

**CHAPTER 5.73 - ARTS EDUCATION AND
ACCESS INCOME TAX**

(Chapter added by Resolution No. 36939 (approved
at November 6, 2012 election); effective December
5, 2012.)

Sections:

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5.73.010 Definitions.

(Amended by Ordinance Nos. 185827, 185960, 187339 and 187610, effective April 1, 2016.) For the purposes of this paragraph, the following definitions apply unless the context requires a different meaning.

- A.** “Arts Teachers” means teachers who provide instruction in any arts discipline, including dance, music, theatre, or visual art.
- B.** “Catchment” means the geographical area from which an elementary school within a District draws its students.
- ~~B.C.~~** “Charter School” means a school offering a comprehensive institutional program as defined under ORS Chapter 338. The charter school will be included in the School District if sponsored by the School District or the State Board of Education, provided that the School District is the Fiscal Agent for state school funds for the Charter School and the Charter School has both Portland catchment and Portland k-5 students.
- ~~C.D.~~** “City Arts Program” means the City’s internal program and its staff who work with City bureaus, Council offices, the Regional Arts & Culture Council, and other partners to support the City’s vibrant arts and culture ecosystem.

E. “Director” means the Director of the Revenue Division, or authorized designee.

DF. “Gross Revenues” means the total of all revenue received by the City of Portland from the Arts Education and Access Income Tax without regard to collection, administrative or other costs.

EG. “Income-earning resident” means a resident who has income of \$1,000 or more in the tax year.

FH. “Net Revenues” means the revenue remaining after interest, collection, administrative and other costs and refunds are deducted from Gross Revenues.

GI. “Portland K-5 Students” means students that reside within the geographical boundary of the City of Portland, Oregon that attend Kindergarten through 5th grade in public schools.

HJ. “Resident” or “resident of the City” means:

1. An individual who is domiciled in this City unless the individual:
 - a. Maintains no permanent place of abode in the City;
 - b. Does maintain a permanent place of abode elsewhere; and
 - c. Spends in the aggregate not more than 30 days in the taxable year in the City; or
2. An individual who is not domiciled in the City but maintains a permanent place of abode in the City and spends in the aggregate more than 200 days of the taxable year in the City unless the individual proves that the individual is in the City only for a temporary or transitory purpose. For purposes of this Subsection, a fraction of a calendar day shall be counted as a whole day.

IK. “Resident” or “resident of the City” does not include:

1. An individual who is a qualified individual under section 911(d)(1) of the Internal Revenue Code for the tax year;
2. A spouse of a qualified individual under section 911(d)(1) of the Internal Revenue Code, if the spouse has a principal place of abode for the tax year that is not located in the City; or
3. A resident alien under section 7701(b) of the Internal Revenue Code who would be considered a qualified individual under section 911(d)(1) of the Internal Revenue Code if the resident alien were a citizen of the United States.

JL. “Schools” means those educational institutions defined as schools by the Oregon Department of Education, but do not include on-line schools.

KM. “School Districts” means the Portland Public, David Douglas, Centennial, Parkrose, Reynolds and Riverdale school districts.

5.73.020 Tax Imposed.

A tax of \$35 is imposed on the income of each income-earning resident of the City of Portland, Oregon who is at least eighteen years old. No tax will be imposed on filer(s) within any household that is at or below the federal poverty guidelines established by the federal Department of Health and Human Services for that tax year.

5.73.030 Net Revenues Distribution.

(Amended by Ordinance No. 187339, effective October 16, 2015.) Net Revenues will be paid by the Revenue Division to the Arts Education and Access Fund for distribution by the City as follows:

A. First, funds shall be distributed to the School Districts for the purpose of hiring certified ~~Arts or music education~~ teachers for elementary school students for Kindergarten through 5th grade (K-5). Distribution shall be based on a ratio of one teacher for every 500 K-5 students at schools that serve Portland K-5 students, except that Charter schools shall be funded based on a ratio of one teacher for every 500 Portland K-5 students served by the Charter school. Students attending schools that receive no distribution of funds shall not be counted. In the event that a school has less than 500 K-5 students, or in the case of Charter schools, less than 500 Portland K-5 students, funds shall be distributed on a pro rata basis based on the number of students attending that school. Funds shall not be distributed to:

1. Elementary schools within the School Districts that have no Portland K-5 students; and
2. Elementary schools within the School Districts that have Portland K-5 students enrolled, but whose catchment does not overlap with the City of Portland’s geographical boundaries.

B. Next, funds shall be distributed to the City Arts Program for the purpose of coordinating, supporting, and reporting on arts education services within School Districts. Funding may be used to:

1. Employ highly qualified person(s) to work with the School Districts in the provision of high-quality arts education;
2. Provide professional development opportunities for certified Arts Teachers in the School Districts;
3. Collect quantitative and qualitative data from School Districts as requested by the City and/or Oversight Committee;

4. Monitor School District performance and report any IGA compliance concerns to the Oversight Committee;

5. Convene superintendents, curriculum directors, Arts Teachers, and other School District personnel as needed to coordinate and evaluate high quality arts education in the School Districts.

