

***A POLICY GUIDE***

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**Local Business License Fees and Taxes  
in Washington State**

*presented by*  
**WASHINGTON REALTORS®**

## I. Introduction

Cities in Washington State are authorized to license business activities within their boundaries for both purposes of regulating businesses and occupations and to generate revenue. However state law does not specify the amount and type of fees that are allowed for generating revenue. This has resulted in cities' adoption of a variety of complicated, non-uniform fee structures with no statutory limit as to amount.

This complicated mix of fee structures has resisted attempts to provide for uniformity across jurisdictions. Efforts by state government to streamline state and local business licensing processes are severely hampered by the limitless number of fee structures and amounts charged by the approximately 188 cities with business license fee programs in place.

For those business owners operating in more than one jurisdiction the lack of limits on fees can represent a significant cost of doing business. Cities should be encouraged to participate in the Washington State Master License Service program as a way to promote their community as being "business friendly". This program has successfully reduced administrative costs to cities as well as increased compliance and if widely used, can help create more uniformity across jurisdictions.

## II. Authority to License Businesses

### (a) Cities and Towns

In Washington State, cities and towns have the authority to require persons "engaging in business" within a city or town to register and/or be licensed and pay any applicable taxes or fees for the privilege of engaging in business. Ordinances adopted pursuant to this authority serve both regulatory and revenue-generating purposes. At least 188 cities across the state require a local business license.

**First Class Cities:** First class cities are cities with a population over 10,000 and operating under a home rule charter. RCW 35.22.280(32) authorizes cities of the first class "to grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same".

**Second Class Cities:** Second class cities are cities with a population over 1,500 and operating without a home rule charter. RCW 35.23.440(8) states (in part) that these cities have the authority "to fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law".

**Code Cities:** A code city is one of any size that chose to incorporate or reorganize under this classification in order to be granted the authority to perform any function granted to any other city classification not specifically denied by the state

constitution. 64% of Washington cities are code cities. RCW 35A.82.020 states a code city may “exercise the authority authorized by general law for any class of city to license and revoke the same for cause, to regulate, make inspections and to impose excises for regulation or revenue in regard to all places and kinds of business, production, commerce, entertainment, exhibition, and upon all occupations, trades and professions and any other lawful activity”.

**Towns:** A town is classified as an incorporated municipality with a population less than 1,500. RCW 35.27.370(9) grants towns the authority “to license, for purposes of regulation and revenue, all and every kind of business, authorized by law and transacted and carried on in such town”.

### **(b) Counties**

Washington counties have the authority to register and/or license only specific types of businesses. RCW 36.32.120(3) states counties have the authority to “license and fix the rates of ferriage; grant grocery and other licenses authorized by law to be by them granted at fees set by the legislative authorities which shall not exceed the costs of administration and operation of such licensed activities”.

There is specific statutory authority for noncharter counties to impose a license requirement for: dog or kennel licenses (RCW 36.49.020); private ferries (RCW 36.53); peddlers and hawkers (RCW 36.71); massage practitioners (RCW 36.32.122); retail liquor (RCW 67.14.040); trading stamp license (RCW 19.83.020).

## **III. Who Must Be Licensed**

### **(a) In General**

State enabling statutes do not specify which businesses should be required to obtain a license. To avoid confusion, a city’s business license ordinance should clearly define “business” and any terms synonymous to “engaging in business”. These definitions should include consideration of whether a physical presence is necessary and should establish minimum thresholds for determining whether certain business activities include “engaging in business”.

State law authorizing the state business and occupation tax (chapter 82.05 RCW) defines “business” to include all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. “Engaging in business” is defined as “commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business”.

A model Municipal Business and Occupation Tax Ordinance developed by the Association of Washington Cities and mandated by state law contains a comprehensive listing of examples for “engaging in business” as well as examples of de minimus

business activities that would not require a business license. These lists are useful guides to help clarify a city's business license ordinance. The full content of the Model Ordinance is in Appendix B.

Cities should include exemptions depending on the stated purpose for licensing businesses within the city. There are certainly business activities which are socially beneficial to a community and should not be burdened with the cost of licensing, for example fraternal organizations, charities and other non-profits already registered with the state.

### **(b) Non-Resident Businesses**

Consistently, the question arises whether a city has the authority to require non-resident businesses to register and pay business license fees and/or taxes. Washington state law does not address this directly and Washington state case law on the validity of licensing requirements for out of area businesses is lacking. However, case law exists on cities' authority to collect Municipal Business and Occupation (B&O) taxes. License fees collected for revenue generating purposes are considered taxes therefore case law regarding B&O tax can be cited by analogy.

Washington courts have established a three part test to determine whether a Washington city may impose B&O tax. First, the event that is taxable under the relevant city statute must be identified. Second, the taxable event must occur within the city. Third, there must exist a minimum connection between the city and the person, property or transaction that it seeks to tax. This minimum connection is called nexus, and is mostly determined on a case by case basis by broadly applying a "nexus" threshold which is the minimum amount of activity a business must perform in a particular jurisdiction to become subject to taxation in that jurisdiction.

The third part of the test is two fold. First, there must be a reasonable relationship between the city and the taxable event to justify the imposition of the tax. Second, the measure of taxation must be fairly and closely related to the taxable event within the city as to complete the definite link or minimum connection between the city and taxable event.

To help non-resident businesses determine whether they are required to pay license fees in any particular jurisdiction, a business license ordinance should address non-resident businesses specifically. A city may choose to exempt non-resident businesses from local licensing requirements. For many non-resident businesses, especially service businesses, it is difficult or impossible to prospectively determine whether they would be engaging in business in a specific jurisdiction or what business activities trigger requirement to pay a license fee. The ordinance should be crafted in a way that would ensure fair and equal compliance for all types of non-resident businesses. Some businesses are more visible than others, making enforcement easier against visible firms while non-visible, yet equally active firms may go unregulated and untaxed.

A license ordinance may not be applied to a non-resident business owner who comes into the city to perform a single or isolated act in the pursuit of his or her business.<sup>1</sup>

#### **IV. Purposes for Licensing Businesses**

##### **(a) In General**

Cities require businesses to obtain a license for one of three general purposes:

1. for regulatory purposes;
2. for purposes of generating revenue; and/or
3. for purposes of levying excise taxes on a business' gross receipts to raise revenue;

A municipality's business license ordinance should clearly state the purpose of the licensing program. Any fees to obtain a license should be set at a rate in accordance to the purposes for licensing the business.

A municipality's police power to license as a mode of regulation is distinguished from its power to license for revenue. A license fee imposed by a municipality's police power must legitimately assist in the regulation and shall not exceed the necessary or probable expense of issuing the license and of regulating the business that it covers. A revenue license is akin to a tax and a municipality may only tax pursuant to specific legislative authority. A license fee imposed for revenue generating purposes is considered a tax even though it is called a fee and the name used is immaterial for determining such.<sup>2</sup>

Washington courts have established a three part test to determine whether a fee charged is a regulatory fee or a revenue raising tax. First, is the primary purpose of the fee to accomplish desired public benefits which cost money or whether the primary purpose is to regulate. If the primary purpose is to raise revenue rather than regulate, the fee is a tax.

Second, must the money collected pursuant to the fee be allocated only to the authorized regulatory purpose? If so, the fee will be deemed a regulatory fee. If the revenues are deposited in a jurisdiction's general fund, it can be presumed the purpose is revenue generation.

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<sup>1</sup> In Mayfield v. Reed, 278 Ky 5, 127 SW 2d 847, the court stated that the city clearly had a right to impose license taxes upon non-resident professionals whose vocations are pursued within the city. However, the court stated that there must be continued activity in that particular profession within the city and the professional must actually hold himself out as engaged in such a profession within the city by soliciting and accepting business in the city. The same court stated that a license ordinance may not be applied to a non-resident professional who comes into the city to perform a single or isolated act in pursuit of his profession.

