

**Jan. 26**

**To: Thomas Lannom, Revenue Division Director**

**From: Tony Green, Deputy Ombudsman**

**RE: Metro Supportive Housing/Multnomah County Preschool for All tax collection**

I am writing to draw your attention to a matter involving the Revenue Division's collection of the Metro Supportive Housing Services (SHS) Business and Personal Income Tax and the Multnomah County Preschool for All (PFA) Personal Income Tax. Because the tax is new, Revenue is waiving penalties for delinquent taxpayers who contact Revenue and say they did not know about the tax. However, Revenue is not affirmatively informing all eligible taxpayers of this option.

This issue came to our attention through a complaint. A taxpayer received a Notice of Personal Income Tax Owed from Revenue in early November 2022 saying that their joint 2021 taxable income was above the specified threshold and required them to pay these taxes. The letter provided a deadline for filing and stated that penalties and interest would be assessed. The taxpayer promptly filed their return and paid the tax amount of about \$4,400.

Revenue sent a follow-up Notice of Debt stating that the taxpayer owed approximately \$1,100 in penalties and \$294 in interest for both taxes. The letter did not contain a notice that the taxpayer could appeal the determination or seek a penalty waiver but provided a phone number and a secure email address if the taxpayer had any questions. The taxpayer called and said they had no idea they owed the taxes before receiving the November 2022 notice. They were told they could request a penalty waiver, which they did. The penalty waiver was granted. They also filed a complaint with the Ombudsman saying it was unfair for the City to assess penalties and interest for being late on a tax without first informing taxpayers that the tax was owed.

The Ombudsman spoke with Revenue about their efforts to notify taxpayers prior to the taxes being due on April 18, 2022. Revenue said a targeted notification was not possible at the time because they did not have the ability to identify which taxpayers might owe the tax. They said there were discussions with Metro and Multnomah County about notifying all taxpayers, but both entities declined this option. They noted that only taxpayers in the top five to ten percent of income earners were expected to be responsible to pay the tax and they didn't want to cause unnecessary confusion by notifying all taxpayers.

The Ombudsman also notes that Revenue published the news article "How to pay your 2021 personal income taxes" on the City website, but it did not appear until April 13, 2022, five days before the tax was due.

Revenue estimated that as of December 2022 they had received returns from about 68,000 taxpayers for the Metro and Multnomah County taxes. As of December, Revenue had sent out about 4,200 letters to taxpayers who likely owed taxes based on their 2021 Oregon tax returns. They have identified another 10,000 taxpayers who likely owe taxes as well. These numbers, while not final, point to a compliance rate of approximately 83 percent.

Revenue informed the Ombudsman that because this the first year of collection, Revenue is waiving late penalties when taxpayers call and say they were unaware of the new taxes. Revenue, however, is not proactively informing delinquent filers that they can request a penalty waiver. Revenue acknowledged that none of their written communications tell taxpayers about the waiver request process.

Principles of administrative fairness require that opportunities to appeal, contest or otherwise challenge an administrative act be made clearly and plainly available. In addition, the Portland City Council in 2015 adopted Ordinance 187151 to eliminate barriers to administrative appeals. The ordinance added Portland City Code Chapter 3.130.020, which states that when there is a right to appeal an administrative act, the City must provide a timely, written notice that cites the applicable City Code provision. The Ombudsman's inquiry into this matter raises two concerns.

Although a request for a penalty waiver may differ from a right to appeal an administrative act, the spirit of the Code and basic principles of fairness would favor clearly notifying all taxpayers of their options. That is particularly so when the penalties are as substantial as they are in the case of these taxes. Although it would be difficult to extrapolate from the taxpayer in this case, it is safe to say that penalties and interest for more than 14,000 delinquent taxpayers would be in the millions of dollars. In circumstances when a significant number of taxpayers were informed that they owed a penalty at the same time they received their first notification of tax due, it seems unfair that the penalty waiver is being made available only to taxpayers who call and complain, particularly when Revenue is not proactively informing delinquent filers of the option.

The Ombudsman would also like to flag a concern about Revenue's compliance with PCC 3.130.020. The Notice of Debt does not notify taxpayers of their right to appeal Revenue's determination. Multnomah County Code Section 11.544 (regarding the Preschool for All tax) and Metro Code Section 7.05.160 (regarding the Supportive Housing personal income tax) provide for appeals processes that are to be conducted by the "Administrator," a role that the City has agreed Revenue will play. However, from materials reviewed by the Ombudsman, it appears that Revenue is not providing taxpayers the required notice of their right to appeal Revenue's debt determinations. Moreover, it is unclear if an appeals process for either of these taxes has even been established to date despite being a statutory requirement.

To remedy this matter, the Ombudsman proposes two options for the Revenue Division and a suggestion:

1. Waive all late penalties and refund those that have been paid; or
2. Notify all delinquent taxpayers that they can seek a penalty waiver if they did not know they owed the taxes. Notify those who have paid the penalty that they can request a refund.
3. In addition, the Ombudsman suggests that Revenue review whether PCC 3.130.020 is being fully adhered to in Revenue's administration of the Metro and Multnomah County taxes.

Ordinance 187151 confirmed the City's commitment to "safeguarding the rights of persons and promoting higher standards of competency, efficiency and justice in the provision of City services." The ordinance noted that "it is important that all processes meet minimum standards of fairness and are accessible to all community members." Revenue has made an informal policy decision to grant penalty

waivers for the new Metro and Multnomah taxes to those who request them. This is a form of appeal, and all of those who are eligible should be given clear notice.