


Date: September 16, 2015
To: Board of Directors
From: Neil McFarlane 
Subject: **ORDINANCE NO. 340 OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (TRIMET) AMENDING CHAPTER 13 AND CHAPTER 14 OF THE TRIMET CODE TO AMEND THE PAYROLL AND SELF-EMPLOYMENT TAX RATES OVER A TEN YEAR PERIOD AS AUTHORIZED BY ORS 267.385 (SECOND READING)**

1. Purpose of Item

Ordinance No. 340 amends TriMet Code Chapters 13 and 14 to increase the payroll tax and self-employment tax rates, respectively. The increases would take effect January 1, 2016, and are further described in Section 5, Background.

2. Type of Agenda Item

- Initial Contract
- Contract Modification
- Other: Ordinance

3. Reason for Board Action

The TriMet Code may be amended only by adoption of an ordinance. Ordinance No. 340 requires two readings.

4. Type of Action

- Resolution
- Ordinance 1st Reading
- Ordinance 2nd Reading
- Other

5. Background

A. Legislative Background

In 1969 the Oregon State Legislature (“Legislature”) first authorized the creation of mass transit districts, including TriMet. The law allows districts like TriMet to set their own payroll and self-employment tax rates, subject to a statutory maximum. In 1969, the maximum permissible rate for each tax was 0.006 (six-tenths of one percent). Since 1969, the Legislature has authorized two rate increases, each with the broad support of regional businesses, business organizations, labor organizations and local jurisdictions:

- In 2003, the Legislature authorized an increase to 0.007 (seven-tenths of one percent) and required that any increase be phased in over a 10-year period. The following year, the TriMet Board of Directors (“Board”) adopted a phased-in rate increase for both taxes to 0.007 over 10 years. At that time, previously imposed automatic adjustment rates (discussed below) added 0.000218 to the total rate. *See* Ordinance No. 279 (adopted August 11, 2004).
- In 2009, the Legislature authorized an increase to 0.008 (eight-tenths of one percent) and required that any increase be phased in over a 10-year period. ORS 267.385. The TriMet Board has not yet acted on this authority. After applying the automatic adjustment rates (discussed below), the new maximum permissible rate would be .008237.

B. Payroll and Self-Employment Tax

Pursuant to TriMet Code Chapter 13, an employer of individuals who perform services within the District is subject to a payroll tax. Currently, the tax rate is .007237 of wages paid by such employer with respect to services performed within the District and is imposed on wages paid during the calendar quarter. This rate is comprised of the basic rate of .007, plus an automatic adjustment rate of .000237 to account for past withdrawals from the District, including the most recent withdrawal, in 2011, of the Boring, Oregon area. State law requires the automatic adjustment rate to be added when an area within a mass transit district withdraws. This provision is necessary to insure that bond purchasers do not have their underlying credit position undermined as a result of a withdrawal.

Pursuant to TriMet Code Chapter 14, individuals are subject to tax on their “Net Earnings from Self-Employment” during the taxable year from activities within the District. Presently, the self-employment tax rate, including the adjustment rate, is the same as the payroll tax rate and equals .007237 of a person’s Net Earnings from Self-Employment in excess of \$400. The self-employment tax is paid annually.

C. Statutory Conditions on Rate Increases

The manner in which TriMet may increase its payroll and self-employment tax rates is restricted in two ways. First, TriMet may adopt an ordinance increasing its payroll and self-employment tax rates only if the Board makes a finding that the economy in the district has recovered to an extent sufficient to warrant the increase in tax. In making such a finding, the Board must consider regional employment and income growth. Second, any increase in the payroll and self-employment tax rates must be phased in over a 10-year period. In doing so, TriMet must by ordinance set forth the increments by which the increase in tax is phased in. Each annual increment must not increase the rate of tax by more than .0002.

The Board has considered information relating to regional employment and income growth, including the economic information, data and trends compiled and submitted to TriMet by ECONorthwest; the economic overview, information, and data presented to the Board; and information provided by the public and TriMet staff to determine whether the economy in the TriMet district has recovered to an extent sufficient to warrant the increase in the payroll and self-employment taxes authorized by ORS 267.385, as amended in 2009.

The ECONorthwest report was presented to the Board at the July 22, 2015 Board meeting. The Board has also considered information relating to the challenges that actual and forecasted population growth place on the region, and the importance of sustained investment in public transportation service to ensure affordability and livability.