<sup>2</sup> The nature and purpose of a licensing fee and the statute authorizing the ordinance will determine whether it is a regulating fee or a revenue raising tax. A licensing ordinance which has no provision for regulation and that imposes a fee is a tax designed to raise revenue, especially when the proceeds are placed in the municipality's general account. A licensing ordinance that contains a regulatory measure for the furtherance of the public health, safety, welfare or morals will be presumed, although not conclusive, to be a regulatory licensing ordinance created under the municipality's police power. McQuillan, Municipal Corporations, Volume 9, Sec. 26.04 42-46.

Third, is there a direct relationship between the fee charged and the service received by the payer of the fee or between the fee charged and the burden produced by the payer of the fee? Where such a relationship exists, the charge is a regulatory fee.

Furthermore, a Washington city may not regulate professions or subjects which are already regulated by state legislation. For example, the real estate profession is regulated by the Real Estate Licensing Law, RCW 18.85. Any attempt by a lesser government to regulate real estate activities is illegal.<sup>3</sup>

### **(b) License Fees for Regulatory Purposes**

A license fee may be imposed by a municipality's police power to regulate business activities. Licensing and regulating businesses for regulatory purposes only is the least burdensome to businesses and can be an important economic development tool for a jurisdiction.

A business license program for regulatory purposes only can help promote business recruitment efforts and establish a municipality's reputation for being business friendly. A simple and inexpensive business license program can help give a city a competitive advantage over nearby jurisdictions with higher fees or complicated fee structures. A simple program can reduce start up costs for new, small businesses helping them get their doors open faster.

Businesses choosing a community in which to locate or relocate consider a number of factors indicative of a favorable business climate. When a local government minimizes the layers and cost of regulatory processes for business it improves their community's business climate. Extra time, effort and cost expended on regulatory concerns detract from a business' core function.

Regulatory license fees fall into two categories. First, there are business license fees. One purpose of such fees is to register all businesses to provide the city with a record of the owners, in the event a citizen or a city department has a problem with a business. Another purpose is to help ensure compliance with city ordinances. These fees are set at a flat rate per license in an amount designed to recover the costs of registering the firms and issuing the licenses, maintaining the files, and inspecting businesses to make certain that all have a license.

A second category of regulatory license is the professional and occupational license. These are levied on such businesses as pawnbrokers, used goods stores, taxis and taxi drivers, and massage parlors. The license fee may include, in addition to the costs listed above, the costs of investigating the background of the person requesting the

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<sup>3</sup> Washington State Supreme Court ruled "it is of universal application that a municipality may not enact regulatory ordinances upon subjects covered by state legislation". Pacific Tel. & Tel. Co v. Seattle, 172 Wash. 649, 21 P.2d 721, 722 (1933).

license. The license fees for professional occupational licenses will vary by the kind of activity involved.

Many smaller cities license and levy a fee for purposes of regulating certain occupations, but do not have a basic business license program for all businesses. However, more cities are moving toward a business license program as it is considered to be a sound management practice to protect the city and its citizens.

### **(c) License Fees for Revenue Generating Purposes**

More and more cities facing fiscal challenges have or are considering implementing license fee programs for revenue generating purposes. Some cities license for revenue as a way to pay for business impacts on the city's infrastructure, especially transportation. However, this trend can discourage economic growth and business recruitment. A complicated structure can be unpredictable for businesses and difficult to compute or verify. Non-resident firms engaging in business within the city sporadically or in isolated circumstances can be unfairly charged fees that were intended to offset impacts of resident businesses.

If a city chooses to implement a license fee program for revenue generating purposes, the fee amount should be relative to the impacts the type of business has on the city budget. In this case, cities should identify the part of the city budget businesses impact and earmark those revenues to that portion of the budget. Cities with high job growth relative to population growth have used license fees to pay for transportation infrastructure to offset impacts of in-migrating workers. In these cases, revenues should be earmarked for specific transportation capital projects and the fee ordinance should sunset once the project is completed. Careful consideration and corresponding deductions should be allowed if impact fees are levied on commercial and industrial construction. If a city charges businesses a stormwater utility fee, parking fee or other fees to offset certain city expenses a license fee can amount to double payment for the same impacts.

State law does not dictate how license fees for generating revenues are to be structured. Case law has determined classes of businesses must be clearly defined, with each firm within each class being charged the same fee. Currently, there is a wide array of fee structures in use. Some of the most prevalent include:

- A flat fee per business, number of employees, square footage, or type of business
- A fee per square foot of occupied space
- A fee per employee
- A fee per Full Time Equivalent/worker hour, and
- A combination of any of the above fees

The quality of any structure considered or in place should be evaluated using four criteria: efficiency, simplicity, equitability and economic growth.

**Efficiency:** The fee structure is easy to administer for the City and the business.

**Simplicity:** The fee structure is easy to understand and the amount of the fee can be easily computed and verified.

**Equitability:** The fee structure affects all businesses within a class to the same extent, and distinctions are appropriate and will not have a disproportionate impact on businesses or a class of business.

**Economic Growth:** The fee structure does not discourage reasonable economic growth or place the City at a disadvantage compared to other cities. The fee structure should compliment the City's economic development goals and strategies.

A study conducted for the City of Kenmore surveyed fee structures of 6 cities. The study found the structure itself had little effect on the amount that is raised. The single factor affecting the amount of revenue was the amount charged. Considering the almost limitless formulas jurisdictions have at its disposal to craft a fee structure, it comes down to a simple fact, the more you charge, the more you get. This fact should be considered alongside the other four criteria.

### **1) Flat Fee Per Business, Number of Employees, Type of Business, or Square Footage**

Cities using flat fees create various classes of businesses or categories so that each class or category pays a specific fee. A flat fee per business or type of business is the most simple and efficient type of flat fee. Fees based on square footage or number of employees utilizes categories and the fees are on a graduated scale that increases from the lowest category to the highest category. For example, a fee structure based on number of employees may establish the lowest category at 1-5 employees and assign a fee rate. The next category may be 6-20 employees with a higher rate assigned and so forth until a ceiling is met. The same concept is applied to fees based on square footage.

For non-resident businesses, the graduated scale method causes confusion and presents issues of fairness. Should a business with no physical presence in a city pay for the privilege of doing business in the city based on the size of a building outside the city? If only a portion of the business' workforce actually enters a city, should the business fee be based on the entire workforce? If not, how can a business determine how many of its employees be counted? An easy solution would be to charge non-resident businesses a flat fee based on type of business.

**Efficiency** – These types of fees are generally easy to administer and to calculate. To help businesses identify the number of employees, cities should provide a method for determining how many employees the business has. Examples include using the number of employees on the payroll on a specific date or calculating the average number of employees from the previous year based on the number of employees each month. When

basing fees on the type of business and square footage, cities should provide definitions for types of business categories and applicants must either estimate or do some research about their square footage. The information provided by the business is not easily verified and may increase administrative costs to the city if audits or other verification procedures are done.

**Simplicity** – With the exception of how they impact non-resident businesses, flat fee structures are easy to understand and fairly easy to calculate. For non-resident businesses, a fee based on square footage or number of employees is problematic.

**Equitability** – Although the fees are the same within a category, the fees do vary among the categories, usually on an increasing scale. If the goal of a business license fee is to pay for service impacts of a business, then the flat fees based on number of employees, type of business, or square footage may be, but not always, more equitable. The assumption is a larger business creates more service impacts and therefore pays more. However, using an increasing scale for flat fees based on the number of employees or square footage can have more impact on the smaller businesses as the cost per unit (e.g. employee) tends to decrease for very large businesses.

**Economic Growth** – The flat fee structure itself does not generally discourage economic growth, depending on the fee levels. An important factor to consider is how the fee levels compare to neighboring jurisdictions. Careful consideration should be given to how the fee levels will increase the start up costs of new, homegrown businesses. Implementing a new fee structure should be considered in close consultation with local business groups and area employers, economic development councils and others interested in preserving and building a healthy business climate.

