

LANE COUNTY MASS TRANSIT DISTRICT

ORDINANCE NO. 10

An ordinance amending Lane County Mass Transit District's Ordinance No. 7, increasing the rate of the excise tax on employers and providing for administration, enforcement and collection of the tax, and declaring an emergency.

The Board of Directors of the Lane County Mass Transit District under the authority of ORS 267.010 to 267.990, both inclusive, does hereby ordain and decree the following ordinance, amending Ordinance No. 7 of Lane County Mass Transit District so as to read as follows:

1.01 Definitions. As used in this ordinance, unless the context requires otherwise:

(1) "District" means the Lane County Mass Transit District.

(2) "Service area" means the area designated in Ordinance No. 8 of Lane County Mass Transit District entitled "An Ordinance Classifying and Designating a Service Area" adopted October 22, 1974, as now constituted and on file and open for public inspection at the District Office in Eugene, Oregon, and filed in the Lane County Clerk's office.

(3) "Department" means the Department of Revenue, State of Oregon.

(4) "Taxpayer" means an employer subject to tax under this ordinance as defined by ORS 267.380 and regulations thereunder.

(5) "Wages" means remuneration for services performed by an employee for his employer as defined by ORS 267.380 and includes wages which are paid for services performed partly within the service area.

1.02 Tax imposed. A tax is hereby imposed on every employer of individuals who perform services within the service area.

1.03 Rate. Every employer subject to tax shall pay an amount equal to 5.4 tenths of one percent (.0054) of the wages paid by him with respect to services performed within the service area.

1.04 Tax period; department the tax agent for district; powers. The tax imposed by this ordinance shall be paid quarterly to the Department of Revenue, State of Oregon, as agent for the District. The department is hereby designated the agent of the district for purposes of administering the tax imposed by this ordinance and is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of this tax as it is authorized to exercise pursuant to ORS 305.620; including, but not limited to entering closing agreements, waiving of interest and penalties, releasing liens, issuance of subpoenas, and the making of refunds.

1.05 Tax and reports due quarterly. Every employer, quarterly, on or before the last day of April, July, October and January each year, shall pay over to the department the

amount imposed by this ordinance as an excise tax and determined according to wages paid by him with respect to the employment of individuals during the preceding calendar quarter. Every taxpayer shall, with each payment made by him to the department, deliver to the department on a return prescribed by the department a statement of the total amount of wages paid to his employees during the quarterly period upon which the tax is required to be computed, and such other information as the department requires.

1.06 Effective date. This amendment and the increased tax hereby imposed shall apply to all wages paid by employers subject to the tax with respect to all services performed after September 30, 1974, within said service area.

1.07. Date return considered filed or payment made. A return filed before the last day prescribed by law for the filing thereof shall be considered as filed on the last day. An advance payment of any portion of the tax made at the time the return was filed shall be considered as made on the last day prescribed by law for filing the return or paying the tax shall be determined without regard to any extension of time granted the taxpayer by the department.

2.01 Assessment of deficiency; penalties and interest on deficiencies.

(1) As soon as practicable after the return

is filed, the department shall audit it, if the department deems such audit practicable. If the department discovers from the audit of a return or otherwise that a deficiency exists, it shall compute the tax and give notice to the taxpayer of its proposal to assess the deficiency, plus interest and penalty for fraud or negligence, if any attaches. The notice shall state the reason for each proposed adjustment to the return and a reference to the ordinance, statute, regulation or department ruling upon which the proposed adjustment is based. Each notice of deficiency and proposed assessment shall be certified by the auditor who audited the return that he has audited the return and that the proposed adjustments to the return are made in good faith and not for the purposes of extending the period of assessment.

(2) Within 30 days from the date of mailing of notice of proposed assessment, the taxpayer shall pay the proposed deficiency with interest computed to the date of payment and any penalty proposed, or within that time shall advise the department in writing wherein its determination of deficiency is erroneous. If requested by the taxpayer in his written objection to the proposed deficiency, the taxpayer shall have an opportunity to confer with the department or its delegate as to the proposed assessment at any time prior to the date such assessment is made.