D. Discussions with Business Partners

TriMet has discussed with regional employers and associations the prospect of implementing the rate increases authorized by the Legislature in 2009. These discussions have been constructive and generally positive. Building on a suggestion from the Portland Business Alliance, the Board would direct TriMet to prepare by the September 2020 meeting an updated (twenty year) forecast of the payroll tax receipts and self-employment tax receipts anticipated with the tax rate schedules set forth in Section 13.09(B) and Section 14.10(A)(2) and the capital and operating cost of implementing the TriMet service plan consistent with state and regional policies, as such plan and policies may be revised from time to time. If the Board determines that the forecasted payroll and self-employment tax receipts in conjunction with other TriMet revenues materially exceed the annual amounts necessary over the forecast period to (a) expand, operate and maintain transit service levels consistent with state and regional policies and (b) maintain sufficient financial reserves, the Board may consider at the September 2020 meeting of the Board whether to defer the payroll tax and self-employment tax rate increase scheduled for calendar year 2021 set forth in Section 13.09(B) and Section 14.10(A)(2), or any subsequent years.

6. Financial/Budget Impact

Ordinance No. 340 proposes that the payroll tax and self-employment tax shall be the rate set forth opposite each period in the following table:

Tax Period	Rate
2016	0.007337
2017	0.007437
2018	0.007537
2019	0.007637
2020	0.007737
2021	0.007837
2022	0.007937
2023	0.008037
2024	0.008137
Tax periods beginning on or after January 1, 2025	0.008237

The new rates are estimated to increase general fund revenues by approximately \$4.3 million in the first year and approximately \$43 million in the tenth year, not adjusting for inflation.

7. **Impact if Not Approved**

Should the Board not proceed with a second reading and not adopt Ordinance No. 340, the existing payroll and self-employment tax rates of .007237 would remain in place.

ORDINANCE NO. 340

AN ORDINANCE OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON AMENDING CHAPTER 13 AND CHAPTER 14 OF THE TRIMET CODE TO AMEND THE PAYROLL AND SELF-EMPLOYMENT TAX RATES OVER A TEN YEAR PERIOD AS AUTHORIZED BY ORS 267.385.

THE BOARD OF DIRECTORS OF THE TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON (“TRIMET”), pursuant to the authority granted to it under sections 267.300, 267.380 and 267.385 of the Oregon Revised Statutes, does hereby ordain and decree the following ordinance:

Section 1 – Findings

- 1.1 The Board has considered information relating to regional employment and income growth, including the economic information, data and trends compiled and submitted to TriMet by ECONorthwest; the economic overview, information, and data presented to the Board as detailed in Exhibit A; and information provided by the public and TriMet staff (hereinafter collectively referred to as the “economic data”) to determine if the economy in the TriMet district has recovered to an extent sufficient to warrant the increase in the payroll and self-employment taxes authorized by ORS 267.385.
- 1.2 Having considered regional employment and income growth, the Board finds that the economy in the district has recovered sufficiently to warrant the increase in the payroll and self-employment taxes, phased in over a 10-year period in accordance with ORS 267.387 in the increments set forth in this ordinance.
- 1.3 Having considered the duration of the statutory phase-in period and the economic forecasting methods presently available, the Board finds that it is advisable to direct TriMet to undertake a forecast by the September 2020 meeting of the Board to determine if an adjustment to the phase-in period should be considered by the Board.

Section 2 – Amendment of Chapter 13 of the TriMet Code (the “Code”)

2.1 Section 13.09. Section 13.09 of the Code is hereby amended to provide in its entirety as follows:

13.09 Rate.

A. Every employer subject to tax pursuant to this Chapter 13 shall pay an amount equal to the product of (i) the Payroll Tax Rate, as set forth in Section 13.09(B), and (ii) the

amount of wages paid by such employer with respect to services performed within the District.

B. With respect to a tax period, the Payroll Tax Rate shall be the rate set forth opposite such period in the following table:

Tax Period	Rate
All Calendar Quarters in 2016	0.007337
All Calendar Quarters in 2017	0.007437
All Calendar Quarters in 2018	0.007537
All Calendar Quarters in 2019	0.007637
All Calendar Quarters in 2020	0.007737
All Calendar Quarters in 2021	0.007837
All Calendar Quarters in 2022	0.007937
All Calendar Quarters in 2023	0.008037
All Calendar Quarters in 2024	0.008137
Calendar Quarters beginning on or after January 1, 2025	0.008237