## **2) Fee Per Square Foot of Occupied Space**

A license fee based on the amount of occupied space is generally charged per square foot of space occupied by the business. The ordinance may differentiate and have different rates for different types of space such as warehouse space, retail floor space, employee break room or other space dedicated to the comfort of employees. Space commonly shared by multiple businesses such as lobby areas should be exempted or proportionally divided among the businesses. A provision for pro-rating the fee should be included to address situations when a business relocates or the amount of occupied space changes between reporting periods.

These fees are not appropriately applied to non-resident businesses and they should be exempted from this type of fee.

**Efficiency** – These types of fees can be difficult for the business to calculate, especially if the definitions in the statute are not clear. The information provided by a business is difficult to verify and a jurisdiction will assume added costs to verify via audits.

**Simplicity** - With clear definitions, the fee structure is easy to understand and once the amount of space is measured, it is easy to calculate.

**Equitability** – This fee structure is more oriented toward revenue than service impacts and disproportionately impacts businesses that require a large amount of space or seek more affordable leases. Formerly vacant, large store fronts in distressed areas can be less costly to lease than small space in high traffic areas. Those savings may be offset by a fee based on square footage. Businesses that own large store fronts in areas characterized by rapidly rising property values face rising property taxes as well as higher license fees.

**Economic Growth** - This fee structure can be counter-productive to neighborhood revitalization efforts and city land use plans for infill development. Growing businesses may be negatively affected as they try to balance costs and benefits of growing their business by relocating to larger space. This fee structure should be evaluated alongside the city's economic development and land use goals and strategies to determine its effects on achieving those goals.

### **3) Fee Per Employee, Full-time Equivalent or Work Hours**

License fees charged at a rate either per employee, per full-time equivalents or per worker hours are often in conjunction with other flat fees per business.

A fee per employee structure generally charges a single rate for each person employed by the business. Some cities base the fee per employee on graduated categories of total number of employees. For example, the single rate per employee is different for businesses that employ 1-5 people than those employing 6-20. Like flat fees based on the number of employees, cities should provide a method for determining how many employees a business has such as using number of employees on the payroll on a specific date or calculating the average number from a previous year based on the number of employees each month.

A fee structure based on number of full-time equivalent employees (FTEs) is calculated by first determining the number of FTEs (one FTE equals some number of hours such as 1,920) then charging a flat rate per FTE. This structure favors businesses that hire part-time employees.

A fee per worker hour is similar to the FTE structure except total hours worked by all employees is multiplied by an hourly rate. These fees are usually based on the hours reported by a business to the Washington State Department of Labor and Industries. This structure also favors businesses that hire part-time employees.

For non-resident businesses, calculating the number of hours worked within the city is an excessive burden. A flat fee or exemption should apply for businesses located outside the city.

**Efficiency** – These fee structures are generally easy to calculate for the city and for the business if information necessary to calculate the fee is readily available. If it is not already calculated by the business the fee structure adds additional recordkeeping steps increasing administrative costs not directly related to their core business practices. Due to the added reporting and verification requirements, these fee structures increase administrative costs to both the city and businesses than a simpler fee structure.

**Simplicity** – If definitions are clear, these fee structures are easy to understand. They are less simple or not applicable to businesses that hire independent contractors or are sole proprietor businesses.

**Equitability** – These fee structures are more oriented toward license fee programs whose purpose is to offset impacts to the city. The premise for the fee structure is that each business contributes proportionately to a city's revenue and service impacts based on the number of employees. Those businesses with more employees are assumed to have greater service impacts. The structures may be more equitable for communities with a large retail industry or service related industries which tend to hire part-time employees than a flat fee per employee.

**Economic Growth** - Depending on the type of businesses a city wants to attract, these fee structures may or may not compliment a city's economic development strategy. It is helpful to evaluate the effect of this structure against the types of businesses already operating in the city and the type of economic development desired.

#### **4) Multiple Fee Structures**

Many cities use a combination of factors on which to base the license fee. The number of combinations that can be used are almost limitless. Combining multiple fee structures to determine the total business license fee makes the process more complex and cumbersome because more information is needed and more than one calculation must be made to determine the total fee. Depending on which types of fees are used, the previous discussions for each type of fee structure concerning efficiency, simplicity, equitability, and economic growth would apply.

##### **(d) Licensing for Purposes of Levying a Tax on Gross Receipts**

Thirty-nine Cities in Washington levy a local Business and Occupation Tax (B&O) that is levied at a percentage rate on the gross receipts of the business. Cities that levy a gross receipts business and occupation tax need to register businesses to be able to check for their compliance in the payment of the taxes. Typically but not always, these cities charge a flat fee to cover administrative costs associated with these compliance efforts.

## V. Local Business and Occupation Tax

### (a) In General

Washington law provides cities the authority to license for revenue by levying a tax on the gross receipts or gross income of a business, minus certain deductions and credits.

Local B&O tax ordinances must conform to mandatory provisions in state law (RCW 35.102). To encourage uniformity in local B&O statutes, the law mandated development of a model ordinance and required cities to report any deviations from the model ordinance.

Business groups have been long time advocates of uniformity in business tax and license laws across jurisdictions. The model B&O ordinance has accomplished some level of uniformity in B&O tax law but continues to allow cities many deviations from the model code.

Following is a list of mandatory provisions<sup>4</sup> not subject to deviations by local governments:

- A system of credits to avoid multiple taxation
- Penalty and interest provisions
- Claim periods
- Definitions using state B&O statute as the baseline
- Local B&O tax rates cannot exceed 0.2% unless a higher rate is approved by the voters. Any new or increased rates passed by a city's legislative authority must be subject to referendum.<sup>5</sup>

The statute specifically requires a nexus between the city and the business activity exist in order to levy the tax. RCW 35.102.050 defines nexus as “business activities conducted by a person sufficient to subject that person to the taxing jurisdiction of a city under the standards established for interstate commerce under the commerce clause of the United States Constitution”. The three part test outlined in section III (b) can be specifically applied to determine whether a business can be taxed by a city.

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<sup>4</sup> RCW 35.102.040 – Model Ordinance, Mandatory Provisions outlines the specific provisions that must be contained in all City Municipal Business and Occupation Tax ordinance Full text of the Model B&O Tax Ordinance is contained in the appendix.

<sup>5</sup> RW 35.21.706 states (in part) “Every city and town first imposing a business and occupation tax or increasing the rate of the tax after April 22, 1983, shall provide for a referendum procedure to apply to an ordinance imposing the tax or increasing the rate of the tax. This referendum procedure shall specify that a referendum petition may be filed within seven days of passage of the ordinance with a filing officer, as identified in the ordinance.”

### **(b) Exemptions and Credits**

Cities are allowed to adopt their own provisions for tax exemptions, credits, and deductions. State law requires exemptions for businesses with gross receipts or income under \$20,000 in any jurisdiction in which they are engaging in business. Cities are allowed to raise this minimum threshold to any amount and exemptions currently in effect range from \$40,000-\$500,000.

Some examples of businesses cities have chosen to exempt include those already licensed and/or taxed by a federal agency such as financial and insurance companies, non-profit organizations, real estate salespersons whose brokerage office is subject to the tax, hospitals and health care maintenance organizations, adult family homes, child care or child care resource and referral businesses, fraternal organizations, and farmers. The City of Tacoma has provided some extraordinary exemptions including a three year exemption for businesses recently annexed into city limits and persons whose gross incomes are below \$10,000 are exempted from filing a tax form.

The law requires cities to provide a credit system to avoid multiple taxation of certain manufacturing, extraction and wholesaling activities. Optional credits offered by some cities include professional fees, dues and tuition, investment interest or interest on loans for mortgages or deeds of trust, and day care activities. To attract business to the city and promote job growth, Tacoma provides a basic job credit for each employee and an additional credit for each new position created.

