

121266

ORDINANCE 121266

AN ORDINANCE relating to taxation; amending Title 5 of the Seattle Municipal Code to implement provisions of Washington State 2003 legislation providing for uniformity and fairness in municipal business and occupation tax; providing for taxation and deductions on interstate and intrastate trucking; clarifying provisions relating to transactions involving more than one city and apportioning between cities; repealing the credit for high technology research and development; amending interest and penalty calculations; adding safeguards to disclosure of tax information provisions; providing for civil penalties; adding specific police powers for special commissioned officers; making technical clarifying changes to Seattle's tax laws; adding Sections 5.45.075, 5.45.082, 5.55.215, 5.55.216, 5.55.225; repealing Section 5.45.105; and amending Chapters 5.45, 5.30, 5.55, and 5.48, respectively, of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective January 1, 2004, Section 5.45.050 of the Seattle Municipal Code is amended as follows:

SMC 5.45.050 Imposition of the tax - Tax or fee levied.

Except as provided in SMC 5.55.040(D)(1), t((F))here is hereby levied upon and shall be collected from every person ~~((as hereinafter provided,))~~ a tax for the act or privilege of engaging in business activities within the City, whether the person's ~~((his or her))~~ office or place of business be within or without the City. ~~((, a business and occupation tax or fee, sometimes herein referred to as the "tax."))~~ 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:



1 A. Upon every person engaging within the City in business as an extractor; as to such persons
2 the amount of the tax with respect to such business shall be equal to the value of the products,
3 including by-products, extracted for sale or for commercial or industrial use, multiplied by the
4 rate of two hundred fifteen one-thousandths of one percent (.00215). The measure of the tax is
5 the value of the products, including by-products, so extracted, regardless of the place of sale or
6 the fact that deliveries may be made to points outside the City.

8 B. Upon every person engaging within the City in business as a manufacturer, except persons
9 taxable under subsection D of this Section; as to such persons the amount of the tax with respect
10 to such business shall be equal to the value of the products, including by-products, manufactured
11 or processed, multiplied by the rate of two hundred fifteen one-thousandths of one percent
12 (.00215). The measure of the tax is the value of the products, including by-products, so
13 manufactured or processed, regardless of the place of sale or the fact that deliveries may be made
14 to points outside the City.

16 C. Upon every person engaging within the City in the business of making sales of retail services,
17 or making sales at wholesale or retail (~~(((including public road construction)))~~), except persons
18 taxable under subsection D of this section; as to such persons, the amount of tax with respect to
19 such business shall be equal to the gross proceeds of such sales of the business without regard to
20 the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two
21 hundred fifteen one-thousandths of one percent (.00215).

24 D. Upon every person engaging within the City in the business of:

25 1. Buying wheat, oats, corn, barley and rye, but not including any manufactured or
26 processed products thereof, and selling the same at wholesale, the tax imposed shall be equal to
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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 two hundred fifteen ten-thousandths of one percent (.000215); or

2. Manufacturing wheat into flour; the tax imposed shall be equal to the value of the flour manufactured, multiplied by the rate of two hundred fifteen ten-thousandths of one percent (.000215).

E. Upon every person engaging within the City in the business of:

1. printing;
2. both printing and publishing newspapers, magazines, periodicals, books, music, and other items;
3. publishing newspapers, magazines and periodicals;
4. processing for hire; or
5. conducting a tour operator business;

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 two hundred fifteen one-thousandths of one percent (.00215).

F. Upon every motor carrier engaging within the City in the business of transporting freight for hire, as to such persons, the amount of the tax with respect to such business shall be equal to the gross income from the transport of freight picked up in the City multiplied by the rate of four hundred fifteen one-thousandths of one percent (.00415). The business of transporting freight for hire includes the business of leasing or renting motor vehicles operated by the lessor, or by a person under the control of the lessor, to transport freight for hire.

1 ((F)) G. Upon every other person engaging within the City in any business activity other than or
2 in addition to those enumerated in the above subsections; as to such persons, the amount of tax
3 on account of such activities shall be equal to the gross income of the business multiplied by the
4 rate of four hundred fifteen one-thousandths of one percent (.00415). This subsection includes,
5 among others, and without limiting the scope hereof (whether or not title to material used in the
6 performance of such business passes to another by accession, merger or other than by outright
7 sale), persons engaged in the business of developing, or producing custom software or of
8 customizing canned software, persons engaged in the business of freight brokering, and persons
9 engaged in the business of rendering any type of service which does not constitute a sale at retail
10 or a sale at wholesale.
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13 **Section 2.** Effective January 1, 2004, Section 5.45.060 of the Seattle Municipal Code is
14 amended as follows.

15 **SMC 5.45.060 Doing business with the City.**

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17 Except where such a tax is otherwise levied and collected by the City from such person,
18 there is hereby levied a tax on the privilege of accepting or executing a contract with the City
19 ~~((involving the sale to the City of materials, supplies, equipment, improvements or contractual~~
20 ~~services))).~~ Such tax shall be levied and collected whether the goods or services are delivered
21 within or without the City and whether or not such person has an office or place of business
22 within or without the City.
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24 As to such persons the amount of tax shall be equal to the gross contract price multiplied
25 by the rate under SMC Section 5.45.050 that would otherwise apply if the sale or service were
26 taxable pursuant to that section. ~~((The gross contract price shall be allocated to the city with~~
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1 ~~which the contract is made. No other city shall have jurisdiction to tax the gross receipts from~~
2 ~~such contract.))~~ The gross contract price may not be reduced by ~~((the deduction contained in~~
3 ~~SMC Section 5.45.100 Q or))~~ the interstate deduction SMC Section 5.45.100 J ~~((F))~~.

4 A. The tax levied in this section shall not be levied when:

5 1. The aggregate value of all City contracts with the person during the calendar year is
6 Five Thousand Dollars (\$5,000) or less, or
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8 2. The person's only source of revenue consists of contracts with the City for
9 neighborhood planning purposes, sister city associations, or Arts Commission grants, and is less
10 than the taxable threshold amount provided in SMC Section 5.55.040 D.
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12 B. All persons subject to this section, other than those exempted by subsection (A) above, are
13 required to obtain and maintain a business license as prescribed by SMC Section 5.55.030.

14 C. This section applies to the City and organizations chartered by the City, including but not
15 limited to, contracts with the Seattle City Employee's Retirement System, the Police Pension
16 Fund, the Fire Fighters Pension Fund, Public Safety Civil Service Commission, and any and all
17 public development authorities chartered by the City.
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19 D. All persons are required to pay in full all taxes or fees due under this chapter on account of
20 such contract, or otherwise, before accepting any warrant as final payment for performing any
21 contract for the City. The Director ~~((of Finance))~~ may withhold payment due a City contractor
22 pending satisfactory resolution of unpaid taxes and fees due the City under this title.
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24 **Section 3.** Effective January 1, 2004, subsection 5.45.070 C of the Seattle Municipal
25 Code is amended as follows.
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SMC 5.45.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.

* * *

C. 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 and that the taxpayer paid the amount of tax sought to be credited. ((In order to qualify as an "eligible gross receipts tax," the tax must be imposed at the local level)).

* * *

Section 4. Effective January 1, 2004, a new Section 5.45.075 is added to Chapter 5.45 of the Seattle Municipal Code as follows.

SMC 5.45.075 Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. 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:

1. 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.

2. Notwithstanding the above, a person who is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties,

1 trademarks, patents, or goodwill may deduct from the measure of the tax on those amounts the
2 gross income used in measuring the eligible gross receipts tax paid to the other jurisdiction where
3 the headquarters is located.

4 3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or
5 executing a contract with another city may deduct an amount equal to the contract price used to
6 measure the tax due to the other city from the measure of the tax owed to the City.

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8 B. Person manufacturing products within and without the City. A person manufacturing
9 products within the City using products manufactured by the same person outside the City may
10 deduct from the measure of the manufacturing tax the value of products manufactured outside the
11 City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction
12 with respect to manufacturing such products.

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14 **Section 5.** Effective January 1, 2004, Section 5.45.080 of the Seattle Municipal Code is
15 amended by amending subsections A, B, and C, and adding a new subsections D and E, as
16 follows.

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18 **SMC 5.45.080 Persons conducting business both within and without the City.**

19 ~~((Where SMC 5.45.100 Q (pertaining to the allocation of gross income between jurisdictions that~~
20 ~~impose an eligible gross receipts tax) does not apply:))~~ This section instructs taxpayers which
21 revenues will be assigned to the City as taxable. Once the amount subject to tax in Seattle is
22 determined according to this section, then the credit or deductions contained in 5.45.070 and
23 5.45.075 may be calculated, if applicable.

24
25 A. A person who maintains an office or place of business in the City shall be taxable on the
26 gross income, gross proceeds ~~((from))~~ of sales, or value of products ~~((, that is))~~ derived from the
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business activities rendered by, generated from, or attributable to the office or place of business located within the City, unless specific deductions or exemptions apply.

B. ~~((A person who maintains an office or place of business in the City and also elsewhere may allocate to the office or place of business located outside the City that portion of the taxpayer's gross income, gross proceeds of sales, or value of products derived from business activities rendered by, generated from, or attributable to the office or place of business located outside the City. The taxpayer shall allocate gross income to the City based on a segregation of business within and business without the City, as shown and supported by accounting records satisfactory to the Director.))~~

~~((If the Director determines that the allocation of gross income from business reported under the "other business activities" classification (SMC 5.45.050(F)) does not fairly reflect gross income derived from business activities within the City, the Director shall determine such gross income by either of the following methods: (a) by a fair and equitable formula agreed upon by the Director and the taxpayer after a consideration of the facts; or (b) by the ratio that the cost of doing business within the City bears to the cost of doing business both within and without the City))~~

A person engaging in business activities in the City who does not maintain an office or place of business in the City shall allocate to the City that portion of the taxpayer's gross income or gross proceeds of sales that are derived from business activities performed in the City.