(3) If neither payment nor written objection is received by the department within 30 days after notice of proposed assessment has been mailed, the department shall assess the de-

deficiency, plus interest and fraud or negligence penalty, if any, and shall give notice of the amount so assessed.

(4) Every deficiency shall bear interest at the rate of two-thirds of one per cent per month for each month or major fraction of a month computed from the due date of the return to date of payment.

(5) Penalties shall be imposed as follows:

(a) If the deficiency is due to negligence in the preparation or filing of excise tax returns, five per cent of the deficiency;

(b) If the return was falsely prepared and filed with intent to evade the tax, 100 per cent of the deficiency.

(6) All payments received must be credited first to penalty, then to interest accrued, and then to tax due.

(7) Mailing of notice to the taxpayer at his last known address shall constitute the giving of notice of proposed assessment as prescribed in subsection (1) of this section or of notice of assessment as prescribed in subsection (3) of this section. The provisions of this ordinance with respect to revision and appeal shall apply to the assessed deficiency, penalties and interest.

(8) Additional assessments and deficiency assessments with respect to any tax return shall be made pursuant to this section, and not otherwise, within the time limits prescribed by section 2.02, including but not limited to the assertion of additional tax arising from:

- (a) The failure to report properly all wages which are the measure of the tax;
- (b) The deduction of wages not permitted by law;
- (c) Mathematical errors in the return or the amount of tax shown due in the records of the department;
- (d) Improper credits or offsets against the tax claimed in the return.

2.02 Time limit for assessment of deficiency. (1) At any time within three years after the return was filed, the department may give notice of proposed assessment as prescribed in Section 2.01.

(2) The limitation to the giving of notice of proposed assessment of a deficiency provided in this section shall not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed.

(3) After the 1st day of January, 1975, the tax deficiency must be assessed and notice of tax assessment mailed to the taxpayer within one year from the date of the notice of proposed assessment unless an extension of time is agreed upon. If, prior to the expiration of any period of time prescribed in this section for giving of notice of proposed assessment or of assessment, the department and the taxpayer consent in writing to the deficiency being proposed or assessed after the expiration of such prescribed period, such deficiency may be proposed or assessed at any time prior to the expiration of the period agreed upon.

2.03 Effect of failure to file return or to pay tax; Determining and assessing tax; penalties.

(1) If a taxpayer fails to file a return within the time required by this ordinance, the department shall determine the wages paid by the taxpayer for services rendered within the district according to the best of its information and belief, assess the tax accordingly, and notify the taxpayer of the determination and assessment. In addition to the tax, the department shall also assess and collect (a) interest on such tax at the rate of $\frac{2}{3}$ of 1% per month computed from the original due date of the return until paid, and (b) a penalty as provided for in subsection (2) of this section.

(2) If a taxpayer (a) fails to file a return at the time required by this ordinance or (b) fails to pay a tax at the time the tax comes due, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount of tax required to be shown on the return, or to the amount of tax as determined by the department, a penalty of 5% of the amount of such tax if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof, during which failure continues, not exceeding 25% of the aggregate.

(3) Interest shall be collected on any unpaid tax as provided in subsection (4) of Section 2.01 of this ordinance.

(4) For purposes of subsection (2) of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax that is paid on or before the date prescribed for payment of the tax and by the amount of any credit against tax which may be properly claimed

upon the return.