### **(c) B&O Allocation and Apportionment**

In an effort to fairly distribute tax revenues between two cities when a business activity takes place in multiple locations, an allocation and apportionment provision was included in the statute and goes into effect in January of 2008.<sup>6</sup> The allocation provision requires all income other than those taxed as service and royalties be allocated to the location where the activity takes place. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

For service industries, an apportionment formula is used to apportion taxable service income from activities occurring in more than one jurisdiction.<sup>7</sup> The law uses a two-factor formula; a payroll factor to account for location of employee and a service income factor to determine the amount of taxable income to be reported to the taxing city. The numerator of the two-factor formula adds total payroll of employees “primarily assigned” to the city in any tax period (divided by total payroll of all employees of the business) to total service income generated in the same city during the same tax period (divided by total service income of the business) then divides the numerator by two.

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<sup>6</sup> RCW 35.102.130 contains the full language of the allocation and apportionment provision.

<sup>7</sup> “Apportionable income” means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available. RCW 35.102.130(4)(a).

The payroll factor in the formula above necessitates assigning a “primary location” for all employees. The RCW defines “primarily assigned” as “*the business location of the taxpayer where the individual performs his or her duties.*” The Association of Washington Cities interpret “the business location of the taxpayer” to mean a place of business, store or office. In cases where personnel are not assigned to a specific place or business their salaries would be assigned to the city where more than 50% of their work is performed or if working from home, in the city where they reside. For non-resident businesses, the determination of where an employee is primarily assigned may present significant changes in bookkeeping practices.

The RCW directs taxpayers to determine where the taxable service income is generated in the city if the customer location is in that city. “Customer location” is defined as the location where “*the majority of contacts with the customer takes place*”. The Association of Washington Cities proposes the customer location be assigned to the location where the majority of direct cost or expenses are incurred to generate the income or the place of service-income producing activity whether it is the customer’s location or the taxpayer’s location.

With some additions, these new definitions help create a more certain threshold for determining nexus between a city and business activity. Terms not defined in the statute but should be defined in a local B&O tax ordinance include “business location” “customer contacts” and “majority of customer contacts”.

Application of the apportionment formula will produce major tax shifts as reported by the State Department of Revenue. Non-resident businesses may realize reductions in taxable income reported to B&O cities where they do business due to more precise calculation of the taxable income to be reported. Resident businesses will be allowed to deduct the portion of the income produced by activities taking place in another city.

The complexity of the formula and substantial opportunity for multiple interpretations of terms not widely used will complicate application and implementation of the apportionment formula. Businesses must work closely with their local government departments of finance to help them understand how they must apportion their tax liability and to determine if and how they must adjust their bookkeeping practices.

## **VI. Master Licensing Service: An Opportunity for Uniformity**

In the 1970’s Washington State began a program that would help businesses navigate through and comply with the myriad of licensing requirements necessary to conduct business in the state. The Combined-Licensing program provided a single, centralized process businesses could use to register their business with all the state regulatory agencies to whom they are responsible. It also provided state agencies a streamlined and efficient system for renewal notification and recordkeeping.

In the 1990's the Department of Community Trade and Economic development conducted a study that recommended the Combined-Licensing program (now called the Master License Service or MLS) be expanded to include local governments. By doing so, business licensing could be further coordinated and benefit both local governments and the business community.

The Master License Service allows businesses to register their business with the state and the cities in which they conduct business using one application and paying one fee. Applications can be made on-line and businesses are led through all necessary requirements applicable to their business and each market area.

However, participation by cities in the MLS is voluntary. Despite the benefits of reduced administrative costs and increased compliance, only 17 of the 188 cities requiring licenses participate in the program. The Department of Licensing, who administers the program, offers a grant to cities to encourage more participation. The grant helps cities remove barriers that would prevent them from participating; computer interfacing, office equipment and temporary staffing to get the program up and running.

Increased and widespread participation in the MLS would help businesses and should be encouraged. Cities would lose the flexibility they now enjoy in crafting individualized fee structures however, they could make up that loss in increased compliance and reduced administrative and enforcement costs. Businesses would be spared the arduous task of having to determine to whom and how they must register their business. The MLS is certainly a promising start to creating more uniformity of business licensing requirements.

## **VII. Conclusion**

It is incumbent on businesses to know the specific requirements of the local community in which they operate. Unfortunately, there is little statutory guidance to make this task less complicated or to help a business stay in compliance. A city cannot disregard the benefits they receive from a healthy and thriving presence of a strong commercial and industrial sector. Enhancing and retaining economic health while protecting consumers should be balanced.

In an environment of ever expanding markets, regulatory uniformity is beneficial for economic health and to reduce costs associated with regulating businesses. The business community should work with their local governments to expand on efforts already in place to enhance uniformity by crafting a business licensing program that balances the need of the business community as well as the communities they serve.

# Appendix A

## Municipal License Fee Program: Questions to Ask

- What are the purposes for implementing a license fee program? Is the purpose clearly stated in the ordinance?
- What would be the impact on the City's economic development goals and strategies?
- Have local business groups, area employers or the local economic development council been consulted?
- Is it more equitable to charge one fee regardless of type of business or business size?
- Should fees be structured to lessen the cost impact on larger or smaller businesses?
- Should multiple fee structures be used or can the City accomplish its goals through one type or fee?
- Should service and cost impacts be considered in determining what fee structure to use?
- Should the City dedicate revenues from the license fee for specific purposes?
- How will the fee structure be implemented for non-resident businesses? Is the purpose and structure applicable to non-resident businesses?
- How will the City enforce the program equally to all non-resident businesses engaging in business within the City?
- What minimum activity threshold must be met to establish a nexus between a non-resident business and the City?
- When should the City implement the fee? Is a sunset clause warranted?
- If fees increases are considered, will there be a need to document and verify the information provided by the businesses that is used to calculate the fee? What documentation should be required to verify fee calculations?
- What costs will the City incur to administer the fee structure?

- What costs will businesses incur to comply with the fee structure?
- Should all public agencies be exempt, and if not, what criteria should be used to determine what agencies should be exempt?
- Should non-profit organizations be exempt from the fee? Should non-profits be exempt from the fee but still required to register?
- What are the costs and benefits of participating in the Washington State Master Licensing Program?

## Appendix B

### **Final revised version of the City model ordinance for business license tax. Dated October 2007.**

The legislative intent information contained in the boxes indicates the intent of the ordinance and provide guidance for courts and administrators in the uniform interpretation of the ordinance. They should not be adopted as part of the ordinance, but as a supporting document to the ordinance.

While the tax provisions of this chapter are intended to provide a uniform methodology for levying a gross receipts tax on business entities, nothing in this chapter should be construed as limiting a city's ability to levy and collect a business privilege tax on any other basis; such as a tax on square footage, a tax on annualized full-time equivalents [head tax], graduated annual license tax, or any other tax calculated on a basis other than a gross receipts tax [gross income of the business, gross proceeds of sales, or value of products multiplied by rates.]

### **MODEL ORDINANCE CHAPTER \_\_\_\_.**

**.010 Purpose.** [CITY MAY ENACT A "PURPOSE PROVISION" IN THIS SECTION.]

**.020 Exercise of revenue license power.** The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

#### Legislative intent information

This section implements Washington Constitution Article XI, Sec. 12 and RCW 35A.82.020 and 35A.11.020 (code cities); 35.22.280(32) (first class cities); RCW 35.23.440(8) (second class cities); 35.27.370(9) (fourth class cities and towns), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. See Enterprise Leasing v. City of Tacoma, 139 Wn.2d 546 (1999). It is intended that this model ordinance be uniform among the various municipalities adopting it.