C. ~~((A person performing business activities in the City who does not maintain an office or place of business in the City shall allocate to the City that portion of the taxpayer's gross income or gross proceeds of sales that is derived from business activities performed in the City))~~

A person who maintains an office or place of business in the City and also elsewhere

1) shall be taxable on that portion of his gross income or gross proceeds of sales, or value of products that is derived from business activity rendered by, generated from, or attributable to the office or place of business located within the City, unless specific deductions or exemptions apply; and

2) shall allocate to the City and be taxable on gross income, or gross proceeds of sales, from business activities performed in the City but supported by the office or place of business located outside the City, where the business activity performed in the City is a significant factor in making or holding the market for the goods or services sold, and

(a) delivery of product or the performance of services occurs in Seattle; or

(b) the customer is located in Seattle.

Allocations of amounts 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.

D. If the Director determines that the allocation of gross income from business activities for a person subject to subsection C above and taxable under the "other business activities" classification (SMC 5.45.050 G) does not fairly reflect gross income derived from business activities within the City, the Director shall determine such gross income by either of the following methods: (a) by a fair and equitable formula agreed upon by the Director and the taxpayer after a consideration of the facts; or (b) by the ratio that the cost of doing business within the City bears to the cost of doing business both within and without the City. For apportionment purposes, all costs must be assigned to an office location.

1 E. This section does not apply to allocate gross income of motor carriers included in the
2 measure of the tax pursuant to subsection 5.45.050 F of the Seattle Municipal Code. This section
3 may apply to allocate gross receipts of motor carriers included in the measure of the tax pursuant
4 to any other subsection of SMC 5.45.050.

5 **Section 6.** Effective January 1, 2004, a new section 5.45.082 is added to Chapter 5.45 of
6 the Seattle Municipal Code as follows.

7 **SMC 5.45.082 Ancillary activities of motor carriers and freight brokers.**

8 A. Ancillary activities of motor carriers include but are not limited to stevedoring, separately
9 billed charges for loading, unloading, sorting, storage, consolidation charges, and other charges
10 not representing the actual transportation charge. The charges for ancillary activities shall be
11 recorded separately from the transportation charges and reported under the “other business
12 activity” classification (Section 5.45.050 G).

13 B. Freight brokers should report revenue from brokering activities under the “other business
14 activity” classification (Section 5.45.050 G).

15 C. Gross receipts from the activities contained in Section 5.45.082 A & B above are subject to
16 the apportionment provisions contained in 5.45.080.

17 **Section 7.** Effective January 1, 2004, Section 5.45.090 of the Seattle Municipal Code is
18 amended by amending subsections D, N, S, and Z, and adding a new subsection BB, as follows.

19 **SMC 5.45.090 Exemptions.**

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21 D. Non-profit organizations that are guarantee agencies, issue debt, or provide guarantees for
22 student loans. This chapter does not apply to gross income received by non-profit organizations
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exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code(~~(of~~
1986)), as hereafter amended, that:

1. Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or
2. Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

* * *

N. Insurance Business. This chapter shall not apply to amounts received by any person (~~(or agent))~~ who is an insurer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, nor shall this chapter apply to amounts received by an agent as defined in RCW 48.17.010; provided that the provisions of this subsection shall not exempt any person engaging in the business of insurance as a broker as defined in RCW 48.17.020 or as a solicitor as defined in RCW 48.17.030; 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.

* * *

S. Employees. This chapter shall not apply to any person in respect to his or her employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, SMC 5.45.090 (S), the definition of employee shall include those persons that are defined in section 3121(d)(3)(B) of the Internal Revenue Code(~~(of 1986))~~,

as hereafter amended(~~through January 1, 1991~~). For purposes of this Chapter, a booth renter, as defined by RCW 18.16.020, is an independent contractor.

* * *

Z. 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 his vendor in the acquisition of the article; and

2. the sale is made as an accommodation to the buyer to enable him to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

Provided, that where the seller holds himself or herself out as being regularly engaged in the business of making sales at wholesale of such property, such sales shall be included in his principal business activity, and not exempt from tax.

* * *

BB. 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.

Section 8. Effective January 1, 2004, Section 5.45.100 of the Seattle Municipal Code is amended by amending subsections E, F, M and N, deleting existing subsections Q, R and S, re-lettering existing subsections T and U as subsections Q and R, and adding new subsections S and T, as follows.

SMC 5.45.100 Deductions.

In computing the license fee or tax, the following may be deducted from the measure of tax:

* * *

E. Day care activities. In computing tax, there may be deducted from the measure of tax amounts derived from day care activities (for periods less than 24 hours) by any organization organized and operated for charitable, educational, or other purposes which is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code(~~of 1986~~), as hereafter amended; provided, however, that amounts derived from selling, altering or repairing tangible personal property shall not be deductible.

F. Compensation from public entities for health or social welfare services-exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan. For purposes of this subsection, SMC 5.45.100 (F), "employee benefit plan" includes the military benefits program authorized in 10 U.S.C. Sec. 1071 et seq., as amended, or amounts payable pursuant thereto.

* * *

M. Repair, maintenance, replacement, etc., of residential structures and commonly held property - eligible organizations.

1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;

b. An "association of apartment owners", as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an "apartment owner" as defined in RCW 64.32.010; or

c. An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

2. For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

3. To qualify for the deductions under this subsection:

a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association; and

c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

N. Sales at wholesale or retail of precious metal bullion and monetized bullion. In computing tax, there may be deducted from the measure of the tax (~~gross income~~) amounts derived from the sale at wholesale or retail of precious metal bullion and monetized bullion. However, no deduction is allowed of amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, and no deduction or offset is allowed against such commissions on account of salaries or commissions paid to salesmen or other employees.

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~~((Q. Amounts subject to an eligible gross receipts tax in another city on the same activity.~~

~~1. A person subject to tax in Seattle and also subject to an eligible gross receipts tax on the same activity in one or more other jurisdiction(s) may deduct from the measure of the tax on such activity those amounts the person used in measuring the eligible gross receipts tax paid to the other jurisdiction where delivery of the product or the performance of the activity occurred, or, if delivery or performance does not occur in the other jurisdiction, or no tax was paid, then the~~

1 ~~measure is assigned to where the customer is located. If neither delivery or performance occurs,~~
2 ~~or the customer is not located, within the jurisdiction imposing an eligible gross receipts tax, then~~
3 ~~the Director shall determine, pursuant to his authority under SMC 5.55.170, whether a deduction~~
4 ~~is allowed. In all cases, if no eligible gross receipts tax is paid to another jurisdiction on such~~
5 ~~activity, then no deduction is allowed.~~

6
7 ~~2. Notwithstanding subsection (Q)(1) above, a person that is subject to an eligible gross~~
8 ~~receipts tax in more than one jurisdiction on the gross income derived from intangibles such as~~
9 ~~royalties, trademarks, patents, or goodwill may deduct from the measure of the tax those amounts~~
10 ~~of gross income used in measuring the eligible gross receipts tax paid to the other jurisdiction~~
11 ~~where the headquarters is located. If tax is not paid where the headquarters is located, then the~~
12 ~~Director shall determine, pursuant to his authority under SMC Section 5.55.170, whether a~~
13 ~~deduction is allowed.~~

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15 ~~R. Person manufacturing products within and without. In computing tax, a person~~
16 ~~manufacturing products within the City using products the person manufactured outside the City~~
17 ~~may deduct from the measure of the manufacturing tax the value of products manufactured~~
18 ~~outside the City and included in the measure of an eligible gross receipts tax paid with respect to~~
19 ~~manufacturing such products.~~

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21 ~~S. Taxes collected as trust funds by the taxpayer from a third party for payment to the taxing~~
22 ~~jurisdiction. In computing tax, the taxpayer may deduct from the measure of the tax amounts~~
23 ~~collected for the benefit of the taxing jurisdiction by the taxpayer from third parties to satisfy~~
24 ~~third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.~~
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1 ((F))Q. Constitutional prohibitions. In computing tax, there may be deducted from the measure
2 of the tax amounts derived from business which the City is prohibited from taxing under the
3 Constitution of the State of Washington or the Constitution of the United States.

4 ((U))R. Distribution Affiliate or Cooperative. In computing tax, there may be deducted from the
5 measure of the tax an amount equal to the actual cost of the merchandise that a distribution
6 cooperative or its distribution affiliate sells to a customer-owner of the distribution cooperative
7 for the customer-owner's resale at retail. Actual cost means the cost actually paid by the
8 distribution cooperative or distribution affiliate after taking into account all cash discounts and
9 other price reductions.
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12 S. In computing tax imposed by SMC 5.45.050 F, there may be deducted from the measure of
13 the tax gross income from the transport of empty containers picked up in the City if 1) a full
14 container transported from outside the City is exchanged for the empty container at the time of
15 pick-up, and 2) the job is billed to the customer as a round trip charge.