2.04 Books and records. Every employer shall maintain records adequate to determine the total wages by which the excise tax imposed by this ordinance is measured. The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of the wages paid by any taxpayer, may examine or cause to be examined by an agent or representative designated by it for the purpose, any books, papers, records or memoranda bearing upon the matter required to be included in the return, and may require the attendance of the taxpayer or officer or agent or any other person having knowledge in the premises, and may take testimony and require proof material for the information, with power to administer oaths to such persons. The department shall have authority, by order or subpoena to be served with the same force and effect and in the same manner that a subpoena is served in a civil action in the circuit court, to require the production at any time and place it may designate of any books, papers, accounts or other information necessary to the carrying out of the provisions of this ordinance and the laws under which it is enacted.

2.05 Department requiring return or supplementary return.

If the department is of the opinion that a taxpayer has failed to file a return, or to include in a return filed, either intentionally or through error, all wages paid, it may require from the taxpayer a return or supplementary return, under oath, in such form as it shall prescribe, of all the wages which the

taxpayer paid during the quarter for which the return is made, whether or not paid with respect to services performed within the service area. If from a supplementary return, or otherwise, the department finds that any wages by which the tax is measured have been omitted from the original return, it may require the wages so omitted to be disclosed under oath of the taxpayer, and to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which he may be liable under any provisions of law, whether or not the department required a return or a supplementary return under this section.

2.06 Tax as debt; termination of taxable period and immediate assessment of tax. (1) Every tax imposed upon employers measured by wages paid to employees, and all increases, interest and penalties thereon shall become, from the time such liability is incurred, a personal debt, due the district, from the person or persons liable therefor.

(2) If the department finds that a taxpayer designs quickly to depart from the state or to remove his 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 such proceedings be brought without delay, the department shall declare the current taxable period for such taxpayer immediately terminated and shall cause notice of such finding and declaration to be given the taxpayer. Simultaneously, the

department, on the basis of the best information available to it, shall assess a tax for such 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 such return and paying the tax has expired) and shall assess additional tax for any quarters open to assessment under the provisions of the applicable law. The department shall give notice to the taxpayer of all taxes so assessed. Such taxes shall thereupon become immediately due and payable as soon as the notice and findings are issued to the taxpayer or mailed to his 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 department, 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 department of the mailing or issuing of the notice and findings specified in this section is presumptive.

2.07. Waiver, cancellation or compromise of tax, penalties and interest. (1) The department may, in its discretion, upon good and sufficient cause, according to and consistent with its rules and regulations, upon making a record of its reason therefor, waive, reduce or compromise any tax balance of \$10 or less or any part or all of the penalties and interest provided for in this ordinance.

(2) The department may cancel any tax imposed by this ordinance or any portion thereof, including penalty and interest, which has not been collected, if the department determines that

the administration and collection costs involved would not warrant collection of the amount that can reasonably be expected to be recovered. Each such cancellation shall be evidenced by a written record in the files of the department, a copy of which shall be sent to the district. Upon canceling the tax, the department shall also cause to be canceled or released any lien which it may have for the tax so canceled.

3.01 Warrant for collection of taxes. (1) If any tax imposed upon employers by wages paid to employees or any portion of such tax is not paid within 30 days after it becomes due (or within five days, in the case of the termination of the tax quarter by the department under the provisions of Section 2.06 of this ordinance) and no provision is made to secure the payment of this by bond, deposit, or otherwise pursuant to regulations promulgated by the department, the department, pursuant to ORS 267.385, shall:

(a) Assess a collection charge of \$5 if the sum of the tax, penalty and interest then due exceeds \$10.

(b) Issue a warrant under its hand and official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the taxpayer found within his county, for the payment of the amount of the tax, with the added penalties, interest, collection charges and the sheriff's cost of executing the warrant, and to return such warrant to the department and pay to it the money collected by virtue thereof by a time to be therein specified,

not less than 60 days from the date of the warrant.

(2) The sheriff shall, within five days after the receipt of the warrant, file with the clerk of his 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 or portion thereof and penalties for which the warrant is issued and the date when such 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 such 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 against property upon judgment of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be added to and collected as a part of the warrant liability.

(3) In the discretion of the department a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect excise 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 such duty.