**.028 Administrative Provisions.** The administrative provisions contained in chapter \_\_\_\_\_ shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

**.030 Definitions.** In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

**"Business."** "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. **(Mandatory)**

**"Business and occupation tax."** "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business. **(Mandatory)**

**"Commercial or industrial use."** "Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities;

**"Delivery"** means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation. (Mandatory)

**"Eligible gross receipts tax."** The term "eligible gross receipts tax" means a tax which:

- (1) Is imposed on the act or privilege of engaging in business activities within section .050; and
- (2) Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
- (3) Is not, pursuant to law or custom, separately stated from the sales price; and
- (4) Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
- (5) Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level. **(Mandatory)**

[Comment: This definition is worded slightly different from the state's definition (RCW 82.04.440) in that it goes into more detail in describing what constitutes an eligible gross receipts tax. In addition, it makes it very clear that an eligible gross receipts tax for which a credit can be calculated must be imposed at the local level.]

**"Engaging in business"** - (1) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

(2) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(3) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(I) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball

clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(q) Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.

(4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) Conducting advertising through the mail.

(g) Soliciting sales by phone from a location outside the City.

(5) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts. **(Mandatory)** [Comment: Section (2) has been added to the State's definition of engaging in business to give guidelines and parameters to businesses in order for them to better ascertain whether or not they need to license and pay tax to the cities.]

**“Extracting.”** “Extracting” is the activity engaged in by an extractor and is reportable under the extracting classification. [Comment: This definition is not contained in state

law; however, RCW 35.102.120 requires that the model ordinance include this definition.]

**"Extractor."** "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

**"Extractor for Hire"** "Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

**"Gross income of the business."** "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

**(Mandatory)**

**"Gross proceeds of sales."** "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. **(Mandatory)**

**"Manufacturing."** "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification. **(Mandatory unless you don't tax manufacturing activities)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

**"Manufacturer," "to manufacture."** (1) "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. **(Mandatory)** (A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.) **(Optional)** [Comment: This definition differs from that found in RCW 82.04.110. The manufacturing vs. processing for hire language has been included within this definition rather than covered by rule as provided in RCW 82.04.110. The optional portion of this definition is different from the RCW in that the RCW allows for the owner of materials that are processed in Washington to be excluded as a manufacturer. It is

presumed that the RCW was written in this way to encourage material owners to bring their materials into Washington to be processed by Washington processors for hire. The State chooses to forego the tax that the owner would pay on the value of the materials under the manufacturing classification. The aluminum and nuclear fuel assembly provisions were excluded since no B & O city contains these types of activities.]

(2) "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- (a) The production of special made or custom made articles;
- (b) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- (c) Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- (d) The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser. **(Mandatory)** [Comment: This definition is different from RCW 82.04.120. The cutting, delimiting, and measuring of felled, cut, or taken trees does not usually take place within cities so that was deleted. The RCW also states that some activities which are covered in other special taxing classifications at the State level are not manufacturing. Although some of these activities normally do not take place in cities we included them into manufacturing since they fall within the definition. Manufacturing activities covered in other tax classifications at the State level such as slaughtering, curing, preserving, or canning were included in this definition since the Cities do not have the other classifications.]

**"Person."** "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof. **(Mandatory)**

**"Retailing."** "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification. **(Mandatory)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

**"Retail Service."** "Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(1) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(2) Abstract, title insurance, and escrow services;

(3) Credit bureau services;

(4) Automobile parking and storage garage services;

(5) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(6) Service charges associated with tickets to professional sporting events; and

(7) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(8) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator. **(Mandatory)**

[Comment: This definition has been removed and separated from the definition of "sale at retail" since many cities have kept these activities taxable at a rate different from their "retailing" rate. The State changed these activities to retail from service a few decades ago. This separation of definitions enables those cities that have historically taxed retail sales and retail services at a different rate to continue to do so. The definition includes more examples under the amusement and recreation subsection than States definition and these examples originated from the State's rule on amusement and recreation. ]

**"Sale," "casual or isolated sale."** (1) "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

[Comment: the term "routine or continuous" comes from WAC 458-20-106.]

**"Sale at retail," "retail sale."** (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under .050(1)(g).

(3) "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property

- owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;
- (d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;
- (e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;
- (f) The sale of and charge made for the furnishing of lodging and all other services, except ~~((network telephone service))~~ telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;
- (g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.
- (4) "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers. [Comment: Cities can only include "competitive telephone service" since ~~((network))~~ telephone business~~((service))~~ is taxed under the utility tax.]
- (5) "Sale at retail" or "retail sale" shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.
- (6) "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or

parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind. (Public road construction)

(7) “Sale at retail” or “retail sale” shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

(78) “Sale at retail” or “retail sale” shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

(89) “Sale at retail” or “retail sale” shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. [This should be reported under the service and other classification.]

(910) “Sale at retail” or “retail sale” shall not include the sale of or charge made for labor and services rendered for environmental remedial action((as defined in RCW 82.04.2635(2))). [This should be reported under the service and other classification.]

**(Mandatory)** [Comment: This definition is different than RCW 82.04.050. Retail services have been given their own definition. Public road construction and government contracting has been included into this definition since the Cities do not have special tax classifications for those two activities. Environmental or nuclear waste clean up are assigned to the service and other classification. And the sales to farmers will remain under the retailing classification. The reference to “(network)telephone business((service)) and cable service” in subsection (3)(f) has been included to clarify to hotels and motels that such telephone services and cable services are taxable under the utility tax.]

**"Sale at wholesale," "wholesale sale."** "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of ((network telephone service)) telephone business to another telecommunications

company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715. **(Mandatory)** [The last sentence must be included since (~~network~~)telephone business(~~service~~) would normally be taxed under the utility tax. The wholesale treatment of (~~network~~)telephone business(~~service~~) to another telecommunications company is dictated by State law.]

**“Services.”** [Comment: RCW 35.102.120 requires that the model ordinance include this definition. However, no explicit definition will be included in this Model Ordinance until the RCW contains a definition of “service”. In the absence of a definition of “service” in state law, the Cities generally use this term and classification to include those activities that do not fall within one of the other tax classifications used by a city.]

**"Taxpayer."** "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

**"Value proceeding or accruing."** "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. (~~The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due.~~)

**(Mandatory if you have a manufacturing tax)**

**"Value of products."** (1) The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller. (2) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values. (3) Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. [Comment: This definition is slightly different than that contained in RCW 82.04.450. The meaning is intended to be

the same, and the only difference is in grammatical construction. The model also adds a sentence, taken from WAC 458-20-112, at the end of subsection (2) explaining the use of costs to ascertain the value of the products.]

**(Mandatory if you have manufacturing or extracting tax)**

**“Wholesaling.”** “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification. **(Mandatory)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

**.050 Imposition of the tax - tax or fee levied.** (1) Except as provided in subsection (2) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person’s office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(a) Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of \_\_\_\_\_ of one percent (\_\_\_\_). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(b) Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of \_\_\_\_\_ of one percent (\_\_\_\_). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(c) Upon every person engaging within the City in the business of making sales at wholesale, except persons taxable under subsection \_\_ of this section; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of \_\_\_\_\_ of one percent (\_\_\_\_).

(d) Upon every person engaging within the City in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of \_\_\_\_\_ of one percent (\_\_\_\_).

(e) Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of \_\_\_\_\_ of one percent (\_\_\_\_).

(f) Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of \_\_\_\_\_ of one percent (\_\_\_\_\_).

(g) Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of \_\_\_\_\_ of one percent (\_\_\_\_\_). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service. [Comment: Most cities do not use all of the classifications listed above, so they need only adopt those that are imposed within their jurisdictions.] (Mandatory wording for those classifications that are adopted).

(2) The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than \$20,000, or is equal to or less than \$5,000 during any quarter if on a quarterly reporting basis. **(Subsection (2) is mandatory)**

**.060 Doing business with the City.** Except where such a tax is otherwise levied and collected by the City from such person, there is hereby levied a tax on the privilege of accepting or executing a contract with the City. Such tax shall be levied and collected whether goods or services are delivered within or without the City and whether or not such person has an office or place of business within or without the City.

Except as provided in \_\_\_\_\_ [insert city code reference to section .077], as to such persons the amount of tax shall be equal to the gross contract price multiplied by the rate under section .050 that would otherwise apply if the sale or service were taxable pursuant to that section.