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17 T. Interstate Trucking. The tax imposed on motor carriers under SMC 5.45.050 F shall not
18 apply to gross income from freight picked up in the City and transported by the taxpayer to a
19 location outside the State of Washington. A motor carrier that does not transport freight across
20 the state boundary is not entitled to a deduction, even though the freight is destined for, and is
21 ultimately transported, outside Washington.

22
23 **Section 9.** Effective January 1, 2004, Section 5.45.105 of the Seattle Municipal Code is
24 repealed in its entirety.

25 **Section 10.** Effective January 1, 2004, Section 5.30.020 of the Seattle Municipal Code is
26 amended by amending subsections A and D, and adding subsection G, as follows:
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SMC 5.30.020 Definitions, A-B.

A. "Advance," "reimbursement."

1. "Advance" means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees of the customer or client.

2. "Reimbursement" means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

* * *

D. "Artistic or cultural organization." The term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs," as defined in subsection (3), below, of this subsection, for viewing or attendance by the general public. The organization must be((either)):

1.((~~A "nonprofit tax exempt organization" as defined in SMC 5.40.010; or~~

2.)) A not-for-profit corporation under RCW Chapter 24.03 that meets all of the following criteria:

a. The organization must be managed by a governing board of not less than eight (8) individuals none of whom is a paid employee of the organization or by a corporation sole under RCW Chapter 24.12.

b. No part of the organization's income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the organization in accordance with its purposes and bylaws.

1 c. Salary or compensation paid to its officers and executives must be only for
2 actual services rendered, and at levels comparable to the salary or compensation of like positions
3 within the state.

4 d. Assets of the organization must be irrevocably dedicated to the activities for
5 which the exemption is granted and, on the liquidation, dissolution, or abandonment by the
6 organization, may not inure directly or indirectly to the benefit of any member or individual
7 except a non-profit organization, association, or corporation which also would be entitled to the
8 exemption.
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10 e. The organization must be duly licensed or certified when licensing or
11 certification is required by law or regulation.
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13 f. The amounts received that qualify for exemption must be used for the activities
14 for which the exemption is granted.

15 g. Services must be available regardless of race, color, national origin, or
16 ancestry.
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18 ((3))2. The term "artistic or cultural exhibitions, presentations, or performances or
19 cultural or art education programs" (~~includes and~~) is limited to:

20 a. An exhibition or presentation of works of art or objects of cultural or historical
21 significance, such as those commonly displayed in art or history museums;
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23 b. A musical or dramatic performance or series of performances;

24 c. An educational seminar or program, or series of such programs, offered by the
25 organization to the general public on an artistic, cultural, or historical subject; or
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1 ((d. ~~An event conducted by a "nonprofit tax exempt organization," as defined in~~
2 ~~SMC 5.40.010, which is exempt from the admission tax pursuant to SMC Chapter 5.40.))~~

3 * * *

4 G. "Business" includes all activities engaged in with the object of gain, benefit, or advantage to
5 the taxpayer or to another person or class, directly or indirectly.

6
7 **Section 11.** Effective January 1, 2004, subsections E and G of Section 5.30.025 of the
8 Seattle Municipal Code are amended as follows:

9 * * *

10 E. "Competitive telephone service" means the providing by any person of telecommunications
11 equipment or apparatus, ~~((directory advertising and lease of telephone street directories,))~~ or
12 service related to that equipment or apparatus such as repair or maintenance service, if the
13 equipment or apparatus is of a type which may be provided by persons not subject to regulation
14 as telephone companies under RCW Title 80, and for which a separate charge is made.

15 Competitive telephone service also includes directory advertising and leasing of telephone street
16 directories. Transmission of communication through cellular telephones is classified as
17 "telephone business" rather than "competitive telephone service."
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21 G. "Consumer" means the following:

22 1. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal
23 property irrespective of the nature of the person's business and including, among others, without
24 limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate
25 real or personal property of or for a consumer other than for the purpose of:
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1 a. resale as tangible or intangible personal property in the regular course of
2 business;

3 b. incorporating such property as an ingredient or component of real or personal
4 property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or
5 decorating such real or personal property of or for consumers;

6 c. incorporating such property as an ingredient or component of a new product or
7 as a chemical used in processing a new product when the primary purpose of such chemical is to
8 create a chemical reaction directly through contact with an ingredient of a new product; or
9

10 d. consuming the property in producing ferrosilicon which is subsequently used
11 in producing magnesium for sale, if the primary purpose of such property is to create a chemical
12 reaction directly through contact with an ingredient of ferrosilicon;

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14 2. Any person engaged in any business activity taxable under SMC Section 5.45.050
15 ((F))G;

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17 3. Any person who purchases, acquires, or uses any competitive telephone service as
18 herein defined, other than for resale in the regular course of business;

19 4. Any person who purchases, acquires, or uses any personal, business, or professional
20 service defined as a retail sale in SMC Section 5.30.050 other than for resale in the regular course
21 of business;

22 5. Any person who is an end user of software;

23
24 6. Any person engaged in the business of "public road construction," as that term is
25 defined in SMC Section 5.30.040, in respect to tangible personal property when that person
26 incorporates the tangible personal property as an ingredient or component of a publicly-owned
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street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of a publicly-owned street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of a publicly-owned mass public transportation terminal or parking facility;

7. Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;

8. Any person who is an owner, lessee, or has the right of possession, of personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

9. Any person engaged in "government contracting," as that term is defined in SMC Section 5.30.035. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

~~((— 10. Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one (1) year.))~~

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

* * *

Section 12. Effective January 1, 2004, Section 5.30.030 of the Seattle Municipal Code is amended as follows:

SMC 5.30.030 Definitions, E-F.

A. "Eligible gross receipts tax" means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within SMC Section 5.45.050;
2. Is measured by the gross volume of business in terms of gross receipts, and is not an income tax or value added tax;
3. Is not, pursuant to law or custom, separately stated from the sales price;
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, and not by a Country, State, Province, or any other non-local jurisdiction above the county level.

B. "Engaging in business(~~(("nexus"))~~)."

1. The term "engaging in business activity" means commencing, conducting, or continuing in ~~((the City any activity with the object of gain, benefit, or advantage to the person, either directly or indirectly. It))~~ business, and also ~~((includes))~~ the exercise of corporate or franchise powers, ~~((design, research, and development activities, and))~~ as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

2. ~~((Examples of engaging in business activity.))~~ This ~~((sub))~~ 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 license 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), above. If an activity is not listed, the issue of whether it constitutes engaging in business in the City ~~((is to))~~ shall be determined by considering all the facts and circumstances and applicable law. ~~((Refer to the definition of “nexus” in (5) below.))~~

3. Without being all inclusive, any one of the following activities ~~((, whether performed itself or))~~ conducted within the City by a person, or ((by)) its employee((s)), agent((s)), representative((s)), independent contractor((s)), broker((s)) or another((s)) 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;

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

4 f. Installing, constructing, or supervising installation or construction of, real or
5 tangible personal property;

6 g. Soliciting, negotiating, or approving franchise, license, or other similar
7 agreements;

8 h. Collecting current or delinquent accounts;

9 i. Picking up and transporting tangible personal property, construction debris, or
10 excavated materials;

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

15 k. Rendering professional services such as those provided by accountants,
16 architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball
17 clubs and other sports organizations, chemists, consultants, psychologists, court reporters,
18 dentists, doctors, detectives, laboratory operators, teachers, veterinarians; or

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

21 m. ~~((The following activities if performed in the City on a non-minimal basis (ten~~
22 ~~(10) or more days within a twelve (12) month calendar year):~~
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1 ~~(i) Conducting~~ ~~((t))~~ Training or recruiting ~~((other educational services for))~~
2 employees, agents, representatives, independent contractors, brokers or others domiciled or
3 operating on a job in the City, acting on its behalf, or for customers or potential customers;

4 n.(((ii))) Investigating, resolving, or otherwise assisting in resolving customer
5 complaints;
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7 o.(((iii))) In-store stocking or manipulating products or goods, sold to and owned
8 by a customer, regardless of where sale and delivery of the goods took place;

9 p.(((iv))) Delivering goods in vehicles owned, rented, leased, used, or maintained
10 by the person who sold the goods or another acting on its behalf.
11

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

15 4 ((3)). If a person, or its employee, agent, representative, independent contractor, broker
16 or another acting on the person's behalf, engages in no other activities in or with the City but the
17 following, it need not register and obtain a business license and pay tax. ((Notwithstanding
18 subsections (i) and (ii), a person performing one or more of the following activities in the City,
19 whether itself or by its employees, agents, representatives, independent contractors, brokers or
20 others acting on its behalf, is not required to register and obtain a business license provided that
21 it engages in no other business activities in or with the City))
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23
24 a. Meeting with suppliers of goods and services as a customer;

25 b. Meeting with government representatives in their official capacity, other than
26 those performing contracting or purchasing functions;
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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." Persons participating at a trade show shall review the City's trade show ordinance, SMC Chapter 6.20;

f. Conducting advertising through the mail; or

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

5 ((4)). 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.

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.

~~((5. "Nexus." A person has created nexus with the City if, whether itself or by its employees, agents, representatives, independent contractors, brokers or others acting on its behalf, it:~~

~~a. is physically present in the City;~~

~~b. endeavors to maintain a share of the market within the City; or,~~

~~c. avails itself of the economic benefits of the City.~~

1 ~~The City expressly intends that nexus extend to the limits otherwise allowed by~~
2 ~~law and the constitutions of the United States and the State of Washington.))~~ Nexus is presumed
3 to continue as long as the taxpayer benefits from the activity that constituted ~~((maintains sales or~~
4 ~~services that resulted from))~~ the original nexus generating contact or subsequent contacts.

