

ADMINISTRATIVE ORDER NO. 44-20-05-F
of the
City Manager

ADOPTION OF COMMUNITY SAFETY PAYROLL TAX
ADMINISTRATIVE RULE R-3.762

A. Pursuant to the authority contained in Sections 2.019, 3.756, 3.760, 3.762, and 3.764 of the Eugene Code, 1971, I issued Administrative Order No. 44-20-05 proposing to adopt the Community Safety Payroll Tax Administrative Rule R-3.762 to implement the provisions of Sections 3.750 through 3.768 of the Code regarding a Community Safety Payroll Tax and providing the public with the opportunity to comment on the proposed Rule adoption.

B. It is necessary to adopt administrative rules that implement Ordinance No. 20616 by establishing provisions for the designation of a Tax Administrator; definitions for the purposes of this administrative rule; tax and return due dates; penalties and interest; refunds; audits; books and records requirements; and appeals.

C. Notice of the proposed Rule adoption was given by providing copies of the Notice and the proposed Rule to the Mayor and City Councilors, and making copies available to review at the Sheldon Community Center, Hilyard Community Center, Petersen Barn Community Center and on the City of Eugene's Website. Notice of the proposed Rule, where the Rule could be reviewed, and the manner in which the public could comment on the proposed Rule was published in the Register Guard Newspaper on July 6, 7, 8, 9, and 10, 2020. Copies were also provided to any person who had requested such notice.

D. The notice advised the public that written comments would be received for an extended period of 21 days, starting on July 6, 2020. The written comments received during the 21-day period are addressed in the City Manager's Findings in Consideration of Written Submissions, attached as Exhibit A to this Order.

NOW THEREFORE, based on the above findings, the findings set forth in Exhibit A, and the findings in Administrative Order No. 44-20-05, and pursuant to the authority contained in Sections 2.019, 3.756, 3.760, 3.762, and 3.764 of the Eugene Code, 1971, the Community Safety Payroll Tax Administrative Rule R-3.762 is adopted as follows:

COMMUNITY SAFETY PAYROLL TAX
ADMINISTRATIVE RULE R-3.762

R-3.762-A DESIGNATION OF TAX ADMINISTRATOR.

The Tax Administrator is the City of Eugene Finance Director or any person or entity with whom the City Manager contracts to perform the tax administration duties.

R-3.762-B DEFINITIONS. In addition to the definitions contained in EC 3.752, the following words and phrases mean:

Business Location. Any physical location in the Eugene city limits to which an employer or self-employed person conducts business operations, including any real property, building, facility, or office owned, leased, or occupied by the employer or self-employed person. "Business location" does not include temporary job sites generated by customers located in the Eugene city limits, including but not limited to construction sites or plumbing/electrical/landscaping clients.

Net Earnings from Self-Employment. As defined in section 1402 of the Internal Revenue Code of 1986, as that section was in effect and operative on December 31, 1988.

Self-Employed Person. Someone with net earnings from self-employment, including a sole proprietor, independent contractor, or individual partner in a partnership. For purposes of EC 3.754, a self-employed person is an employer and can have employees.

Taxpayer. A person subject to tax or required to withhold and remit tax under EC 3.754.

Wages. As defined in ORS 267.380(1)(c), (2)(b) – (c), and 2(e) - (j). For the purposes of a self-employed person, "wages paid by the employer" means net earnings from self-employment. If a self-employed person also has employees, wages means both earnings from self-employment and as defined in ORS 267.380(1)(c), (2)(b) – (c), and 2(e) - (j).

R-3.762-C EMPLOYER PAYROLL TAX.

1. Tax Owed.

(a) An employer with a physical address in the City must pay tax on the total wages paid by the employer at the rate set forth in EC 3.754(1) or (2). If an employer with a physical address in the City has one or more business locations outside the City, no tax is owed by the employer for those hours an employee works at an employer's business location that is outside the City.