C. The Board directs TriMet to prepare by the September 2020 meeting of the Board an updated (twenty year) forecast of the payroll tax receipts and self-employment tax receipts anticipated with the tax rate schedules set forth in Section 13.09(B) and Section 14.10(A)(2) and the capital and operating cost of implementing the TriMet service plan consistent with state and regional policies, as such plan and policies may be revised from time to time. If the Board determines that the forecasted payroll and self-employment tax receipts in conjunction with other TriMet revenues materially exceed the annual amounts necessary over the forecast period to (a) expand, operate and maintain transit service levels consistent with state and regional policies and (b) maintain sufficient financial reserves, the Board shall at the September 2020 meeting of the Board defer the payroll tax and self-employment tax rate increase scheduled for calendar year 2021 set forth in Section 13.09(B) and Section 14.10(A)(2), to the subsequent year. The process of TriMet updating the forecast of payroll and self-employment tax receipts, and the Board determining whether receipts and other revenues materially exceed the annual amounts necessary for enumerated expenses and reserves, shall be undertaken annually after 2020 until the final increment of the new rate (0.008237) is implemented.

2.3 Periods Before 2016. The Payroll Tax Rate for calendar quarters in 2015 shall remain 0.007237. With respect to tax periods before 2015, the Payroll Tax Rate shall remain the rate established by the Code as in effect in such period.

Section 3 – Amendment of Chapter 14 of the Code

3.1 Section 14.10(A). Subsection A of Section 14.10 of the Code is hereby amended to provide in its entirety as follows:

14.10 Imposition of Tax.

A. Tax Imposed.

(1) A tax is imposed annually on every natural person in an amount equal to the product of (i) the Self-Employment Tax Rate for such year, as set forth in Section 14.10(A)(2), and (ii) the amount of such person's Net Earnings from Self-Employment during the Taxable Year in excess of \$400 from activities within the District.

(2) With respect to any Taxable Year, or portion thereof, the Self-Employment Tax Rate shall be the rate set forth opposite such Taxable Year in the following table:

Taxable Year	Rate
2016	0.007337
2017	0.007437
2018	0.007537
2019	0.007637
2020	0.007737
2021	0.007837
2022	0.007937
2023	0.008037
2024	0.008137
2025 and subsequent years	0.008237

(3) The Board may adjust the self-employment tax rate increases for calendar year 2021, or any subsequent year, shown in Section 14.10(A)(2) in the manner described in Section 13.09(C).

3.2 Years Before 2016. The Self-Employment Tax Rate for 2015 shall remain 0.007237. With respect to Taxable Years, or portions thereof, before 2015, the Self-Employment Tax Rate shall remain the rate established by the Code as in effect in such year.

Section 4 – Effective Date

This ordinance shall be effective January 1, 2016.

Date Adopted: _____, 2015.

Presiding Officer

Attest:

Recording Secretary

Approved as to Legal Sufficiency:



Legal Department

Ordinance 340 -- Exhibit A

The TriMet Board of Directors hereby makes a finding pursuant to ORS 267.385 that the economy in the district has recovered to an extent sufficient to warrant the tax increase contained in TriMet Ordinance No. 340.

The Board's finding is based on a broad-based evaluation of the region's current economic condition compared to recessionary levels and incorporates an assessment of trends in Portland area and western U.S. regional employment and income growth. These findings include information provided in the July 13, 2015 ECONorthwest report, *Portland Economic Recovery Analysis*, and other generally recognized sources of economic performance data.

In summary, the analysis finds that employment in the region has recovered to pre-recession levels with unemployment rates approaching lows last experienced during the region's most recent economic boom times of 2000 and 2007. Regional Gross Domestic Product exceeds pre-recession levels and is growing at a rate faster than all but two or three metro areas nationally. While income and wages have not yet regained pre-recession levels, income has recovered most of the ground lost during the recession and wages are growing at rates faster than the national average. In addition, underlying economic activity appears to be buoying both income and wages. Construction, one of the areas of the economy hardest hit by the recession, is showing significant recovery with residential and particularly multifamily building permits expanding. Regional, state and national trends indicate that employment dynamics are exerting upward pressure on wages and, along with projections for continued economic expansion and gains in productivity, wages appear on a trajectory to recoup and surpass pre-recession levels in the near future.

For these reasons the TriMet Board of Directors finds that the economy has recovered sufficiently to meet the requirements of ORS 267.385(8)¹.