C. Any funds remaining after distribution to the School Districts and the City per Subsections 5.73.030 A. and B. shall be distributed to the Regional Arts & Culture Council (RACC). The City shall execute a contract amendment with RACC to ensure the funds are spent as follows:

1. Up to 95 percent of the remaining funds shall be distributed to RACC for grants to support non-profit Portland arts organizations that demonstrate artistic excellence, provide service to the community, show administrative and fiscal competence and provide a wide range of high-quality arts programs to the public. RACC will make the determination as to which arts organizations shall be supported, in accordance with their contract with the City. In the event that RACC distributes less than 95 percent of the funds to non-profit Portland arts organizations, the remaining funds shall be distributed for the purpose of providing grants and programs as described in Subsection 2. below.
2. A minimum of 5 percent of the remaining funds shall be distributed to RACC for the purpose of providing grants and programs to non-profit arts organizations, other nonprofits and schools that will give access to high-quality arts experiences to Kindergarten through 12th grade students (K-12) and for grants and programs that will make arts and culture experiences available to Portland residents, with particular emphasis on programs directed to communities who are underserved by local arts providers.
3. These funds are in addition to existing and ongoing financial support from the City to RACC.

5.73.040 Intergovernmental Agreements.

The City will execute Intergovernmental Agreements (IGAs) with the School Districts and will amend its contract with RACC and require them to provide independently audited financial statements each year that show how the funds received pursuant to this program are spent.

5.73.050 ~~Citizen~~ Oversight Committee.

(Amended by Ordinance No. 185827, effective December 19, 2012.) The City will appoint an an citizen-oversight committee that is representative of the City's diverse communities to ensure the Arts Education and Access Fund is being implemented as required, to review expenditures made and to report their findings in a public record to the City Council on an annual basis. The committee shall be comprised of a minimum of 10 and a maximum of

20 members, including, if possible, a member of the Tax Supervising and Conservation Commission.

5.73.060 Audits.

The City will receive copies of annual independent audits or other documentation regarding expenditures by RACC and the School Districts each year. The Arts Education and Access Fund also will be part of the City's independent annual audit report, the results of which will be made available to the public.

5.73.070 Effective Dates.

This tax will be effective beginning with the tax year 2012 and shall continue each year thereafter. Payment of the tax each year is due on the date on which state taxes are due, not including any extensions of time that might be requested or received.

5.73.080 Revenue Division Responsibilities.

(Amended by Ordinance No. 187339, effective October 16, 2015.) The Revenue Division shall:

- A. Receive the Gross Revenues derived from the Arts Education and Access Income Tax and distribute the Net Revenues in accordance with the IGAs and RACC contract;
- B. Keep accurate records of the funds;
- C. Report to the City Council by way of a public record on all funds received and directed to the School Districts, the City Arts Program, and RACC;
- D. Adopt administrative rules necessary to implement tax collection and administration.
- E. If necessary, contract with public or private agencies to fulfill any of its duties in regard to this Arts Education and Access Income Tax and the Arts Education and Access Fund; and
- F. Accept any and all gifts and donations to the Arts Education and Access Fund.

5.73.090 Limitation on Costs.

(Amended by Ordinance Nos. 185960, 187339 and 188859, effective April 13, 2018.)

- A. The Revenue Division's first year start-up costs are capped at \$600,000. Ongoing administrative costs will be subject to the oversight and annual approval of the City Council.

~~B. The City's contract amendment with RACC will require RACC to:~~

- ~~1. Limit any additional RACC arts education coordination costs incurred as a result of receiving funds to a maximum of 3 percent of Net Revenues;~~

- ~~2. — Ensure that highly qualified persons will coordinate and work with the School Districts in the provision of high quality arts and/or music education;~~
- ~~3. — Seek additional funds from other sources for arts education and access to supplement the goals of the Arts Education and Access Fund;~~
- ~~4. — Provide quality oversight to the programs of the School Districts as well as the expenditures made by RACC; and~~
- ~~5. — Coordinate between School Districts and arts organizations to ensure high quality arts education for Portland students.~~

B. The City Arts Program's costs for coordinating, supporting, and reporting on Arts Education Activities in the School Districts are capped at 3 percent of Net Revenues.

5.73.100 Confidentiality.

(Added by Ordinance No. 185827; amended by Ordinance Nos. 187339 and 187610, effective April 1, 2016.) It is unlawful for any City employee, agent or elected official, or for any person who has acquired financial information pursuant to Chapter 5.73 or the Division's administrative rules to divulge, release or make known in any manner any financial information submitted or disclosed to the City under the terms of the Arts Education and Access Income Tax, unless otherwise required by law. This Section does not prohibit:

- A. Disclosure to the taxfiler or authorized representative of the taxfiler;
- B. Disclosure of general statistics in a form which would prevent the identification of financial information regarding an individual taxfiler;
- C. Disclosure to the City Attorney's Office to obtain payment on unpaid accounts or to receive legal advice; or
- D. Disclosure to an outside collection agency for collection of any unpaid account balance receivable. Assignment to an outside collection agency permits the Division to collect a reasonable collection fee, above and beyond any amount otherwise owed to the Division;
- E. Disclosure as otherwise required by law.

5.73.110 Frivolous Filing, False Filing and Hacking.

(Added by Ordinance No. 185827, effective December 19, 2012.)

- A. A \$250 penalty will be assessed if a taxfiler takes a "frivolous position" in respect to preparing the taxfiler's tax return. A tax return is considered frivolous if a taxfiler does not provide information on which the substantial correctness of the

Exhibit A

self-assessment may be judged or if the tax return contains information that on its face indicates that the self-assessment is substantially incorrect. Examples of “frivolous positions” as provided in Oregon Administrative Rule 150-316.992(5)(2) are hereby adopted by direct reference.

- B.** A \$250 penalty will be assessed if a taxfiler willfully makes or provides false statements related to their tax return filing.
- C.** The provisions of PCC Subsection 7.02.850 regarding Hacking apply.