(b) An employer must pay a tax on the net earnings from self-employment, but does not need to pay a tax on the total wages paid by the employer to the employees if the employer: (1) is a self-employed person with net-earnings for self-employment; and, (2) pays wages to one or more employees.

(c) For purposes of EC 3.754(2), an employer's number of employees is the average number of employees employed by the employer of the taxable year.

(d) For purposes of EC 3.754(2), a self-employed person with two, one, or no employees is “an employer with two or less employees.”

(e) An employer that qualifies for the reduced tax rate of 0.0015 on the first \$100,000 of wages paid by the employer may apply this reduced rate on the final quarterly tax return and may deduct from the tax owed on this final quarterly tax return the overpaid taxes on the prior quarterly tax returns. If amount overpaid exceeds the total amount owed on the final quarterly tax return, the amount overpaid will be credited against the employer’s tax owed the next tax period or the employer may request a refund of the overpaid amount. Notwithstanding the foregoing, a self-employed person that qualifies for the reduced rate of 0.0015 on the first \$100,000 of wages may apply this reduced rate on the employer’s annual return.

2. Payments and Returns.

(a) Employers shall pay the tax due and file returns quarterly for the previous calendar quarter on or before the last day of January, April, July, and October.

(b) Notwithstanding subsection (a), taxes owed by an employer that is a self-employed person with net-earnings from self-employment shall be paid, and return filed, annually for the previous taxable year on or before the 15th day of the fourth month following the end of the taxable year.

(c) A partnership may choose to pay the tax due on behalf of individual partners. If a partnership pays the tax owed on behalf of all individual partners, the individual partners are not required to file any return with the City unless they have net earnings from self-employment from sources other than such partnership.

(d) When the tax due date falls on a Saturday, Sunday or legal holiday, the tax and quarterly return or annual return are due on the next business day.

(e) A payment made or return filed before the due date as provided in in this section shall be considered as made on the due date of the payment or return.

(f) An employer that is a self-employed person with net-earnings from self-employment and that receives an extension to file a federal or Oregon individual income tax return, will be allowed the same extension.

(g) Taxes owed by employers shall be paid and filed by the employer on the forms provided by the City.

R-3.762-D EMPLOYEE PAYROLL TAX.

1. Tax Owed.

(a) An employee working at an employer located in the City must pay a tax on the employee's total wages at the rate set forth in EC 3.754(3), (4) or (5). If an employee works for an employer located in the City that also has one or more business locations outside the City, no tax is owed by the employee for those wages an employee earns at an employer's business location that is outside the City.

(b) The applicable tax rate is based on the annualized income of the employee per pay period using tax rate charts provided by the City and consistent with the per hour rates set forth in EC 3.754(3), (4) or (5). The applicable tax rate is determined without adjustment for overtime wages.

2. Payments and Returns.

(a) An employer must withhold, report, and remit the employee tax required by EC 3.754(3) – (5). The employer shall remit the tax withheld from an employee and file tax returns quarterly for the previous calendar quarter on or before the last day of January, April, July, and October. When the tax due date falls on a Saturday, Sunday or legal holiday, the tax and quarterly return or annual return are due on the next business day.

(b) A payment made or return filed before the due date as provided in this section shall be considered as made on the due date of the payment or return.

(c) Taxes withheld by employers from employees shall be remitted and filed by employers on the forms provided by the City.

R-3.762-E AUDITS.

1. As soon as practicable after a return is filed, the City shall examine or audit it if the City deems such examination or audit practicable. If the City discovers from an examination or an audit that a deficiency exists, it shall compute the tax and give notice to the employer filing the return of the deficiency and of the City's intention to assess the deficiency, plus interest and any appropriate penalty. Except as provided in subsection 2 of this section, the notice shall:

(a) State the reason for each adjustment; and,

(b) Provide the authority upon which the adjustment is based.

2. When the notice of deficiency described in subsection 1 of this section results from the correction of a mathematical or clerical error and states what would have been the correct tax but for the mathematical or clerical error, such notice need state only the reason for each adjustment to the return.