ECONorthwest Analysis

The analysis performed by ECONorthwest in July of this year examined personal income, wage, salary and population data from the U.S. Bureau of Economic Analysis; unemployment rate, unemployment, employment and labor force figures from the Bureau of Labor Statistics, Local Area Unemployment Statistics and Oregon Employment Department; and single-family and multifamily residential construction permits from the U.S. Department of Urban Housing and Development. Their analysis found the following:

- Economic activity in the Portland region continues to outpace that across the rest of the state and is expected to continue to produce steady increases in employment.
- As of the end of 2013, the region had regained all of the jobs lost during the recession and, by mid-2015, had regained more than twice the recessionary employment losses.
- Unemployment in the Portland region has fallen from its peak of almost 11% in mid-2009 to 5.32% in the first quarter of 2015, essentially equaling pre-recession levels, and estimates point to continued improvement.
- Per capita personal income is approaching pre-recession highs of 2000 and 2007 and, as of 2013, had recovered a majority of recessionary losses.
- Real per capita wage and salary levels have increased since 2009 and have recently grown more quickly than real per capita personal income.
- It is anticipated that 2014 and 2015 per capita and wage data will indicate additional growth due to positive employment trends.
- Construction of single-family housing in the region has recovered steadily since late 2010. Multifamily construction accelerated much more quickly out of the recession, reaching levels not seen since at least 1997."

Ordinance 340 -- Exhibit A

Oregon Office of Economic Analysis

The status of the statewide economy has a significant influence on the health of the Portland regional economy. The Office of Economic Analysis (OEA) statewide analysis examines four main sources for jobs data: the monthly payroll employment survey, the monthly household survey, monthly withholding tax receipts and the quarterly census of employment and wages. Their findings are that all four measures of the labor market are showing “relatively strong improvements with jobs being added, wages increasing and the unemployment rate declining.” According to the Oregon Economic and Revenue Forecast of May 2015, the state’s economy is growing very quickly.

“Unlike the nation that is growing at a modest pace, Oregon’s economy is experiencing full-throttle growth today. Jobs and income are increasing as fast, if not faster than during the mid-2000s. Given demographic trends, such rates of growth are considered full throttle. As in past expansions, Oregon has regained its traditional growth advantage relative to other states. Much of this advantage can be attributed to the state’s industrial structure and strong in-migration flows. More important are the indications that Oregon is seeing a deeper labor market recovery. Wages for the average Oregon worker are increasing quicker than in the typical state, and the labor force is growing.”

The OEA also finds that Oregon’s economy appears to have returned to pre-recession patterns of job creation leading to reductions in unemployment levels and that fuller employment likely will lead to higher wages.

“More encouragingly, since job growth accelerated in 2013, Oregon’s economy has exhibited signs of normal labor market dynamics. More jobs reduce the ranks of the unemployed and provide more job opportunities for Oregonians. As such, the labor market tightens, providing workers with more bargaining power as firms have to compete more on price (wages) to attract and retain the best workers.”

OEA also notes that Oregon wages have been increasing rapidly and predict that, as economic conditions continue to improve, real average wages will increase more rapidly.

“(W)ages in Oregon are increasing at nearly 8 percent per year, which is better than during the mid-2000s expansion but still a notch below the 1990s gains of 10 percent per year. Average wages per worker are currently increasing over 3 percent per year, which is slightly above the rate of inflation... As economic conditions continue to improve, expectations are that real average wages will pick up further as well, rising along the lines of 2 percent.”

Finally, in its May forecast, OEA also predicts that personal income will increase more quickly in the near term.

“Along with an improving labor market, stronger personal income gains will come... Personal income rebounded strongly in 2014, with gains of 5.7 percent. Continued strong growth is expected moving forward, along with a full throttle economic expansion, with income gains of 5.5 percent in 2015 and 6.1 percent in 2016.”ⁱⁱⁱ

On June 25, Josh Lehner of the OEA reported on the U.S. Bureau of Economic Analysis (BEA) release of state income estimates. His report notes:

Ordinance 340 -- Exhibit A

“Similar to our state’s overall economy and labor market, the data show strong growth that outpaces the nation. Again, the economy is on the upswing, during which time Oregon typically grows significantly faster than the average state. So it’s no surprise to see Oregon’s personal income gains over the past year ranked second best among the 50 states. Wages grew 2nd fastest as well over the year.”^{iv}

The report showed Oregon personal income increasing 5.8% between the first quarter of 2014 and the first quarter of 2015.

