

EXCERPT OF Final revised version of the City model ordinance for business license tax. Dated October 2012.

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.]

....

.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.

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"Digital automated service," "digital code," and "digital goods" have the same meaning as in RCW 82.04.192. (Mandatory)

"Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b). (Mandatory)

"Eligible gross receipts tax."

.....

"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.

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(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. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

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

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"Gross proceeds of sales." "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other 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,

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(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 digital goods or 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.]

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"Sale at retail," "retail sale." (1) "Sale at retail" or "retail sale" means every sale of

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(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 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 installing, repairing, altering, or improving of digital goods for consumers;

~~((g))~~ (h) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), ~~((and))~~ (f), and (g) 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 telephone business is taxed under the utility tax.]

(5) (a) "Sale at retail" or "retail sale" shall also include the sale of ~~((canned))~~ prewritten 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))~~ . For purposes of this subsection (5)(a) the sale of the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

(i) Custom ~~((custom))~~ software; or

(ii) The ~~((the))~~ customization of prewritten ~~((canned))~~ software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection 5 includes the right to access and use prewritten software to perform data processing.

(B) For purposes of this subsection (b)(ii) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

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(11) "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

(a) Sales in which the seller has granted the purchaser the right of permanent use;

(b) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(c) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(d) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection [insert reference to section 5(11)] includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

(12) "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

(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 "telephone business 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, digital goods, digital codes, digital automated services, prewritten computer software, or services described in [insert reference to "sale at retail" section 5(b)(i)], 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 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 telephone_business would normally be taxed under the utility tax. The wholesale treatment of telephone business to another telecommunications company is dictated by State law.]

~~((.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.)~~

Legislative intent information

This "super-nexus" section is repealed to reflect changes effective January 1, 2008, when allocation and apportionment provisions in section .077 took effect for city B&O taxes. The intent is that this change would not affect any rights under contracts executed for periods under the old language prior to the change.

.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) In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

_____ (a) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

_____ (b) If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

_____ (c) If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

_____ (d) If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

_____ (e) If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(4) If none of the methods in subsection [insert city code reference to .077(3)] for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections [insert city code reference to .077(3)(a) through .077(3)(e)], then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection [insert city code reference to .077(D)]. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections [insert city code reference to .077(3)(a) through .077(3)(e)] are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

(5) For purposes of subsections [insert city code reference to .077(3)(a) through .077(3)(e)], "Receive" has the same meaning as in RCW 82.32.730.

~~((3))~~ (6) 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.

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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. Digital goods will be allocated according to the new factors set out in RCW 35.102.130, as amended.

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.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) **Insurance business.** This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

~~(4((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 is an independent contractor for purposes of this chapter.

~~(5((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.

~~(6)~~**(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.

~~(7)~~**(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)**

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

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(7) Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

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).

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EXCERPT OF Final Revised version of the City model ordinance (Administrative Provisions) for business license tax. Dated October 2012.

CHAPTER ____.
Administrative Provisions For _____ Taxes

.010 Purpose.

CITIES WILL INSERT PURPOSE LANGUAGE

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.200 Public disclosure - Confidentiality - Information sharing.

EACH CITY ~~((SHOULD DEVELOP ITS OWN PUBLIC DISCLOSURE REQUIREMENTS. THE FOLLOWING CONTAINS SUGGESTED LANGUAGE))~~MAY ADOPT PROVISIONS OF 82.32.330 TO ADDRESS CONFIDENTIALITY OF TAX INFORMATION UNDER PUBLIC DISCLOSURE (RCW 35.102.145):

(1) For purposes of this section, ~~((unless a different meaning is clearly established by context, the following definitions apply))~~defined terms shall be as set forth in [City's generally applicable definitions section]:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information.

(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-))~~City with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under the [City's tax code] for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, ((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 do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.

(c) "City agency" means every City office, department, division, bureau, board, commission, or other City agency.

(d) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

(2) Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.

(3) This section does not prohibit the Director from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under [City's tax code] if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding.

(b) Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to [city code reference to Model ordinance admin provisions section .160], such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must 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 department 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;

(c) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(d) Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any City agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(e) Permitting the City's records to be audited and examined by the proper state officer, his or her agents and employees;

(f) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the

disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this Section;

(g) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;

(h) Disclosing any such return or tax information to the United States department of justice, including the bureau of alcohol, tobacco, firearms and explosives, the department of defense, the immigration and customs enforcement and the customs and border protection agencies of the United States department of homeland security, the United States coast guard, the alcohol and tobacco tax and trade bureau of the United States department of treasury, and the United States department of transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

(i) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(j) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(k) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

(l) Disclosing such return or tax information to the United States department of agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

(m) Disclosing to a financial institution, escrow company, or title company, in connection

with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;

(n) Disclosing to a person against whom the department has asserted liability as a successor under [Model ordinance section .130] return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(o) Disclosing real estate excise tax affidavit forms filed under [City's real estate excise tax code if applicable] in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(p) Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

(4)(a) The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties under this Title , or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less

burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Service of a subpoena issued by the court or under [city code provision authorizing hearing examiner to issue subpoenas] does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under [city code provision authorizing hearing examiner to issue subpoenas] may disclose the existence or content of the subpoena to that person's legal counsel.

(6) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection (3) (d), (e), (f), (g), (h), (i), or (k) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the city, such person must forfeit such office or employment and is incapable of holding any public office or employment in this City for a period of two years thereafter.
~~((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.

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