5 C. "Extractor" means every person who from the person's own land or from the land of another
6 under a right or license granted by lease or contract, either directly or by contracting with
7 others for the necessary labor or mechanical services, for sale or for commercial or industrial
8 use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay,
9 mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other
10 than plantation Christmas trees, or other natural products; or takes fish, or takes, cultivates, or
11 raises shellfish, or other sea or inland water foods or products. "Extractor" does not include
12 persons performing under contract the necessary labor or mechanical services for others;
13 persons cultivating or raising fish entirely within confined rearing areas on the person's own
14 land or on land in which the person has a present right of possession; or persons who fell, cut,
15 or take plantation Christmas trees from the person's own land or from land in which the
16 person has a present right of possession.

17 D. "Freight Broker" shall mean persons who sell, provide for, or arrange transportation by
18 a motor carrier for compensation. Freight brokers do not themselves transport or contract to
19 transport property from origin to destination.

20 **Section 13.** Effective January 1, 2004, Section 5.30.035 of the Seattle Municipal Code is
21 amended by amending subsections E and H, and adding a new subsection I, as follows:

22 **SMC 5.30.035 Definitions, G-M.**

* * *

E. "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible ~~((or intangible))~~ 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.

F. "In this City," "within this City." "In this City" or "within this City" includes all federal areas lying within the corporate city limits of the City.

G. "Janitorial Services." The term "janitorial services" shall mean those cleaning and care taking 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 does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal, sandblasting, or cleanup related to construction activities.

H. "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~~((his or her))~~ 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.~~((all or a portion of the materials that become a part or whole of the manufactured product, the Director shall prescribe~~

equitable rules for determining tax liability.)) 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.

2. "To manufacture" means((embraces)) 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 of tangible personal property is produced for sale or commercial or industrial use, and shall include:

a. the production of special-made articles or custom-made articles;

b. ~~((the development, production, or duplication of canned software programs including the development, production, or duplication of master copies;))~~

~~((e-))~~ the production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

~~((d))~~c. crushing and/or blending of rock, sand, stone, gravel, or ore; and

~~((e))~~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.

I. "Motor Carrier" shall mean the carrier providing transportation for hire described in the definitions of "common carrier" and "contract carrier" as defined in RCW 81.80.010.

Section 14. Effective January 1, 2004, Section 5.30.040 of the Seattle Municipal Code is amended by amending subsections C and H, adding a new subsection P, and re-lettering existing subsections P, Q and R as subsections R, S and T, as follows:

SMC 5.30.040 Definitions, N-R.

* * *

C. "Non-profit organization" means an organization in which no part of the income can be distributed to its members, directors, or officers and that holds a current tax exempt status as provided under Sec. 501(c)(3) of the Internal Revenue Code(~~(-of 1986)~~), as hereafter amended, or is specifically exempted from the requirement to apply for tax exempt status under Sec. 501(c)(3).

* * *

H. "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person(~~is own~~) furnishes, or sells to the customer prior to manufacture materials or ingredients equal to twenty (20) percent or more of the total value of all materials or ingredients that become a part of the finished product, the person will be deemed to be a manufacturer, and not a processor for hire.

* * *

O. "Reporting period," "Monthly," "Quarterly," "Annual."

The “reporting period” means one of the following:

1. a one-month period beginning the first day of each calendar month (“monthly”);

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").

P. "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 (a) horticultural services provided to farmers and (b) 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.

((P))Q. "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.

((Q))R. "Royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames and similar items.

((R))S. "Rubbish" has the meaning given in SMC Section 21.36.016.

Section 15. Effective January 1, 2004, Section 5.30.050 of the Seattle Municipal Code is amended as follows:

SMC 5.30.050 Definitions, S-V.

A. "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" or "retail sale." 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.

B. "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

1 of such property is to create a chemical reaction directly through contact with an ingredient of
2 ferrosilicon; or

3 e. Purchases for the purpose of providing the property to consumers as part of
4 competitive telephone service, as defined in RCW 82.04.065.

5 The term shall include every sale of tangible personal property which is used or
6 consumed or to be used or consumed in the performance of any activity classified as a "sale at
7 retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c),
8 (d), or (e) of this subsection following such use.

9
10 2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to
11 persons engaged in any business activity which is taxable under .050(1)(h).

12
13 3. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible
14 personal property consumed and/or for labor and services rendered in respect to the following:

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

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

4 c. The charge for labor and services rendered in respect to constructing, repairing,
5 or improving any structure upon, above, or under any real property owned by an owner who
6 conveys the property by title, possession, or any other means to the person performing such
7 construction, repair, or improvement for the purpose of performing such construction, repair, or
8 improvement and the property is then reconveyed by title, possession, or any other means to the
9 original owner;

10 d. The sale of or charge made for labor and services rendered in respect to the
11 cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include
12 the charge made for janitorial services; and for purposes of this section the term "janitorial
13 services" shall mean those cleaning and caretaking services ordinarily performed by commercial
14 janitor service businesses including, but not limited to, wall and window washing, floor cleaning
15 and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial
16 services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow
17 removal or sandblasting;

18 e. The sale of or charge made for labor and services rendered in respect to
19 automobile towing and similar automotive transportation services, but not in respect to those
20 required to report and pay taxes under chapter 82.16 RCW;

21 f. The sale of and charge made for the furnishing of lodging and all other services,
22 except network telephone service and cable service, by a hotel, rooming house, tourist court,
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1 motel, trailer camp, and the granting of any similar license to use real property, as distinguished
2 from the renting or leasing of real property, and it shall be presumed that the occupancy of real
3 property for a continuous period of one month or more constitutes a rental or lease of real
4 property and not a mere license to use or enjoy the same;

5 g. The sale of or charge made for tangible personal property, labor and services to
6 persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges
7 are for property, labor and services which are used or consumed in whole or in part by such
8 persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though
9 such property, labor and services may be resold after such use or consumption.

10 Nothing contained in this subsection B 3 shall be construed to modify subsection 1 of this
11 subsection B, and nothing contained in subsection B 1 shall be construed to modify this
12 subsection B 3.

13 4. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone
14 service to consumers.

15 5. "Sale at retail" or "retail sale" shall also include the sale of canned software other than
16 a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the
17 method of delivery to the end user, but shall not include custom software or the customization of
18 canned software.

19 6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor
20 and services rendered in respect to the building, repairing, or improving of any street, place, road,
21 highway, easement, right of way, mass public transportation terminal or parking facility, bridge,
22 tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state
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1 or by the United States and which is used or to be used primarily for foot or vehicular traffic
2 including mass transportation vehicles of any kind. (Public road construction)

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

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12 8. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for
13 the clearing of land and the moving of earth of or for the United States, any instrumentality
14 thereof, or a county or city housing authority. Nor shall the term include the sale of services or
15 charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and
16 other byproducts of weapons production and nuclear research and development. (This is reported
17 under the service or other classification).

18
19 9. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and
20 services rendered for environmental remedial action as defined in RCW 82.04.2635(2) (This is
21 reported under the service or other classification)

22
23 ~~((B. "Sale at retail," "retail sale."~~

24 ~~1. "Sale at retail" or "retail sale" means every sale of tangible personal property~~
25 ~~(including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of~~
26 ~~their business.~~

2. ~~"Sale at retail" or "retail sale" includes the following:~~

~~a. The sale of tangible personal property 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 subsection c-i of this definition following such use.~~

~~b. The sale of tangible personal property to persons engaged in any business taxable under SMC 5.45.050 F.~~

~~c. The sale of or charge made for tangible personal property consumed and/or labor and services rendered in respect to the following:~~

~~(i) 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 non-profit health care facilities, and excluding services rendered in respect to live animals, birds and insects;~~

~~(ii) 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;~~

~~(iii) The 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 re-conveyed by title, possession, or any other means to the original owner;

(iv) The clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture, and shall include the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for "janitorial services;"

(v) The towing of automobiles or other vehicles;

(vi) The furnishing of lodging and all other services, except the provision of network telephone services, 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;

d. The sale of or charge made for tangible personal property, labor and services to persons taxable under (i), (ii), (iii), (iv), (v) and (vi) of subsection (2)(c) 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.

e. The sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, service charges, and other

1 ~~service emoluments however designated, received by persons engaging in the following business~~
2 ~~activities:~~

3 ~~_____ (i) Amusement and recreation services including but not limited to golf,~~
4 ~~pool, billiards, skating, bowling, ski lifts and tows, day tours, and others, when provided to~~
5 ~~consumers;~~

6
7 ~~_____ (ii) Abstract, title insurance, and escrow services;~~

8 ~~_____ (iii) Credit bureau services;~~

9 ~~_____ (iv) Automobile parking and storage garage services;~~

10 ~~_____ (v) Landscape maintenance and horticultural services but excluding:~~

11 ~~_____ (1) horticultural services provided to farmers and~~

12 ~~_____ (2) pruning, trimming, repairing, removing, and clearing of trees~~
13 ~~and brush near electric transmission or distribution lines or equipment, if performed by or at the~~
14 ~~direction of an electric utility;~~

15 ~~_____ (vi) Service charges associated with selling tickets to professional~~
16 ~~sporting events; or~~

17 ~~_____ (vii) The following personal services: physical fitness services, tanning~~
18 ~~salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services,~~
19 ~~and dating services.~~