**.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.**

(1) Persons who engage in business activities that are within the purview of two (2) or more subsections of .050 shall be taxable under each applicable subsection.

(2) Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

(3) To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

(4) Credit for persons that sell in the City products that they extract or manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a) with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(5) Credit for persons that manufacture products in the City using ingredients they extract. Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products. (6) Credit for persons that sell within the City products that they print, or publish and print. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products. **(Mandatory)**

[Comment: The wording in this section .070 is not quite the same as RCW 35.102.060 (1). Subsection (1) is the same as (a) in RCW 35.102.060. Subsection (2) has the same meaning although the cities add the last phrase that the tax will be subjected to the greatest extent possible. Subsection (3) is not included in RCW 35.102.060—it merely states that the taxpayer must have records or proof that it paid another eligible gross receipts tax to another local jurisdiction.

In the case of manufacturing products that have been partially manufactured in another location with an eligible gross receipt tax, the cities have chosen to give a deduction and only tax the incremental increase in the value of the product. This should provide an equal or better treatment to the manufacturer than the credit provision contained in RCW 35.102.060 (1)(d). (Refer to subsection .075(2) below.)]

#### Legislative intent information

This section provides a tax credit for taxpayers engaged in multiple taxable activities. The section provides a credit against eligible selling or manufacturing taxes imposed by the City for extracting or manufacturing taxes paid to the City or to any other local jurisdiction with respect to the same products. The tax credit does not depend upon whether a person that sells in the City extracts or manufactures in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The tax credit does not depend on whether a person that manufactures in the City extracts in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The credit is available to any person that pays an eligible gross receipts tax on the applicable activities, regardless of where it conducts business. The result of this section is that a city in which selling takes place gives up the tax to the manufacturing jurisdiction and the manufacturing jurisdiction gives up the tax to the extracting jurisdiction, whether those jurisdictions are inside or outside the State of Washington.

**.075 Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.**

(1) Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a((A)) taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

- (a) A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.
- (b) Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).
- (c) A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City. **(Mandatory)**

Legislative intent information

This section establishes deductions to be applied when a single taxable activity is taxable by more than one jurisdiction that imposes an eligible gross receipts tax for taxes due prior to January 1, 2008. Prior to January 1, 2008, uUnder Washington State Law, more than one city that has established nexus can include 100% of the gross receipts from that transaction in its tax base. However, to eliminate the possibility of the same sale or service being taxed more than once by cities that maintain nexus and an eligible gross receipts tax, the cities have provided this deduction to taxpayers. For taxes due after January 1, 2008, the apportionment provisions in section .077 will provide the mechanism for all activities except manufacturing.

Sales. A taxpayer that has paid an eligible gross receipts tax on the sale to the jurisdiction where the product is delivered may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on the sale. If a taxpayer has not paid tax to the jurisdiction where the product is delivered, then no deduction is allowed. The sale shall be taxed by the city where the office or place of business that generated the sale is located.

Service. A taxpayer that has paid an eligible gross receipts tax on services to the jurisdiction where the service is performed may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on that service. If a taxpayer has not paid tax to the jurisdiction where the service is performed, then the service income shall be taxed by the city where the office or place of business that generated the sale is located. For both sales and services, the order of taxing rights is delivery city, first; and business office location, second.

General Business Activities Other Than Services. The eligible gross receipts tax on income derived from intangibles such as royalties, licenses, trademarks, patents and

goodwill, and reportable under the general business classification .050 (7), shall be assigned to the domicile/headquarters office.

Conducting Business With Another City. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with a city may deduct the contract price used to measure the tax from the measure of the tax owed to another city on the same activity.

(2) Person manufacturing products within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products. **(Mandatory)**

**.076 Assignment of gross income derived from intangibles.**

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

.077 Allocation and apportionment of income when activities take place in more than one jurisdiction.

Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties under \_\_\_\_\_ [insert city code reference to .050(1)(g)] shall be allocated to the location where the activity takes place.

(2) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(3) Gross income derived from activities taxed as services and other activities taxed under \_\_\_\_\_ [insert city code reference to .050(1)(g)] shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

(a) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

(b) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

(i) The customer location is in the city; or

(ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

(iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

- (i) Separate accounting;
- (ii) The use of a single factor;
- (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
- (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (4) The definitions in this subsection apply throughout this section.
  - (a) "**Apportionable income**" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.
  - (b) "**Compensation**" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.
  - (c) "**Individual**" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
  - (d) "**Customer location**" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.
  - (e) "**Primarily assigned**" means the business location of the taxpayer where the individual performs his or her duties.
  - (f) "**Service-taxable income**" or "**service income**" means gross income of the business subject to tax under either the service or royalty classification.
  - (g) "**Tax period**" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.
  - (h) "**Taxable in the customer location**" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.
- (5) Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

**[Mandatory – Effective January 1, 2008]**

Legislative intent information

This section is required by RCW 35.102.130 and provides allocation and apportionment formulas to be applied when a single taxable activity takes place in more than one jurisdiction, whether or not that jurisdiction imposes a gross receipts tax. A definition of delivery has been added in section .030. Retail services will be allocated to where the activity takes place.

**.078 Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction.**

Notwithstanding RCW 35.102.130, effective January 1, 2008, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the department of revenue.

Legislative intent information

This section is required by RCW 35.102.150 and provides that printing and publishing income shall be allocated to the city in which taxpayer's business is directed or managed. This section is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.150.

**.090 Exemptions.**

(1) Public utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of **[local utility tax cite]**.

(2) Investments - dividends from subsidiary corporations. (a) This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

(3) Employees.

(a) This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.

(b) A booth renter(~~(, as defined by RCW 18.16.020,))~~) is an independent contractor for purposes of this chapter.

(4) Amounts derived from sale of real estate. This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

(5) Mortgage brokers' third-party provider services trust accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

(6) Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW

82.36.440, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter. **(Mandatory)**

(7) Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

**(Mandatory)**

(8) Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

(9) Accommodation sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

(10) Taxes collected as trust funds. This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

**.100 Deductions.** In computing the license fee or tax, there may be deducted from the measure of tax the following items:

(1) Receipts from tangible personal property delivered outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is ~~((received by the purchaser or its agent))~~ delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington. **(Mandatory)**

(2) Cash discount taken by purchaser. In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

(3) Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

(4) Constitutional prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States. **(Mandatory)**

(5) Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

(6) Professional employer services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

Legislative intent information

Subsection (6) is required by RCW 35.102.160 and provides that professional employer organizations may deduct the portion of fees for actual costs of employee wages and other benefits and taxes from gross income. This deduction is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.160 and is taken from RCW 82.04.540(2).

**.120 Tax part of overhead.**

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

**.130 Severability Clause.**

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.

Note: The following Items contained in the model ordinance guidelines are omitted from this Core model ordinance.

Definitions omitted:

- (1) Advancement, Reimbursement
- (2) Agricultural Product
- (3) Artistic or cultural organization
- (4) Consumer
- (5) In this City, within the City
- (6) Newspaper
- (7) Non-profit organization or non-profit corporation
- (8) Office, or Place of business
- (9) Precious metal bullion or monetized bullion
- (10) Product, byproduct
- (11) Royalties
- (12) Software, canned software, custom software, customization of canned software, master copies, retained rights
- (13) Tuition fee

Sections omitted:

(.040) Agency—sales and services by agent, consignee, bailee, factor or auctioneer

(.110) Application to City's business activities.

Exemptions and Deductions omitted:

Numerous exemptions and deductions—compare with model guidelines to see if you need additional exemptions or deductions.

**NOTE:** Because of the wording contained in Section .050(2), cities should insure that their licensing or registration section contains the authority to impose the license or registration. Section .050(2) is intended to relieve persons engaging in business activities that total equal to or less than \$20,000 from tax obligations – but not from license or registration fee requirements.