3. The Tax Administrator, or any person or representative authorized by the City, may examine or cause to be examined during normal business hours, and upon notification to the taxpayer, any books, papers, records, or memorandum bearing upon the matter required to be included in the return, including copies of the taxpayer's state and federal tax returns, for the purpose of ascertaining the accuracy of any return or for the purpose of making an estimate of tax amount required to be paid to the City.

R-3762-F TIME LIMIT FOR ISSUING A DEFICIENCY.

1. At any time within three years after the return was filed, the City may give notice of a deficiency.

2. If the City finds that an amount equal to 25 percent or more of the wages or net earnings from self-employment reported has been omitted from the taxpayer's return, notice of the deficiency may be given at any time within five years after the return was filed.

3. The limitations to the giving of notice of a deficiency provided in this section do not apply to a deficiency resulting from false or fraudulent returns, or in cases where no return has been filed.

R-3.762-G PENALTIES AND INTEREST.

1. An employer who fails to file a return or fails to pay or remit the tax required by EC 3.754(1) – (5) by the due date shall incur the following penalties:

(a) If tax due is paid or remitted after the due date, a penalty of 5 percent of the tax due.

(b) If a return is filed more than 30 days after the due date, an additional penalty of 20 percent of the tax due.

(c) The tax administrator may impose a penalty equal to 100 percent of the tax due if the Tax Administrator determines no quarterly returns are filed for 12 consecutive quarters or three consecutive years for annual returns.

2. In addition to the penalties and interest set forth in subsection 1 of this section, an employer that fails to deduct and withhold the tax required by EC 3.756:

(a) Is deemed responsible for the payment of the tax obligation in an amount equal to the amount required to be withheld from the employee's wages and remitted to the City; and

(b) Is subject to a penalty of \$250 per employee, up to a maximum penalty of \$25,000, if the employer knowingly fails to deduct and withhold the tax.

3. Each penalty imposed under this section is in addition to any other penalty imposed under this section. All payments received shall be credited first to penalty, then to accrued interest, and then to tax due.

4. Interest on unpaid tax accrues at the rate established by ORS 305.220 and computed on a daily basis from the time the tax is due, during which the tax remains unpaid.

R-3.762-H PENALTY WAIVER DUE TO GOOD CAUSE.

1. The Tax Administrator may reduce or waive a penalty imposed pursuant to section R-3.762-G, subsections 1(a) and 1(b), if the Tax Administrator concludes that there was good cause for the failure to file, pay, or remit at the time the return and payment were due.

2. A request for a penalty reduction or waiver shall be submitted to the Tax Administrator on the form provided by the City and shall include at a minimum the name and address of the taxpayer, the tax period associated with the request, and an explanation of good cause serving as the basis for the requested penalty reduction or waiver.

3. For the purpose of this rule, "good cause" means circumstances beyond the reasonable control of the taxpayer, including but not limited to:

(a) Death or serious illness of the taxpayer or member of the taxpayer's immediate family;

(b) Destruction by fire, a natural disaster, or other casualty of the taxpayer's home, place of business, or records needed to prepare the returns and remit payment;

(c) Unavoidable and unforeseen absence of the taxpayer from the state that began before the due date of the return and tax.

4. For the purposes this rule, "good cause" does not include:

(a) Reliance on a professional to merely prepare a return and remit the tax on time;

(b) Lack of knowledge filing and payment deadlines or requirements;

(c) Mere inability of the taxpayer to pay the tax; and

(d) Other circumstances that are within the control of the taxpayer or the taxpayer's representatives.

5. Notwithstanding subsection 2 of this section, for the first two quarters of the 2021 tax year, the Tax Administrator may reduce or waive a penalty imposed pursuant to section R-3762-G, subsections 1(a) and 1(b) without first receiving a request. Notwithstanding subsections 3 and 4 of this section, reduction or waiver by the Tax Administrator during the first two quarters

of the 2021 tax year may be based on the Tax Administrator's general conclusion that taxpayers are working in good faith to comply with the City's newly imposed payroll tax.

