its responsibility to pay the taxes and that there are no past due payroll expense taxes, penalties or interest payments owed to the city by the business entity;

4. A cash deposit or bond with a corporate surety has been filed with the Collector, sufficient to cover the amount of payroll and self-employment tax anticipated to become due for the payroll expenses before the transfer; or

5. The buyer or seller has provided an alternative means of assuring that the payroll and self-employment tax for the period before the sale will be paid, and the alternative means is reasonably sufficient, in the judgment of the Collector, to ensure the payment of the tax when due.

§ 3.24.200 Receivers, trustees, executors, administrators, guardians, conservators and others.

If control of any employer subject to the payroll and self-employment tax passes to any trustee, receiver, executor, administrator, guardian, conservator or other personal representative or fiduciary, the personal representatives or fiduciary shall have all the duties of the employer under this chapter.

§ 3.24.210 Right of privacy.

Except when disclosure is required by law or in connection with the collecting and enforcing the payroll and self-employment tax, no city officer or employee shall disclose to any person outside of the Ceollector's office ~~any~~and information learned from any return or other information filed by any taxpayer under this chapter. City officers and employees enforcing this chapter and collecting taxes shall not seek information that is irrelevant to the payroll and self-employment tax.

§ 3.24.220 Computer records of taxpayers.

The following rules apply to taxpayers who have records stored in temporary or permanent memory in any computer.

A. In lieu of any return or report required by this chapter, any taxpayer may submit a printout from a computer containing all of the information required in the return, in a format approved by the Ceollector.

B. Whenever the Ceollector has the authority or the duty to examine any books and records of any taxpayer, the Ceollector shall also have the authority or duty to examine relevant information stored in any computer used by the taxpayer. The taxpayer need not permit the Ceollector or any city employee to operate the computer, but the taxpayer shall furnish to the Ceollector an employee or other person authorized by the taxpayer to operate the computer, permitting readouts and printouts as requested or determined by the Ceollector. The duties and powers of the Ceollector may be exercised by any person working under the supervision of the Ceollector.

§ 3.24.240 False information, failure to file; penalty.

A. No person, firm, corporation or association required by this chapter to file any return or report shall fail to file the return or report. No person, firm, corporation or association shall knowingly furnish any false information to the city as all or part of any information furnished under any provision of this chapter. The furnishing of false information shall constitute a violation of this section even if the person furnishing the false information could not have profited or saved money by the deception. If any individual officer, employee or owner of any firm, corporation or association knowingly furnishes false information, the individual shall also be subject to the penalty set out in this section. The penalty set out in this section shall be in addition to any interest, late charge or other civil penalty provided by ordinance.

B. Any person, firm, corporation or association committing any violation described in this section shall, upon conviction, be fined not less than \$100, nor more than \$2,500, for each offense, and shall be subject to 1 year in jail. A separate offense shall be deemed committed with the filing of each false document.

§ 3.24.250 Appeal from Ceollector.

A. An appeal from the determination upon the application made by the taxpayer for refund or revision of any tax, as provided for in this chapter, may be taken by the taxpayer to the circuit court located in Clackamas County. Any appeal must be within 60 days after notice of the Collector's determination has been received by the taxpayer, given as provided in this chapter. If the Collector fails to notify the taxpayer within 12 months after the claim was filed of its determination of the claim for refund or revision of the tax, the taxpayer may then appeal to the circuit court.

B. Unless otherwise ordered by the circuit court, an appeal to the Collector or to the court from an assessment of taxes or additional taxes, shall not stay proceedings to collect any unpaid tax if the Collector believes that collection of the tax will be jeopardized by delay.

### 3.24.260 Record Keeping Requirements

A. It shall be the duty of every person subject to the tax imposed by this Chapter to keep and preserve suitable records and such other books and accounts as may be necessary to determine the amount of tax for which he is liable under this Chapter. The books and records must contain, at a minimum, such detail and summary information as may be required by regulation, or when records are maintained within an electronic data processing (EDP) system, the requirements established by the Oregon Department of Revenue for privilege tax filings will be accepted. It shall be the duty of every person to keep and preserve such books and records for a period equal to the applicable limitation period for assessment of tax, and all such books and records shall be open for inspection by the Collector during any business day.

B. The Collector may direct, by letter, a specific taxpayer to keep specific other books, records, and documents. Such letter directive shall apply:

1. Only for future reporting periods and;

2. Only by express determination of the Collector that such specific record keeping is necessary due to the inability of the City to conduct an adequate examination of the past activities of the taxpayer, which inability resulted from inaccurate or inadequate books, records, or documentation maintained by the taxpayer.