**Final Revised version of the City model ordinance (Administrative Provisions) for business license tax. Dated October 2007.**

**CHAPTER \_\_\_\_.**  
**Administrative Provisions For \_\_\_\_\_ Taxes**

**.010 Purpose.**

**CITIES WILL INSERT PURPOSE LANGUAGE**

**.015 Application of chapter stated.** The provisions of this chapter shall apply with respect to the taxes imposed under chapters \_\_\_\_\_ and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section.

**.020 Definitions.** For purposes of this chapter:

The definitions contained in chapter \_\_\_\_\_ (tax portion of model ordinance) shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply.

**"Reporting period."** "Reporting period" means:

- (1) A one-month period beginning the first day of each calendar month (monthly); or
- (2) A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
- (3) A twelve-month period beginning the first day of January of each year (annual).

**"Return."** "Return" means any document a person is required by the City to file to satisfy or establish a tax or fee obligation that is administered or collected by the City and that has a statutorily defined due date.

**"Successor."** "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

**"Tax year," "taxable year."** "Tax year" or "taxable year" means the calendar year.

.021 Definitions -- References to Chapter 82.32 RCW

Where provisions of Chapter 82.32 RCW are incorporated in \_\_\_\_\_ [insert city code reference to section .090] of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in \_\_\_\_\_ [insert city code reference to section .030 of the model ordinance – some cities may need to add definition to their .030 provisions from the guidelines] and "warrant" as used in the RCW shall mean "citation or criminal complaint."

**.025 Registration/license requirements.**

**CITIES WILL INSERT REGISTRATION/LICENSE REQUIREMENTS LANGUAGE**

**.030 Registration/license certificates.**

**CITIES WILL INSERT THEIR OWN REGISTRATION/LICENSES CERTIFICATE LANGUAGE.**

**.040 When due and payable - Reporting periods - Monthly, quarterly, and annual returns - Threshold provisions or Relief from filing requirements - Computing time periods - Failure to file returns.**

(1) Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.

(2) Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

(3) Tax returns must be filed and returned by the due date whether or not any tax is owed.

(4) For purposes of the tax imposed by chapter\_(tax portion of model ordinance), any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than (**1<sup>st</sup> OPTION:** Twenty Thousand Dollars (\$20,000) (or higher threshold as determined by city) in the current calendar year) **-or-** (**2<sup>nd</sup> OPTION:** Five Thousand Dollars (\$5,000) (or higher threshold as determined by the city) in the current quarter), shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

**(Subsection (4) is mandatory)**

(5) A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.

(6) Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

(7) If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

**.050 Payment methods - Mailing returns or remittances - Time extension - Deposits - Recording payments - Payment must accompany return - NSF checks.**

(1) Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered.

Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

(2) A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

(3) If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

(4) The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

(5) For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

(6) Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of twenty dollars (\$20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars (\$20.00) NSF fee) is received.

(7) The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

**.060 Records to be preserved - Examination - Estoppel to question assessment.**

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

(1) If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be

required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

(2) Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

**.070 Accounting methods.**

(1) A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

(2) The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

**.080 Public work contracts - Payment of fee and tax before final payment for work.**

The Director may, before issuing any final payment to any person performing any public work contract for the City, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

**.090 Underpayment of tax, interest, or penalty – Interest.**

(1) If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

(2) (a) **CITIES WILL INSERT LANGUAGE IN THIS SUBSECTION FOR INTEREST DUE FOR PERIODS PRIOR TO EFFECTIVE DATE OF THE 2004 ORDINANCE.**

(b) For tax periods after December 31, 2004 the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

(c) If \_\_\_\_\_ [insert city code reference to .090 2(b)] is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply. ~~((Interest imposed after the effective date of this ordinance, shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.~~

~~(e) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.))~~ **(Mandatory)**

Legislative intent information

Cities have interpreted RCW 35.102 interest provisions to apply prospectively to tax periods after the effective date of the model ordinance. For taxes and interest due for tax periods prior to the effective date of the 2004 ordinance, the cities will apply interest provisions from their own code in effect during that tax period. Subsection (b) permanently links statute to RCW to incorporate 2006 changes and any future changes.

.095 Time in which assessment may be made.

The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

- (1) Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director;
- (2) Against a person that has committed fraud or who misrepresented a material fact; or
- (3) Against a person that has executed a written waiver of such limitations.

**.100 Over payment of tax, penalty, or interest - Credit or refund - Interest rate - Statute of limitations.**

(1) If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2) The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the

waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

(3) Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

(4) Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

(5) (a) **CITY WILL INSERT REFUND INTEREST LANGUAGE COVERING PERIODS PRIOR TO THE ORDINANCE EFFECTIVE DATE HERE.**

(b) For tax periods after December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.

(c) If \_\_\_\_\_ [insert city code reference to .100(5)(b)] is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply. ~~((Interest on overpayments of taxes for periods beginning on or after January 1, 2005, shall be the average federal short term interest rate as outlined for assessments under .090(2)(c) plus two (2) percentage points.))~~ **(Mandatory)**

Legislative intent information

Cities have interpreted RCW 35.102 refund interest provisions to apply prospectively to tax periods after the effective date of the model ordinance. For refund interest due for tax periods prior to the effective date of the 2004 ordinance, the cities will apply refund interest provisions from their own code in effect during that tax period. Subsection (b) permanently links statute to RCW to incorporate 2006 changes and any future changes.

**.110 Late payment - Disregard of written instructions - Evasion - Penalties.**

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended~~((equal to five (5) percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, the Director shall add a total penalty equal to fifteen (15) percent of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, the Director shall add a total penalty equal to twenty five (25) percent of the amount of the tax. No penalty assessed herein shall be less than Five Dollars (\$5.00)))~~.

(2) If ~~((a tax deficiency is assessed by))~~ the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended~~equal to five (5) percent of the amount of the deficiency. If payment of any tax deficiency assessed by the Director is not received by the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to fifteen (15) percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the Director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to twenty~~

five (25) percent of the amount of additional tax found due. No penalty added shall be less than Five Dollars (\$5.00).

**(3) If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 82.32.090(3), as it now exists or as it may be amended~~((of ten (10) percent of the amount due, but not less than Ten Dollars (\$10)))~~.**

**(4) If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by \_\_\_\_\_, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be**

**Amended~~((of five (5) percent of the amount of tax due from that person for the period that the person was not licensed))~~.** No penalty shall be imposed under this subsection (4) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

**(5) If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may**

**be amended~~((of ten (10) percent of the amount of the additional tax due.~~**

~~(a) A taxpayer fails to follow specific written tax reporting instructions when the Director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the Director has not issued final instructions because the matter is under appeal pursuant to this chapter. The Director shall not assess the penalty under this subsection (5), upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the Director to that taxpayer.~~

~~(b) Specific written instructions may be given as a part of a tax assessment, audit, determination or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents.~~

~~(c) Any specific written instructions by the Director shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection).~~

**(6) If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW**

**82.32.090(6), as it now exists or as it may be amended~~((of fifty (50) percent of the additional tax found to be due))~~.**

**(7) The penalties imposed under subsections (1) through (5) above of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.**

~~(8) ((The penalties authorized by subsections (5) and (6) of this section shall be assessed in accordance with the provisions of this chapter governing assessment of tax~~

~~deficiencies.))~~ The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(9) For the purposes of this section, "return" means any document a person is required by the City of \_\_\_\_\_ to file to satisfy or establish a tax or fee obligation that is administered or collected by the City, and that has a statutorily defined due date.

(10) If incorporation into the City of \_\_\_\_\_ code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

### **(Mandatory)**

#### **.120 Cancellation of penalties.**

(1) The Director may cancel any penalties imposed under subsections .110 (1) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection (3).

(2) A request for cancellation of penalties must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.

(3) The Director may cancel the penalties in subsections .110 (1) one time if a person:

- (a) Is not currently licensed and filing returns,
- (b) Was unaware of its responsibility to file and pay tax, and
- (c) Obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

(4) The Director shall not cancel any interest charged upon amounts due.