R-3.762-I REFUNDS.

1. Employer Tax.

(a) If an employer has overpaid taxes due for total wages paid for a quarter and files an original or amended quarterly tax return, the City will credit the overpayment toward the employer's liability for the current quarter. If the employer requests a refund of the overpayment, the request shall be made on the quarterly return for which the overpayment is determined.

(b) If an employer has overpaid the taxes due for net earnings from self-employment and files an original or amended annual tax return, the City will refund the overpayment to the employer.

(c) If the employer is no longer in business, and all returns have been filed, the overpayment will be refunded.

2. Employee Tax.

(a) If an employee asserts that the actual amount of taxes withheld and remitted by an employer was computed on an amount that is not taxable or is excess of the correct tax amount, the employee may request a refund of the overpayment in writing to the employer. The request shall be mailed or delivered to the employer within 30 days of the due date for the taxes.

(b) Written notification of excess employee taxes paid and any request for refund shall include the employer's business name, nature of excess taxes paid, and refund amount requested.

(c) If, within 60 days of the date of the original request for refund by the employee, the employer does not return the excess tax to the employee, the employee may appeal to the Tax Administrator by filing a written appeal within 120 days of the date of the original request for refund.

(d) The Tax Administrator must refund to an employee the excess taxes when shown by satisfactory proof that the employee paid excess tax, the tax was not refunded by the employer, and the employee made a timely request for refund of excess taxes as established in this section.

(e) If the Tax Administrator determines pursuant to this section that the amount of the tax due is less than the amount theretofore paid, the excess shall be refunded by the City with interest at the rate established by ORS 305.220 for the period beginning 45 days after the due date of the return or the date the tax was paid, whichever is later.

(f) For purposes of subsection 2 of this section, "Tax Administrator" means the Tax Administrator or the Tax Administrator's designee.

3. The City may not allow or make a refund after three years from the date the return was filed, or two years from the date the tax (or a portion of the tax) was paid, whichever period expires later, unless before the expiration of this period a claim for refund is filed by the taxpayer in compliance with this section. In any case, if the original return is not filed within three years of the due date of the return, the City may allow or make a refund only of amounts paid within two years from the date of the filing of the claim for refund.

R-3762-J BOOKS AND RECORDS.

1. It shall be the duty of every employer required to remit or pay the taxes imposed by EC 3.762 to keep and preserve suitable records and other such book and accounts as may be necessary to determine the amount of the tax liability of the employer or taxpayer. The books and records must be kept for a period equal to the applicable limitation period for assessment of the tax.

2. The City, for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of the total wages paid, employee wages or net earnings of a self-employed 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 City 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 Municipal 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 any law imposing tax on or measured by wages or net earnings of a self-employed individual.

R-3.762-K RIGHT TO APPEAL DETERMINATION OF TAX LIABILITY.

A taxpayer who is aggrieved by a determination of tax liability by the Tax Administrator may appeal the determination through the procedures set forth in Section 2.021 of the Eugene Code, 1971. A Taxpayer who wishes to appeal shall also contact the Tax Administrator within 15 days of the date of the notice of determination of tax liability.

R-3.762-L REPORTING EMPLOYEE PAYROLL TAX WITHHELD.

Employers must report the employee subject wages (box 18), tax withheld (box 19), and "EUG" as the locality name (box 20) of the employee's Form W-2.

R-3.762-M EMPLOYER REGISTRATION.

New employers with a physical address in the City must register with the City. A registered employer must submit a return for each reporting period, even though the employer may not have had any payroll during that period. The responsibility to file a return ceases only after the employer notifies the City that the employer no longer has employees subject to the payroll tax.

R-3.762-N ENFORCEMENT.

In addition to the penalties and interest set forth in Section R-3.762-G, if a taxpayer has violated or is violating any provision of these Rules or EC 3.754 through 3.768, the City Manager or designee may impose a compliance fee in an amount established by the City Manager pursuant to EC 2.020. Prior to imposing a compliance fee, the City Manager or designee shall pursue reasonable attempts to secure voluntary compliance, failing which the City Manager or designee may impose a compliance fee. A taxpayer may appeal the imposition of a compliance fee through the procedures set forth in EC 2.021.