(4) If a warrant is returned not satisfied in full, the department 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 assessment record by transferring the unpaid deficiency to his delinquent record.

3.02 Liability of transferee of property or taxpayer for taxes imposed on taxpayer. (1) When a taxpayer ceases to exist or is no longer subject to the jurisdiction of this district (although subject to the courts of a state having comity with the state of Oregon), being indebted for excise taxes levied upon employers, the transferee of the money or property of the taxpayer shall be liable for any such tax or deficiency in tax, including penalties and interest, imposed by law on the taxpayer and accruing or accrued upon the date of transfer, to the extent of the amount of money or value of the property received by the transferee. Property received by the transferee shall be valued at the fair market value of said property at the time of transfer to the initial transferee by the taxpayer. However, no heir, legatee, devisee or distributee of an estate of a deceased person shall be liable as a transferee of the decedent or of the decedent's estate (a) after the Department of Revenue's certificate of release with respect to such decedent's estate has been filed with the clerk of the probate court, or (b) where no release has been filed but 90 days have elapsed following a request to the department by the decedent's representative for such release, unless

within that time the probate court, upon application by the department, finds reasonable grounds for extending the period and allows the department additional time in which to issue a release.

(2) The amount for which a transferee of the property of a taxpayer is liable in respect of any such tax or deficiency in tax, including penalties and interest, whether shown on the return of the taxpayer or determined as a deficiency in the tax, shall be assessed against such transferee and collected and paid in the same manner and subject to the same provisions and limitations as would apply to the taxpayer had he or it continued subject to the jurisdiction of this district, except as provided in this section.

(3) As used in this section, the term "Transferee" means one not a bona fide purchaser for value and includes an heir, legatee, devisee, distributee of an estate of a deceased person, the shareholder of a dissolved corporation, the assignee or donee of an insolvent person, the successor of a corporation which is a party to a corporate reorganization, and persons acting on behalf of such transferees in a fiduciary capacity.

(4) The period of limitation for assessment of any such liability of a transferee shall be as follows:

(a) In the case of the liability of an initial transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the taxpayer;

(b) In the case of the liability of a transferee of a transferee of the property of the taxpayer, within one year after the expiration of the period of limitation for assessment against the preceding transferee, but not more than three years after the expiration of the period of limitation for assessment against the taxpayer;

(c) If, before the expiration of the period of limitation for the assessment of the liability of the transferee, as set forth in paragraph (a) or (b) of this subsection, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, then the period of limitation for assessment of the liability of the transferee shall expire one year after final judgment has been rendered in the court proceedings;

(d) If, before the expiration of the time prescribed in paragraphs (a), (b) or (c) of this subsection for the assessment of the liability, both the Department of Revenue and the transferee have consented in writing to its assessment after such time, the liability may be assessed at any time prior to the expiration of the period of extension agreed upon. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period of extension previously agreed upon.

(5) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period which would be in effect had death or termination of existence not occurred.

(6) In the absence of notice to the Department of Revenue of the existence of a fiduciary relationship, notice of liability enforceable under this section in respect to a tax or deficiency in tax, including penalties and interest thereon, imposed by this ordinance, if mailed to the person subject to the liability at his last known address, shall be sufficient for the purposes of this section even if such person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

4.01 Refunds. (1) If the amount of the tax found due as computed is less than the amount theretofore paid, the excess shall be refunded by the department with interest at the rate of two-thirds of one per cent for each month or fraction of a month from the time the tax was paid to the time the refund is made. No refund shall be allowed or made after three years from the time the return was filed, or two years from the time the tax or a portion thereof was paid, whichever period expires the later, unless before the expiration of such period a claim for refund is filed by the taxpayer in compliance with the manner prescribed by the department. The amount of the refund, exclusive of interest thereon, shall not exceed the portion of

the tax paid during such period preceding the filing of the claim, or, if no claim is filed, then during the period preceding the allowance of the refund during which a claim might have been filed. Where there has been an overpayment of any tax imposed, the amount of the overpayment and the interest thereon shall be credited against any tax, penalty or interest then due from the taxpayer, and only the balance shall be refunded.