20 ~~_____ f. The renting or leasing of tangible personal property to consumers and the rental~~
21 ~~of equipment with an operator.~~

22 ~~_____ g. The providing of competitive telephone service to consumers, as defined in~~
23 ~~RCW 82.04.065.~~

1 ~~h. The sale, licensing, rental, or any other charge made for the transfer or use of~~
2 ~~canned software regardless of the method of delivery to the end user, including the right to~~
3 ~~reproduce and use the software under original equipment manufacturer's ("OEM") licenses, but~~
4 ~~not the sale of custom software, customization of canned software, or the sale of other retained~~
5 ~~rights in software.~~

6
7 ~~i. The sale of or charge made for "Public road construction," as defined in SMC~~
8 ~~Section 5.30.040.~~

9 ~~j. The sale of or charge made for "Government contracting," as defined in SMC~~
10 ~~Section 5.30.035, and any sales to any government entity.~~

11
12 ~~3. Notwithstanding subsections 5.30.050 (2)(a) and (b), above, "sale at retail" or "retail~~
13 ~~sale" does not include:~~

14 ~~a. A sale to a person who presents a resale certificate under RCW 82.04.470 and~~
15 ~~who:~~

16
17 ~~(i) Purchases tangible personal property in the regular course of business~~
18 ~~for the purpose of resale without intervening use by such person;~~

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

23
24 ~~(iii) Purchases for the purpose of consuming the property purchased in~~
25 ~~producing for sale a new article of tangible personal property or substance, of which such~~
26 ~~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;~~

~~————— (iv) 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~~

~~————— (v) Purchases for the purpose of providing the property to consumers as part of competitive telephone service.~~

~~The activities contained in SMC subsection 5.30.050 (B)(3)(a) shall be taxed under the wholesaling classification (SMC 5.45.050 C.~~

~~————— b. The sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other by products of weapons production and nuclear research and development. Nor shall the term include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2). These activities shall be taxed under the "other business activity" classification (SMC 5.45.050 F.)~~

C. "Sale at wholesale," "wholesale sale."

"Sale at wholesale" or "wholesale sale" means any ((~~"retail sale,"~~ as defined herein, to a person, other than a consumer, for the purpose of resale)) 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, if such charge is expressly defined as a retail sale when rendered to or for consumers. Sale at wholesale also includes the sale of

network telephone service to a telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

Notwithstanding the above, "sale at wholesale" or "wholesale sale" shall specifically not include a distribution cooperative's or its distribution affiliate's sales of merchandise to a customer-owner of the distribution cooperative for the customer-owner's resale at retail. A distribution cooperative or a distribution affiliate is taxed on such sales pursuant to Section 5.45.050 ((F))G of the Seattle Municipal Code

D. "Software," "canned software," "custom software," "customization of canned software," "master copies," "retained rights."

1. "Canned software" means software that is created for sale to more than one (1) person. For purposes of this chapter, canned software is deemed to be tangible personal property regardless of the method of delivery—tangible media (i.e. disk or installed on hardware) or intangible (i.e. electronically over telecommunications paths).

2. "Custom software" means software created for a single person.

3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

4. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale

1 or license. The software encoded on a master copy and the media upon which the software
2 resides are both ingredients of the master copy.

3 5. "Retained rights" means any and all rights, including intellectual property rights such
4 as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held
5 under contract or license by a software developer, author, inventor, publisher, licensor,
6 sublicensor, or distributor.

7
8 6. "Software" means any information, program, or routine, or any set of one (1) or more
9 programs, routines, or collections of information used, or intended for use, to convey information
10 that causes one or more computers or pieces of computer-related peripheral equipment, or any
11 combination thereof, to perform a task or set of tasks. "Software" includes the associated
12 documentation, materials, or ingredients regardless of the media upon which that documentation
13 is provided, that describes the code and its use, operation, and maintenance and that typically is
14 delivered with the code to the consumer. All software is classified as either canned or custom.

15
16 E. "Solid waste" has the meaning given in SMC Section 21.36.016.

17
18 F. "Successor" means any person to whom a taxpayer quitting, selling out, exchanging or
19 disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the
20 ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise,
21 inventory, fixtures or equipment of the taxpayer. Any person obligated to fulfill the terms of a
22 contract shall be deemed a successor to any contractor defaulting in the performance of any
23 contract as to which such person is a surety or guarantor.
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1 **Section 16.** Effective January 1, 2004, Section 5.30.060 of the Seattle Municipal Code is
2 amended by amending subsections E and F, as follows:

3 **SMC 5.30.060 Definitions, T-Z.**

4 * * *

5 E. "Tuition fee" includes library, laboratory, health service and other special fees, and amounts
6 charged for room and board by an educational institution when the property or service for which
7 such charges are made is furnished exclusively to the students or faculty of such institution.

8 "Educational institution," as used in this section, means only those institutions created or
9 generally accredited as such by the state and includes educational programs that such educational
10 institution cosponsors with a non-profit organization, as defined by Section 501(c)(3) of the
11 Internal Revenue Code(~~of 1986~~), as hereafter amended, if such educational institution grants
12 college credit for coursework successfully completed through the educational program, or an
13 approved branch campus of a foreign degree-granting institution in compliance with chapter
14 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting
15 institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by
16 the United States secretary of education, and offering to students an educational program of a
17 general academic nature or those institutions which are not operated for profit and which are
18 privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but
19 not including specialty schools, business colleges, other trade schools, or similar institutions.

20 F. "Value proceeding or accruing" means the consideration, whether money, credits, rights, or
21 other property expressed in terms of money, actually received or accrued. The term shall be
22 applied, in each case, on a cash receipts or accrual basis according to which method of
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1 accounting is regularly employed in keeping the books of the taxpayer. The ((Director may
2 provide by regulation that the)) value proceeding or accruing from sales on the installment plan
3 under conditional contracts of sale ((may)) shall be reported as of the dates when the payments
4 become due.

5 * * *

6
7 **Section 17.** Effective January 1, 2004, Section 5.55.040 of the Seattle Municipal Code is
8 amended as follows:

9 **SMC 5.55.040 When due and payable - Reporting periods – Monthly, quarterly,**
10 **and annual returns – Threshold provisions – Computing time periods - Failure to file**
11 **returns.**

12
13 A. Other than any annual license fee or registration fee assessed under this chapter, the tax
14 imposed by SMC Chapters 5.32 (Amusement Devices), 5.40 (Admission Taxes), 5.45 (Business
15 ((and Occupation)) License Tax), 5.48 (Utility Tax), and 5.52 (Gambling Tax), shall be due and
16 payable in quarterly installments. At the Director's discretion, businesses may be assigned to a
17 monthly or annual reporting period depending on the tax amount owing or type of tax. Taxes
18 imposed by SMC Section 5.52.030(A)(2) and (B)(2) for punchboards and pulltabs shall be due
19 and payable in monthly installments. Tax payments are due on or before the last day of the next
20 month following the end of the assigned reporting period covered by the return.

21
22 B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as
23 prescribed by the Director. The return shall be signed by the taxpayer personally or by a
24 responsible officer or agent of the taxpayer. The individual signing the return shall swear or
25 affirm that the information in the return is true and complete.
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1 C. Tax returns must be filed and returned by the due date whether or not any tax is owed.

2 Returns not received on or before the due date are subject to penalties and interest in accordance
3 with this chapter.

4 D. 1. For purposes of the tax imposed by SMC Chapter 5.45, any person whose value of
5 products, gross proceeds of sales, or gross income of the business, subject to tax after all
6 allowable deductions, is less than Fifty Thousand Dollars (\$50,000) in the current calendar year,
7 shall file a return, declare no tax due on their return, and submit the return to the Director. The
8 gross receipts and deduction amounts shall be entered on the tax return even though no tax may
9 be due.

10
11 2. Any person who reasonably estimates that the value of products, gross proceeds of
12 sales, or gross income of the business, as the case may be, subject to tax after all allowable
13 deductions, will be less than Fifty Thousand Dollars (\$50,000) in the current calendar year may
14 file a declaration so stating on a form supplied by the Director at the same time he or she files his
15 or her application for a business license or a renewal. The Director may assign any person who
16 files such declaration to an annual reporting basis. ~~((Regardless of reporting period assigned, any~~
17 ~~person whose value of products, gross proceeds of sales, or gross income of the business, subject~~
18 ~~to tax after all allowable deductions, does not exceed the threshold amount in the current~~
19 ~~calendar year, shall file a return, declare no tax due on their return, and submit the return to the~~
20 ~~Director. The gross receipts and deduction amounts shall be entered on the tax return even~~
21 ~~though no tax may be due.))~~
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1 E. A taxpayer who commences to engage in business activity shall file a return and pay the tax
2 or fee for the portion of the reporting period during which he or she is engaged in business
3 activity subject to the conditions set forth in subsection D, above.

4 F. Except as otherwise specifically provided by any other provision of this chapter, in computing
5 any period of days prescribed by this chapter the day of the act or event from which the
6 designated period of time runs shall not be included. The last day of the period shall be included
7 unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of
8 such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or
9 Federal legal holiday.
10

11 G. If any taxpayer fails, neglects or refuses to make his or her return as and when required in this
12 chapter, the Director is authorized to determine the amount of the tax or fees payable by
13 obtaining facts and information upon which to base his or her estimate of the tax or fees due.
14 Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the
15 City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so
16 determined, together with any penalty, interest, and fees due; the total of such amounts shall
17 thereupon become immediately due and payable.
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19

20 **Section 18.** Effective January 1, 2004, Section 5.55.060 of the Seattle Municipal Code is
21 amended as follows.