Dated and effective this 19th day of August, 2020.



jm
NK Sarah Medary
City Manager

**City Manager's Findings
in Consideration of Written Submissions**

During the 21-day comment period from July 6 – 27, 2020, the City received 44 written comments. Of those 44 written comments, nine related specifically to the proposed Community Safety Payroll Tax Administrative Rule R-3.762 (“proposed Rule”). The remaining 35 comments related, generally, to the Community Safety Initiative and the payroll tax adopted by Council via Ordinance No. 20616. A summary of all the comments received, and findings addressing the comments, are set out below.

1. Comments seeking clarification around the definition of wages, including what constitutes “taxable wages” for purposes of the payroll tax.

Findings: EC 3.752 defines “wages” by cross-referencing the definition of “wages” from the Transit payroll taxes in ORS 267.380(1)(c) and what does *not* constitute “wages” under ORS 267.380(2)(b) – (c); and ORS 267.380(2)(e)-(j). ORS 267.380(2)(h), one of the statutory provisions cross-referenced in EC 3.752, states that “wages” does *not* include wages “not subject to withholding under ORS Chapter 316.” Therefore, to the extent that the wages are not subject to Oregon state withholding, they are also not subject to the Community Safety payroll tax. The purpose of including the term “taxable wages” in the proposed Rule was to reference to “wages subject to withholding under ORS Chapter 316.” Because the use of “taxable” in reference to wages is causing some confusion for taxpayers, and since “wages” is already defined to exclude non-taxable (or not subject to ORS Chapter 316 withholding requirements) wages, it is unnecessary to include “taxable” or “gross” in reference to subject wages. As such, the proposed Rule is being revised to delete the terms “taxable” and “gross,” when referencing wages.

2. Comments that the penalty provisions are excessive and the waiver provisions too strict given that this is a new tax.

Findings: EC 3.760 state: “The city manager shall adopt administrative rules pursuant to section 2.019 of this code to specify the amount of penalties and interest that an employer must pay if the employer fails to timely pay or remit any tax imposed by this code. *The amount penalties and interest established by administrative rule shall be consistent with comparable provisions of state law*” (emphasis added). The penalty provisions provided in the proposed Rule are consistent with the penalty structure provided for state purposes (ORS 314.400). The proposed Rule’s penalty waiver provisions are also consistent with state waiver provisions under OAR 150-305-0068.

In response to the comments that the penalty waiver provisions are too strict, and recognizing that this is a new tax with unique requirements, the proposed Rule will be revised in a way that complies with EC 3.760 *and* provides the Tax Administrator with some flexibility to waive penalties during the initial period of tax implementation. Specifically, in response to these

comments, the proposed Rule is being revised to add the following provision as R-3.762-H.5:

5. Notwithstanding subsection 2 of this section, for the first two quarters of the 2021 tax year, the Tax Administrator may reduce or waive a penalty imposed pursuant to section R-3762-G, subsections 1(a) and 1(b) without first receiving a request. Notwithstanding subsections 3 and 4 of this section, reduction or waiver by the Tax Administrator during the first two quarters of the 2021 tax year may be based on the Tax Administrator's general conclusion that taxpayers are working in good faith to comply with the City's newly imposed payroll tax.

Additionally, in response to the comments that the penalty provisions are excessive, the proposed Rule is being revised to delete two grounds for imposing a penalty equal to 100 percent of the tax due. Specifically, proposed Rule R-3.762-G.1(c)(1) ("failure to file a return with intent to evade the tax") and R-3.762-G.1(c)(2) ("return falsely prepared and filed with the intent to evade the tax") will be deleted.

3. **Comments complimentary of the annualized income tax rate charts included in the proposed Rule.**

Findings: No changes are being made to the proposed Rule as a result of these comments.