Oregon Employment Department

The Oregon Employment Department tracks trends related to employment and business activity and publishes regular updates. In recent reports, the department has noted the improving employment trends, including:

- From July 10, 2015, the finding that “Oregon’s Gross Domestic Product (GDP) grew 3.6 percent in 2014 according to the Bureau of Economic Analysis. This was the sixth-fastest growth rate in the nation.”
- Oregon has seen net job gains (more jobs created than lost) every quarter since early 2010.
- From May 2015, that as of April, Oregon’s seasonally adjusted unemployment had declined to 5.2% and that Portland Vancouver Hillsboro MSA unemployment stood at 4.9%, rivaling the pre-recessionary lows of 2007 and 2008 of 4.7 and 4.8%.^v

Increasing gross domestic product, declining unemployment and increasing total job numbers tend to indicate both economic health and are traditionally associated with growing wages over time.

Federal Reserve Bank of San Francisco

In a July 9, 2015 in a *FedViews* report from the Federal Reserve Bank of San Francisco, Rob Valletta, Vice President at the Federal Reserve Bank of San Francisco, offered his views on the current economy and outlook. His analysis points to increasing upward pressure on wages as the economy reaches pre-recession employment levels and labor supply tightens. His observations include:

- We expect a second quarter rebound to be largely maintained in coming months, with growth converging back near its 2% long-run trend by late 2016.
- Our expectation of a moderate expansion is also supported by continued solid employment growth. Job gains this year have slowed relative to last year’s torrid pace. Still, averaging slightly above 200,000 per month, they remain well above the minimum needed to sustain improvement in labor market conditions.
- Sustained employment growth has helped push down the unemployment rate further this year. The June level of 5.3% is closing in on the long-run normal or natural rate that is generally consistent with stable inflation, which we estimate at 5.2%. Our forecast calls for the unemployment rate to fall below the natural rate later this year and remain below it through next year.
- One sign that the labor market is near maximum employment is an increase in upward wage pressures and observed wage growth. Our standard set of four compensation measures, which combines earnings and employment costs, are somewhat mixed. On balance, however, they show an acceleration beginning in mid-2014, most notably for the employment cost index.^{vi}

Ordinance 340 -- Exhibit A

TriMet Payroll Receipts

Although there is some lag, TriMet payroll tax revenues are linked closely with changes in wages and self-employment levels in the district. Net of changes in the payroll and self-employment tax rate, TriMet's tax revenues rose 6.2% between FY 2013 and FY 2014 and by 6.0% between FY 2014 and FY 2015. These changes indicate continued strong growth in wages and self-employment earnings in the regional economy at least through the middle of calendar 2015.^{vii}

Summarizing these reports, the consensus view is that the economy has made a substantial recovery from recessionary lows. Total employment has grown beyond pre-recession levels and unemployment rates have declined to levels near recent historic lows. Regional Gross Domestic Product continues to grow along with the recovery of sectors such as construction which were hard hit by the recession. Per capita personal income is approaching pre-recession highs and wages are growing faster than in other areas. Near term trends indicate that wages and incomes will continue to climb past pre-recession levels as the overall economy continues to expand. The current recovery of the regional economy is ample justification for a finding that the economy has recovered sufficiently to meet the requirements of ORS 267.385(8). When combined with the positive trends in economic expansion and expected increases in both per capita income and wages, the board finds that the health of the economy justifies both the letter and spirit of the state requirement for implementing a change in the payroll tax.

ⁱ "The district board may not adopt an ordinance increasing a tax authorized by subsection (1) of this section unless the board makes a finding that the economy in the district has recovered to an extent sufficient to warrant the increase in tax. In making the finding, the board shall consider regional employment and income growth."

ⁱⁱ Portland Economic Recovery Analysis, ECONorthwest Report to the TriMet Board of Directors, July 13th, 2015, Andrew Dyke, Senior Economist.

ⁱⁱⁱ Oregon Economic and Revenue Forecast May 2015 Volume XXXV, No. 2 Release Date: May 14, 2015 <http://www.oregon.gov/DAS/OEA/docs/economic/forecast0515.pdf>

^{iv} Josh Lehner, Oregon Office of Economic Analysis, June 25, 2015, <http://oregoneconomicanalysis.com/>

^v Amy Vander Vliet, July 10, 2015, Oregon GDP: Growth Ranks Sixth Fastest Among All States; Ken Lux, Oregon Business Employment Dynamics Report, Third Quarter, 2014; www.qualityinfo.org/portland-metro

^{vi} FedViews, Robert Valletta, vice president, Federal Reserve Bank of San Francisco, July 9, 2015, <http://www.frbsf.org/economic-research/publications/fedviews/2015/july/july-9-2015/>.

^{vii} TriMet Audited financials for FY2013 & 2014 and unaudited for FY2015. Includes Employer and self employed receipts and excludes state in-lieu revenues.