22 **SMC 5.55.060 Records to be preserved - Examination - Inspection - Search**
23 **warrants - Estoppel to question assessment.**
24

25 A. Every person liable for any fee or tax imposed by this chapter, SMC Chapters 5.32, 5.40,
26 5.45, 5.48, and 5.52 shall keep and preserve, for a period of five (5) years after filing a tax return,
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1 such records as may be necessary to determine the amount of any fee or tax for which the person
2 may be liable; which records shall include copies of all federal income tax and state tax returns
3 and reports made by the person. All ~~((places of business,))~~ books, records, papers, invoices,
4 ticket stubs, vendor lists, gambling games and payout information, inventories, stocks of
5 merchandise, and other data, including federal income tax and state tax returns, and reports
6 needed to determine the accuracy of any taxes due, shall be open for inspection or examination at
7 any time by the Director or a duly authorized agent. Every person's business premises shall be
8 open for inspection or examination by the Director or a duly authorized agent.

10 B. If a person does not keep the necessary books and records within the City, it shall be
11 sufficient if such person:

13 1. produces within the City such books and records as may be required by the Director,
14 or

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

20 C. 1. The Director and Department employees that have been commissioned as special
21 police officers pursuant to Section 5.55.225 shall have the right to enter any premises or
22 establishment at reasonable times in order to determine whether a violation constituting a gross
23 misdemeanor under Section 5.55.220 has occurred, is occurring or may occur.

25 2. If the Director or his agent is denied access to any premises or establishment, the
26 Director or his agent may apply for a search warrant to any court official of a court of competent
27

jurisdiction authorized to issue a criminal search warrant. A search warrant may be issued for the purposes of inspecting or examining property, buildings, premises, places, books, records, or other physical evidence in order to determine compliance with law and rules administered by the Department. The warrant shall be issued upon probable cause.

D. 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 ~~((information contained in subsection A))~~, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City based upon any period for which such ~~((books,))~~ records ~~((and invoices))~~ have not been provided, made available or ~~((so))~~ kept and preserved, or in respect to 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 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.

Section 19. Effective January 1, 2004, Section 5.55.090 of the Seattle Municipal Code is amended as follows.

SMC 5.55.090 ~~((Underpayment of tax, interest, or penalty--))~~ Interest on underpayment of tax ~~((--Limitations))~~.

A. If, upon examination of any returns, or from other information obtained by the Director, it appears that an amount of tax less than that properly due has been paid, the Director shall add

interest thereto as provided in subsection B of this section. Interest shall be added to delinquent tax only and shall not be calculated upon penalty or interest.

B. Interest calculations on underpayments:

1. Interest on underpayments of taxes for periods prior to ~~((the effective date of Ordinance 120668))~~ January 1, 2002 shall be computed from the date of underpayment until paid at a rate of ten (10) percent per year on the balance due.

2. Interest on underpayments of taxes for periods beginning on or after ~~((the effective date of Ordinance 120668))~~ January 1, 2002 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 a deficiency assessment the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the assessment ~~((audit period))~~. 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 (2) percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually ~~((, for the months of January, April, July, and October of the year immediately preceding the calendar year as published by the United States Secretary of the Treasury))~~. 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.))~~

Section 20. Effective January 1, 2004, Section 5.55.095 of the Seattle Municipal Code is amended as follows:

SMC 5.55.095 Time in which assessment may be made.

A. The Director shall not assess, or correct an assessment of, additional taxes or assessable penalties more than four (4) years after the close of the calendar year in which they were incurred ((due)) with the following exceptions:

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 ten (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, for all taxes due; or

3. Against a person that has executed a written waiver of such limitations, for taxes due within the period authorized by the waiver.

B. The Director shall notify the person by mail of the amount of the deficiency, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such additional time as the Director may provide in writing.

Section 21. Effective January 1, 2004, Section 5.55.100 of the Seattle Municipal Code is amended as follows:

SMC 5.55.100 Overpayment of tax, penalty, or interest -- Credit or refund --

Interest rate -- Statute of limitations.

A. 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 B of this section, no refund or credit shall be made for taxes, penalties, or interest accrued and paid

1 more than four (4) years prior to the beginning of the calendar year in which the refund
2 application is made or examination of records is completed.

3 B. The execution of a written waiver, pursuant to SMC 5.55.095, shall extend the time for
4 applying for, or making, a refund or credit of any taxes paid during, or attributable to, the years
5 covered by the waiver if, prior to the expiration of the waiver period, an application for refund of
6 such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

7
8 C. Refunds shall be made by means of vouchers approved by the Director and by the issuance of
9 a City check, warrant or wire transfer drawn upon and payable from such funds as the City may
10 provide.

11
12 D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for
13 tax, penalties, interest or costs paid by any person shall be paid in the same manner, as provided
14 in subsection C of this section, upon the filing with the Director a certified copy of the order or
15 judgment of the court.

16
17 E. Interest calculation on refunds or overpayments.

18 ~~((1. No interest shall be allowed on any refund or credit granted for tax periods ending~~
19 ~~prior to September 5, 1999.))~~

20 ~~((2.))~~ 1. Interest on overpayments of taxes for periods beginning on or after September 5,
21 1999, and ending prior to January 1, 2002, shall be computed at five (5) percent per annum.

22 ~~((3.))~~ 2. Interest on overpayments of taxes for periods beginning on or after January 1,
23 2002, shall be the average federal short term interest rate, ~~((for underpayments))~~ as defined under
24 SMC .55.090 B(2), less two (2) percentage points.
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1 3. Interest on overpayments of taxes for periods beginning on or after January 1, 2005,
2 shall be the average federal short term interest rate, as defined under SMC 5.55.090 B(2), plus
3 two (2) percentage points.

4 **Section 22.** Effective January 1, 2004, Section 5.55.110 of the Seattle Municipal Code is
5 amended as follows.

6 **SMC 5.55.110 Late payment – Disregard of written instructions – Evasion –**
7 **Penalties.**

8
9 A. If the Director does not receive a return or payment of any tax shown as due on a return by
10 the due date ((filed by a taxpayer)), the Director shall add a penalty equal to ((the greater of)) five
11 (5) percent of the amount of the tax ((,or Ten Dollars (\$10.00))); and if the return or the tax is not
12 received on or before the last day of the month following the due date, the Director shall add a
13 total penalty equal to ((the greater of ten (10))) fifteen (15) percent of the amount of the tax((,or
14 Fifteen Dollars (\$15.00))); and if the return or the tax is not received on or before the last day of
15 the second month following the due date, the Director shall add a total penalty equal to ((the
16 greater of twenty (20))) twenty-five (25) percent of the amount of the tax((,or Twenty Dollars
17 (\$20.00))). No penalty assessed herein shall be less than Five Dollars (\$5.00).

18
19 B. If a tax deficiency is assessed by the Director, there shall be added a penalty equal to five (5)
20 percent of the amount of the deficiency. If payment of any tax deficiency assessed by the
21 Director is not received by the due date specified in the notice, or any extension thereof, the
22 Director shall ((add)) assess a penalty equal to ((the greater of ten (10))) fifteen (15) percent of the
23 amount of the additional tax found due((,or Ten Dollars (\$10))). If payment of any tax
24 deficiency assessed by the Director is not received on or before the thirtieth day following the
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1 due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal
2 to twenty-five (25) percent of the amount of additional tax found due. No penalty added shall be
3 less than Five Dollars (\$5.00).

4 C. If a citation or criminal complaint is issued by the Director for the collection of taxes, fees;
5 assessments, interest or penalties, there shall be added thereto a penalty of ten (10) percent of the
6 amount due, but not less than (~~Twenty Dollars (\$20))~~ Ten Dollars (\$10).

8 D. If the Director finds that a person has engaged in any business or performed any act upon
9 which a tax is imposed under this title and that person has not obtained from the Director a
10 license as required by Section 5.55.030, the Director shall impose a penalty of five (5) percent of
11 the amount of tax due from that person for the period that the person was not licensed. No
12 penalty shall be imposed under this subsection D if the person who has engaged in business
13 without a license obtains a license prior to being notified by the Director of the need to be
14 licensed.

16 E. If the Director determines that all or any part of a deficiency resulted from the taxpayer's
17 failure to follow specific written tax reporting instructions, there shall be assessed a penalty of
18 (~~twenty five (25))~~ ten (10) percent of the amount of the additional tax due.

20 1. A taxpayer fails to follow specific written tax reporting instructions when the Director
21 has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act
22 in accordance with those instructions. The Director shall not assess the penalty under this
23 subsection, SMC 5.55.110 (~~(D)~~)E, upon any taxpayer that has made a good faith effort to comply
24 with the specific written instructions provided by the Director to that taxpayer.
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2. 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.

3. 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.

~~((E))~~F. 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 of fifty (50) percent of the additional found to be due.

~~((F))~~G. The ~~((aggregate of))~~ penalties imposed under subsections A ~~((and B))~~ through E ~~((; above,))~~ of this section ~~((shall not exceed thirty (30) percent of the tax due, and shall not be less than Twenty Dollars (\$20)))~~ 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.

~~((G))~~H. The penalties authorized by subsections ~~((D))~~E and ~~((E))~~F 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.

Section 23. Effective January 1, 2004, Section 5.55.140 of the Seattle Municipal Code is amended by amending subsections A and D, as follows.

SMC 5.55.140 Review of Director's assessment or denial of refund.