4. **Comment seeking clarification regarding whether employers that are not subject to the payroll tax must register.**

Findings: Pursuant to R-3.762-N, the requirement to register is only applicable to "employers" that are subject to the employer payroll or self-employment tax and must remit the employee tax. If the business does not have employees (or don't qualify as an "employer"), there is no requirement to register. No changes are being made to the proposed Rule as a result of these comment.

5. **Comments seeking clarification of the form W-2 reporting requirement, i.e., asking "what are they?"**

Findings: Proposed Rule section R-3.762-L states:

"Employers must report the employee subject wages (box 18), tax withheld (box 19), and 'EUG' as the locality name (box 20) of the employee's Form W-2. No changes are being made to the proposed Rule as a result of these comments.

6. **Comments seeking clarification regarding whether a particular business is subject to the payroll tax.**

Findings: To assist employers determine whether they are subject to the payroll tax, the City has provided an online *Search by Address* tool. The tool enables an employer to see if it is located in the city limits (since the Eugene city limits is not the same as the Eugene urban growth boundary or determined by certain ZIP codes). This online search tool can be found

at: www.eugene-or.gov/4281/Community-Safety-Payroll-Tax. No changes are being made to the proposed Rule as a result of these comments.

7. Comments opposing the use of payroll tax funds to increase funding to the Eugene Police Department, stating that the payroll tax funds should be allocated to social services, such as CAHOOTS, and supporting the “People’s CSI Budget.”

Findings: The proposed Rule does not allocate any funds collected pursuant to the Community Safety Payroll Tax adopted by the City Council via Ordinance No. 20616. Authority to allocate the payroll tax funds rests solely with the City Council and cannot be done through an administrative rule. No changes are being made to the proposed Rule as a result of these comments.

8. Comment opposing the payroll tax because the collected funds will not be used to increase public safety.

Findings: The proposed Rule does not impose a payroll tax. Imposition of the payroll tax was done by the City Council via Ordinance No. 20616. The City Manager does not have the authority to repeal Ordinance No. 20616, such authority rests solely with the City Council. No changes are being made to the proposed Rule as a result of this comment.

9. Comments opposing any funding going to the Eugene Police Department.

Findings: The proposed Rule does not allocate any funds collected pursuant to the Community Safety Payroll Tax adopted by the City Council via Ordinance No. 20616. Authority to allocate the payroll tax funds rests solely with the City Council and cannot be done through an administrative rule. Similarly, the authority to allocate general funds to the Eugene Police Department rests solely with the City Council and cannot be changed through an administrative rule. No changes are being made to the proposed Rule as a result of these comments.

10. Comments advocating for the postponement of the payroll tax for 1 to 5 years due to COVID-19 and/or social issues, such as defunding the police.

Findings: Ordinance No. 20616 states that no tax shall be owed prior to July 1, 2020. Implementing the tax beginning on January 1, 2021, delays implementation by 6 months and is consistent with the adopted ordinance. No changes are being made to the proposed Rule as a result of these comments.

11. Comments opposing imposition of a payroll tax, including advocating for its repeal.

Findings: The proposed Rule does not impose a payroll tax. Imposition of the payroll tax was done by the City Council via Ordinance No. 20616. The City Manager does not have the authority to repeal Ordinance No. 20616, such authority rests solely with the City Council. No changes are being made to the proposed Rule as a result of these comments.

12. Comment asserting that the payroll tax adopted by the City Council is too complicated.

Findings: The City Manager does not have the authority to revise the payroll tax adopted by the City Council via Ordinance No. 20616. However, the proposed Rule does aim to clarify and simplify areas of confusion regarding the payroll tax that have been expressed by the public, including the changes set forth in these findings that are being made as a result of the comments submitted regarding the proposed Rule. No additional changes are being made to the proposed Rule in response to this comment.

13. Comment supporting the Community Safety Initiative and the associated payroll tax.

Findings: No changes are being made to the proposed Rule as a result of this comment.