#### **.130 Taxpayer quitting business - Liability of successor.**

(1) Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

(2) Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

(3) Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

(4) Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

THE FOLLOWING ARE SUGGESTED APPEAL PROCEDURES. INDIVIDUAL CITIES MAY ADOPT PROVISIONS SIMILAR TO THESE OR DEVELOP THEIR OWN PROCEDURES (WE ENCOURAGE CITIES TO CHECK WITH OTHER CITIES AND THE RCW):

**.140 Administrative Appeal.**

Any person, except one who has failed to comply with section .060, aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter may [Optional pay the amount due and] appeal from such determination by filing a written notice of appeal with the \_\_\_\_\_(City Clerk, Hearing Examiner, City Council, etc) within 30 days from the date written notice of such amount was mailed to the taxpayer. **[NOTE: The option language above allows the city to demand payment of the amount assessed before any appeal process. If the option is not used, then payment cannot be demanded before the administrative appeal process is completed]** [This following sentence is also Optional if you have a filing fee that must be paid before a person can make an administrative appeal-- A \$\_\_\_\_ filing fee shall be submitted with the appeal, which filing fee is required to process the appeal.] The (*city official charged with hearing appeals*) shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The hearing shall be conducted in accord with the provisions of (*applicable city ordinance*). The decision of the (*city official charged with hearing appeals*) shall indicate the correct amount of the fee or tax owing.

**.150 Judicial Review of Administrative Appeal Decision. [NOTE: This option is used if the hearing examiner's (or other official charged with hearing appeals) review is used to establish the facts of the case and the court reviews the hearing examiner's (or other official charged with hearing the appeal), determination, rather than the Director's determination. ]**

The taxpayer or the City may obtain judicial review of the (*city official charged with hearing appeals*)'s administrative decision by applying for a Writ of Review in the \_\_\_\_\_ County Superior Court within \_\_\_ days from the date of the (*city official charged with hearing appeals*)'s decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

**.150 Judicial Review of Director's Determination. [NOTE: This option is used if the (official charged with hearing appeals)'s determination does not establish the record and either the city or the taxpayer wants to conduct a trial and establish the facts of the case at the Superior Court level. This option in turn is broken down into two**

**more options based on whether or not the taxpayer must exhaust the right of an administrative appeal prior to going to court.]**

[Option A-taxpayer has to exhaust]. Any person, except one who has failed to comply with section .060, having paid any tax as required and feeling aggrieved by the amount of the tax assessed, and after first exhausting the right of administrative appeal set forth in this chapter, may seek judicial review in the \_\_\_\_\_ County Superior Court within 21 days of the date of the decision of the (*city official charged with hearing appeals*). The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The trial in the Superior Court shall be de novo in accordance with the laws of the State of Washington. The burden shall rest upon the taxpayer to prove that the tax paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax.

[Option B-does not have to exhaust]. Any person, except one who has failed to comply with section .060, having paid any tax as required and feeling aggrieved by the amount of the tax assessed, may seek judicial review in the \_\_\_\_\_ County Superior Court within 21 days of the date of the written notice of the Director's determination. The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The trial in the Superior Court shall be de novo in accordance with the laws of the State of Washington. The burden shall rest upon the taxpayer to prove that the tax paid by the taxpayer is incorrect, either in the whole or in part, and to establish the correct amount of the tax.

**.160 Director to make rules.**

The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

**.170 Ancillary allocation authority of Director.**

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

- (1) To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of \_\_\_\_\_, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;
- (2) To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.
- (3) To apply the City's tax prospectively where a taxpayer has no office or place of business within the City and has paid tax on all gross income to another Washington city where the taxpayer is located; provided that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the City.

**.180 Mailing of Notices.**

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

**.190 Tax declared additional.**

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City of \_\_\_\_\_ except as herein otherwise expressly provided.

**.200 Public disclosure - Confidentiality - Information sharing.**

EACH CITY SHOULD DEVELOP ITS OWN PUBLIC DISCLOSURE REQUIREMENTS. THE FOLLOWING CONTAINS SUGGESTED LANGUAGE:

(1) For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

(a) "Disclose" means to make known to any person in any manner.

(b) "Tax information" means:

(i) A taxpayer's identity;

(ii) The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

(iii) Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

(iv) Other data received by, recorded by, prepared by, or provided to the Director with respect to a taxpayer.

PROVIDED, That tax information shall not include data, material, or documents that do not disclose information related to a specific or identifiable taxpayer.

(2) Tax returns and information may be "public records" as that term is defined in RCW 42.17.020. The Director shall not disclose tax information if disclosure would violate RCW Chapter 42.17 or any other law prohibiting disclosure.

(3) Tax information may be disclosed to the following:

(a) The Mayor, City Manager, members of the City Council, City Attorney, City Clerk, or their authorized designees, for official purposes;

(b) Any agency or officer of the United States of America, the State of Washington, or a tax department of any state, county, city or town, provided that the agency or officer grants substantially similar privileges to the City, and further provided that the agency or officer shall not further disclose the tax information except as authorized in this section.

(c) The taxpayer to whom it pertains or to such person or persons as the taxpayer may designate in writing as the taxpayer's designee; except that tax information not received from the taxpayer shall not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or

another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the Director that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

(4) Nothing in this section shall prevent the use of tax information by the Director or any other agency in any civil or criminal action involving any license, tax, interest, or penalty.

(5) A person disclosing tax information to a person not entitled to receive that information under this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an officer or employee of the City, such person may be required to forfeit their office or employment.

### **.210 Tax constitutes debt.**

Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of \_\_\_\_\_ and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

### **.220 Unlawful actions - Violation - Penalties.**

(1) It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

(a) To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the Director;

(b) To make any false statement on any license application or tax return;

(c) To aid or abet any person in any attempt to evade payment of a license fee or tax;

(d) To fail to appear or testify in response to a subpoena issued pursuant to \_\_\_\_\_;

(e) To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter.

(2) Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

(3) Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

### **.230 Suspension or Revocation of business registration [license].**

**EACH CITY SHOULD DEVISE ITS OWN REVOCATION PROCEDURES THAT MATCH YOUR REGISTRATION AND LICENSE PROCEDURES. The following contains suggested language.**

(1) The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this \_\_\_\_\_. The Director, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under this

\_\_\_\_\_ may be suspended or revoked based on one or more of the following grounds:

- (a) The license was procured by fraud or false representation of fact.
- (b) The licensee has failed to comply with any provisions of this (title)\_\_\_\_\_.
- (c) The licensee has failed to comply with any provisions of the (city code)\_\_\_\_\_.
- (d) The licensee is in default in any payment of any license fee or tax under \_\_\_\_\_.
- (e) The licensee or employee has been convicted of a crime involving the business.

(2) Any licensee may, within \_\_\_\_ days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the \_\_\_\_\_ . A copy of the petition must be provided by the licensee to the Director and the City Attorney on or before the date the petition is filed with the (*city official charged with hearing appeals*). The hearing shall be conducted in accordance with the procedures for hearing contested cases set out in (*appropriate code provision*). The (*city official charged with hearing appeals*) shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the (*city official charged with hearing appeals*) shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

No suspension or revocation of a license issued pursuant to the provisions of this subchapter shall take effect until \_\_\_\_\_ days after the mailing of the notice thereof by the Department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the (*city official charged with hearing appeals*). All licenses which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

The decision of the (*city official charged with hearing appeals*) shall be final. The licensee and/or the Department may seek review of the decision by the Superior Court of Washington in and for \_\_\_\_\_ County within \_\_\_\_ days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.

(3) Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

#### .240 Closing agreement provisions. (Optional)

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

- (1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and
- (2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

**.250 Charge-off of uncollectible taxes. (Optional)**

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer. [Charge-offs in excess of \$\_\_\_\_\_ require [City Council] approval.]

**### Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.