A. Any person, except one who has failed to comply with SMC 5.55.060 ~~((provide or to keep and preserve books, records, and invoices as required in this chapter))~~, aggrieved by the amount of the

1 tax, fee, or penalty assessed by the Director(~~(of Finance)~~), or by the denial of a refund by the
2 Director(~~(of Finance)~~), may, having paid any tax, fee, interest or penalty owing, except as
3 provided in subsection C below:

4 1. Appeal the Director's deficiency assessment or refund denial to the Hearing
5 Examiner by filing a petition for review with the Office of the Hearing Examiner pursuant to
6 Section 5.55.150; or
7

8 2. File a complaint in King County Superior Court for refund of taxes paid.
9 The petition or complaint shall be filed within thirty (30) days from the date that the assessment
10 or denial notice was mailed to the taxpayer, or within the period covered by any extension of said
11 due date granted in writing by the Director(~~(of Finance)~~). The Director (~~(of Finance)~~) may
12 extend the due date for filing an appeal with the Hearing Examiner or a refund suit with the
13 Superior Court only if the taxpayer, within the thirty (30) day period, makes written application
14 showing good cause why an extension is necessary.
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16 * * *

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18 D. The methods for obtaining review of the Director's assessment or refund denial set forth in
19 this section and SMC 5.55.150 are exclusive, and must be strictly complied with.

20 **Section 24.** Effective January 1, 2004, subsection 5.55.150 A is amended as follows:

21
22 **SMC 5.55.150 Appeal to the Hearing Examiner.**

23 A. A person electing to appeal to the Hearing Examiner pursuant to Section 5.55.140 must
24 provide a copy of the petition to the Director(~~(of Finance)~~) and the City Attorney on or before
25 the date the petition is filed with the Hearing Examiner. If no such petition is filed with the
26 Hearing Examiner and provided to the Director (~~(of Finance)~~) and City Attorney within the thirty
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(30) day period, and a complaint is not filed, the assessment covered by the notice shall become final and no refund request may be made for the audit period covered in that assessment.

* * *

Section 25. Effective January 1, 2004, Section 5.55.170 of the Seattle Municipal Code is amended as follows:

SMC 5.55.170 Ancillary authority of Director.

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

A. To conduct an audit or a joint audit of a taxpayer by using an auditor employed by the City of Seattle, another city, or a contract auditor; provided that such contract auditor's pay is not in any manner based upon the amount of tax assessed;

B. 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; or

C. 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.

Section 26. Effective January 1, 2004, Section 5.55.200 of the Seattle Municipal Code is amended as follows.

SMC 5.55.200 Public disclosure – Confidentiality – Information sharing.

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

3 1. "Disclose" means to make known to any person in any manner.

4 2. "Tax information" means:

5 a. A taxpayer's identity;

6 b. The nature, source, or amount of the taxpayer's income, payments,
7 receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over
8 assessments, or tax payments, whether taken from the taxpayer's books and records or any other
9 source;
10

11 c. Whether the taxpayer's return was, is being, or will be examined or
12 subject to other investigation or processing; or
13

14 d. Other data received by, recorded by, prepared by, or provided to the
15 Director with respect to a taxpayer.

16 Provided, that tax information shall not include data, material, or documents that do not disclose
17 information related to a specific or identifiable taxpayer.
18

19 B. Tax returns and information may be (~~are~~) "public records" as that term is defined in RCW
20 42.17.020. The Director shall not disclose tax information if disclosure would violate RCW
21 Chapter 42.17 or any other law prohibiting disclosure.

22 C. Tax information may be disclosed to the following:

23 1. The Mayor, members of the City Council, City Attorney, City Clerk, or their
24 authorized designees, for official purposes;
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1 2. Any agency or officer of the United States of America, the State of
2 Washington, or a tax department of any state, county, city or town, provided that the agency or
3 officer grants substantially similar privileges to the City, and further provided that the agency or
4 officer shall not further disclose the tax information except as authorized in this section.

5 3. The taxpayer to whom it pertains or to such person or persons as the taxpayer
6 may designate in writing as the taxpayer's designee; except that tax information not received
7 from the taxpayer shall not be so disclosed if the Director determines that such disclosure would
8 compromise any investigation or litigation by any federal, state, or local government agency in
9 connection with the civil or criminal liability of the taxpayer or another person, or that such
10 disclosure would identify a confidential informant, or that such disclosure is contrary to any
11 agreement entered into by the Director that provides for the reciprocal exchange of information
12 with other government agencies which agreement requires confidentiality with respect to such
13 information unless such information is required to be disclosed to the taxpayer by the order of
14 any court.

15
16
17 D. Nothing in this section shall prevent the use of tax information by the Director or any other
18 agency in any civil or criminal action involving any license, tax, interest, or penalty.

19
20 E. A person disclosing tax information to a person not entitled to receive that information under
21 this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an
22 officer or employee of the City, such person may be required to forfeit their office or
23 employment.

24
25 **Section 27.** Effective January 1, 2004, a new Section 5.55.215 shall be added to the
26 Seattle Municipal Code, as follows:
27
28

SMC 5.55.215 Civil penalty.

A. In addition to any other sanction or remedial procedure which may be available, any person

who:

(1) violates or fails to comply with any requirements of Sections 5.52.020, 5.40.080, or 5.55.030; or

(2) fails to make and transmit a return for taxes as required under Section 5.55.040; shall be subject to a penalty in the amount of One Hundred Fifty Dollars (\$150.00) for each such violation. If, after fifteen days of having been properly served with a First Notice of Violation from the Director, the person fails to comply with the requirements of the provisions set forth above, the penalty shall be increased to Three Hundred Dollars (\$300.00) for each such violation.

B. After discovery of the existence of a violation or the failure to comply with Section 5.55.030 or the failure to file a tax return as required by Section 5.55.040, the Director shall issue a First Notice of Violation in the manner set forth in Section 5.55.216, which notice shall impose the civil penalty and notify the person of the date by which the person must be in compliance to avoid additional penalty. If, after fifteen days of having been properly served with the First Notice of Violation from the Director, the person fails to comply with the requirements of the provisions set forth above, the Director shall issue a Second Notice of Violation which notice shall impose the additional civil penalty.

C. The penalties imposed by this section shall be collected by civil action brought by the Director in the name of the City. In any civil action for a penalty, the City has the burden of proving by a preponderance of the evidence that a violation exists or existed; the issuance of the

1 notice of violation or of an order following a review by the Director is not itself evidence that a
2 violation exists.

3 **Section 28.** Effective January 1, 2004, a new Section 5.55.216 shall be added to the
4 Seattle Municipal Code, as follows:

5 **SMC 5.55.216 Notice of violation.**

6
7 A. If after investigation the Director determines that a person is in violation of the requirements
8 of Sections 5.52.020, 5.40.080, or 5.55.030, or has failed to file a tax return as required under
9 Section 5.55.040, the Director shall serve a First Notice Of Violation upon the person. The First
10 Notice Of Violation shall state separately each requirement violated, shall state the civil penalty
11 to which the person is subject, shall state what corrective action, if any, is necessary to comply
12 with the requirements; and shall set a time for compliance as set forth in Section 5.55.215. The
13 notice shall state that any continuing violation may result in additional penalty as provided by
14 Section 5.55.215, and shall state that any continuing violation may result in criminal prosecution
15 as provided in Section 5.55.220.

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18 B. If, after fifteen days of having been properly served with the First Notice of Violation from
19 the Director, the person fails to comply with the requirements of the provisions set forth above,
20 the Director shall issue a Second Notice of Violation. The notice shall state the additional penalty
21 imposed and shall state that any continuing violation may result in criminal prosecution as
22 provided in Section 5.55.220.

23
24 C. All notices under this section shall be served by personal service, registered mail, or certified
25 mail with return receipt requested, addressed to the last known address of such person. If, after a
26 reasonable search and reasonable efforts are made to obtain service, the whereabouts of the
27
28

1 person or persons is unknown or service cannot be accomplished and the Director makes an
2 affidavit to that effect, then service of the notice upon such person or persons may be made by:

3 1. Publishing the notice once each week for two (2) consecutive weeks in the City
4 Official Newspaper; and

5 2. Mailing a copy of the notice to each person named on the notice of violation by first
6 class mail to the last known address if known, or if unknown, to the address of the property
7 involved in the proceedings.

9 A copy of the notice may be posted at a conspicuous place on the property, unless posting the
10 notice is not physically possible.

11 D. Nothing in this section shall be deemed to limit or preclude any action or proceeding pursuant
12 to Section 5.55.220.

14 E. An Order or Notice may be amended at any time in order to:

15 1. Correct clerical errors, or

16 2. Cite additional authority for a stated violation.