(2) Notwithstanding any provision to the contrary in subsection (1) of this section, if, prior to the expiration of the period prescribed in subsection (1) of this section, the department and the taxpayer consent in writing to the refund of tax after the expiration of the period prescribed, the refund shall be made at any time prior to the expiration of the period agreed upon and no refund shall be made or allowed after the expiration of the period agreed upon unless a claim for refund is filed by the taxpayer before the expiration of the period agreed upon in compliance with the manner prescribed by the department. The department shall have the power to consent to such refund only where the taxpayer has consented to assessment of additional tax, if such be determined upon audit, after the expiration of the applicable three-year period prescribed.

4.02 Appeal to department. (1) A taxpayer may appeal to the department for the refund or revision, or both, of any excise tax within the time stated below:

(a) In the case of an appeal for a refund of taxes shown on the return filed by the taxpayer, within three years from the

time the return was filed, or two years from the time the tax, or a part or installment thereof, was paid, whichever period expires the later.

(b) In the case of an appeal from additional taxes assessed or taxes assessed where no return was filed, within two years from the date of notice of assessment, or three years from the time the return was filed, whichever period expires the later. Assessments shall be final after the expiration of the period specified in this paragraph and payment of the tax shall not give the taxpayer any extension of the period within which an appeal may be taken.

(2) The appeal shall be by way of written petition which state the grounds upon which the taxpayer contends that the assessment is erroneous. The department shall grant a hearing upon the appeal and shall examine the determination of the amount of tax due, including penalty and interest thereon, and shall redetermine such amount if it is necessary upon the law and the facts to do so. The department shall notify the taxpayer of its determination of the amount of tax due, with penalty and interest, either as originally assessed or as redetermined and shall refund to the taxpayer the amount, if any, paid in excess of the tax found to be due, with interest thereon as provided in this ordinance. Where there has been an overpayment of any tax, the amount of such overpayment and the interest thereon shall be credited against any tax, or penalty or interest then due from the taxpayer, and only the balance shall be refunded. If the taxpayer has failed prior to the time of the

appeal, without good cause, to file any return required by law, within the time prescribed by law, or has filed a fraudulent return, or, having filed an incorrect return, has failed, after notice, to file a proper return, the department shall not reduce or refund so much of the amount of the tax involved in the hearing as it may be found that the taxpayer owes for any other year or years.

403 Appeal from department. Until the effective date of legislation making other provision therefor, an appeal from the determination of the department upon the application made by the taxpayer for refund or revision of any tax, as provided for in this ordinance, may be taken by the taxpayer to the Circuit Court located in Lane County or Marion County. Any such appeal must be within 60 days after notice of the department's determination has been received by the taxpayer, given as provided in this ordinance. If the department 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.

4.04 When appeal stays collection proceedings. Unless otherwise ordered by the Circuit Court, an appeal to the department or to the court from an assessment of taxes or additional taxes shall not stay proceedings to collect any unpaid tax if the department believes that collection of the tax will

be jeopardized by delay.

4.05 The Board of Directors finds that the responsibility for continuing, operating, maintaining, extending and improving public transportation in the service area, and to undertake studies that will provide a district service and operations plan have created an urgent and immediate need for revenue and that this ordinance is necessary for the immediate preservation of the public health, order and safety, and that because of said reasons and the need to institute collection and administrative procedures, immediate action on this ordinance is required. Therefore, this ordinance shall take effect immediately.

ADOPTED this 22nd day of October, 1974.

/s/ DANIEL M. HERBERT
President and Presiding Officer

ATTEST:

/s/ GLENN E. RANDALL
Secretary

/s/ RICHARD BRYSON
Recording Secretary