17
18 **Section 29.** Effective January 1, 2004, Section 5.55.220 of the Seattle Municipal Code is
19 amended by amending subsections A and C and adding subsections E and F, as follows:

20 **SMC 5.55.220 Unlawful actions -- Violation -- Penalties.**

21 A. It shall be unlawful for any person (~~liable for amounts due under~~) subject to the provisions
22 of this chapter, or SMC Chapters 5.32, 5.40, 5.45, 5.48 and 5.52:

23
24 1. To violate or fail to comply with any of the provisions of this chapter, SMC Chapters
25 5.32, 5.40, 5.45, 5.48 and 5.52, or any lawful rule or regulation adopted by the Director;
26
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1 2. To make or manufacture any license required by this chapter except upon authority of
2 the Director;

3 3. To make any false statement on any license, application or tax return;

4 4. To aid or abet any person in any attempt to evade payment of a license fee or tax;

5 5. To refuse admission to the Director to inspect the premises and/or records as required
6 by this chapter, or to otherwise interfere with the Director in the performance of duties imposed
7 by SMC Chapters 5.32, 5.40, 5.45, 5.48 and 5.52;

8 6. To fail to appear or testify in response to a subpoena issued pursuant to SMC Section
9 3.02.120 in any proceeding to determine compliance with this chapter and SMC Chapters 5.32,
10 5.40, 5.45, 5.48 and 5.52;

11 7. To testify falsely in any investigation, audit or proceeding conducted pursuant to this
12 chapter; or

13 8. In any manner, to hinder or delay the City or any of its officers in carrying out the
14 provisions of this chapter or SMC Chapters 5.32, 5.40, 5.45, 5.48 and 5.52.

15 B. Each violation of or failure to comply with the provisions of this chapter, or SMC Chapters
16 5.32, 5.40, 5.45, 5.48 or 5.52 shall constitute a separate offense. Any person who commits an act
17 defined in subsection A of this section is guilty of a gross misdemeanor, punishable in
18 accordance with SMC Section 12A.02.070 . The provisions of Chapters 12A.02 and 12A.04 5 of
19 the Seattle Municipal Code apply to the offenses defined in subsection A of this section, except
20 that liability is absolute and none of the mental states described in SMC Section 12A.04.030
21 need be proved.
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C. 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 punishable by a fine not to exceed Five Thousand Dollars (\$5,000), or imprisonment not to exceed one year, or both fine and imprisonment (~~class C felony in accordance with RCW 9A.20~~)).

D. Prosecution pursuant to this section shall not be commenced more than four (4) years after the Director knew or should have known that the act(s) constituting the offense occurred. The penalties and punishments established by this section shall be in addition to all other penalties provided by law.

E. Any person who violates or fails to comply with any requirement of Section 5.55.030; or who fails to make and transmit a return for taxes as required under Section 5.55.040, shall be guilty of a gross misdemeanor and upon conviction shall be fined in a sum not exceeding Five Thousand Dollars (\$5,000), or be imprisoned for a term not exceeding one (1) year, or be both fined and imprisoned. Each day of noncompliance with any of the aforementioned provisions shall constitute a separate offense.

F. Upon a determination that a person is subject to criminal prosecution under this Section, the Director and agents of the Director, who are commissioned as non-uniformed special police officers pursuant to Section 5.55.225, may issue citations and make arrests for violations of this Section.

Section 30. Effective January 1, 2004, a new section is added to Chapter 5.55 of the Seattle Municipal Code as follows:

SMC 5.55.225 Police powers of special commissioned officers.

1 For purposes of enforcement, Department employees may be commissioned by the Chief of
2 Police as special police officers having the power to issue citations, enter and inspect premises
3 and establishments, seize evidence or make arrests for unlawful conduct as defined in Section
4 5.55.220.

5 **Section 31.** Effective January 1, 2004, subsection 5.48.050 A of the Seattle Municipal
6 Code is amended as follows:

7 **SMC 5.48.050 Occupations subject to tax – Amount.**

8 * * *

9
10 A. Upon everyone engaged in or carrying on a telephone business, a fee or tax equal to six (6)
11 percent of the total gross income from such business provided to ~~((consumers))~~ customers within
12 the City; provided, that effective January 1, 1987, the tax liability imposed under this section
13 shall not apply for that portion of gross income derived from charges to another
14 telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching
15 charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or
16 charges for, interstate services, which shall be taxed under SMC Chapter 5.45. The total gross
17 income shall also include all charges by the provider of cellular or cellular mobile telephone
18 services provided to its customers in any taxing jurisdiction (intrastate or interstate), which are
19 billed to a “place of primary use” located in Seattle by or for the home service provider,
20 irrespective of whether the services are provided by the home service provider.

21 * * *

22 **Section 32.** Effective January 1, 2004, Section 5.48.072 of the Seattle Municipal Code is
23 amended as follows:
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SMC 5.48.072 Anti-pyramiding credit for haulers of CDL Waste.

There shall be allowed to anyone who is engaged in the business of the collection of CDL Waste and subject to tax under Section 5.48.055 ((€)) B a credit against the tax in the amount of One Dollar and Forty-three Cents (\$1.43) per ton for each ton of DCL Waste collected in the City, delivered to a person engaged in or carrying on the business of transferring DCL Waste from one (1) mode of transportation to another under Section 5.48.055 A (called the “transfer station”), and used by the transfer station in measuring the tax due under Section 5.48.055 A upon the transfer station’s activities of transferring CDL Waste from one (1) mode of transportation to another. When the transfer station engages in recycling activities, the tonnage used by the taxpayer in measuring the credit shall be reduced by the proportion of the transfer station’s tonnage recycled.

This section is intended to prevent pyramiding of the economic impact of the tax imposed under Section 5.48.055A on CDL Waste, and is limited in its application to fulfilling that purpose.

Section 33. Prospective application of ordinance.

The provisions of this ordinance apply prospectively only and not retroactively. The legality of taxes accruing for periods before January 1, 2004 is governed by the law in existence at the time the tax accrued.

Section 34. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 8th day of September, 2003, and signed by me in open session in authentication of its passage this 8th day of September, 2003.

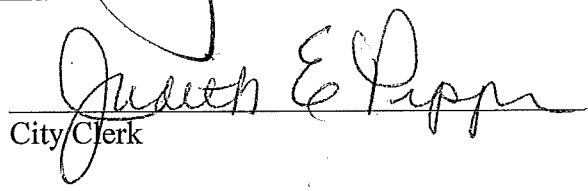


President _____ of the City Council

Approved by me this 17 day of September, 2003.


Gregory J. Nickels, Mayor

Filed by me this 17 day of Sept., 2003.


City Clerk

(Seal)



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

August 12, 2003

Honorable Peter Steinbrueck
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Steinbrueck:

The attached ordinance amends Seattle Municipal Code (SMC) Chapters 5.30, 5.45, 5.48 and 5.55 to conform to the requirements created by the Legislature through Chapter 79, Laws of 2003, which provides for uniformity and fairness in municipal business and occupation tax among Washington cities. Amendments mandated by this act include changes and additions to definitions, and changes in the penalty, interest, and refund provisions. Additionally, the ordinance clarifies existing gross receipts allocation and apportionment provisions aimed at preventing multiple taxation of income to businesses that operate in more than one city. Other clarifying amendments and substantive changes are also incorporated, including the addition of a trucking classification with its own measure of tax. We have included a detailed summary of the proposed revisions as an attachment to the fiscal note.

Thank you for your consideration of this legislation. Should you have questions, please contact Ken Nakatsu, Director of Executive Administration, at 684-0505, or Mel McDonald, Director of Revenue and Consumer Affairs, at 233-0071.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Nickels", written over a horizontal line.

GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, Seattle, WA 98104-1854

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, E:mail: mayors.office@ci.seattle.wa.us

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FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Executive Administration	Mel McDonald/3-0071	Jennifer Devore/5-1328

Legislation Title:

AN ORDINANCE relating to taxation; amending Title 5 of the Seattle Municipal Code to implement provisions of Washington State 2003 legislation providing for uniformity and fairness in municipal business and occupation tax; providing for taxation and deductions on interstate and intrastate trucking; clarifying provisions relating to transactions involving more than one city and apportioning between cities; repealing the credit for high technology research and development; amending interest and penalty calculations; adding safeguards to disclosure of tax information provisions; providing for civil penalties; adding specific police powers for special commissioned officers; making technical clarifying changes to Seattle's tax laws; adding Sections 5.45.075, 5.45.082, 5.55.215, 5.55.216, 5.55.225; repealing Section 5.45.105; and amending Chapters 5.45, 5.30, 5.55, and 5.48, respectively, of the Seattle Municipal Code.

Summary of the Legislation:

Many of the changes contained in the proposed legislation are the result of the adoption of a model B&O tax ordinance by the Legislature earlier this year. Other changes are intended to clarify existing provisions of the law. The most substantive changes relate to how the B&O tax applies to the trucking industry. Substantive changes will be explained below under group headings.

Items changed due to mandated requirement by 2003 State Legislation in ESHB 2030.

Definitions

- Changed the definition of "engaging in business" to establish a tax threshold rather than the previous licensing safe harbor of a number of days of doing certain activities within Seattle. The tax threshold does not impact Seattle since the Legislature mandated at least a \$20,000 threshold for amounts subject to tax, and Seattle already has a higher threshold (\$50,000).

Penalties

- The penalty section, SMC 5.55.110 has been substantially changed to match the requirements in RCW 82.32.090. This includes increasing the penalty percentages for late filing from the present 5%, 10%, and 20% provisions to 5%, 15%, and 25%, depending on how late the payment was made. The RCW previously had the same percentages as those contained in the SMC; however, due to the State budget crisis the percentages were increased. This change will result in approximately \$185,000 in more penalty revenue. The penalty for failure to pay an assessment on time was

previously 10% in both the RCW and SMC. It will also now be 5%, 15%, and 25% depending on the lateness of the payment. This will result in very little change in revenue since very few of our assessments are paid late. The penalty for failure to follow specific written instructions is currently 25% in the SMC. The City is now required to lower that penalty to 10% according to the RCW. We have used this penalty very few times. Finally, there will now be an automatic 5% penalty on any underpaid tax found in an audit assessment. This 5% penalty will add approximately \$250,000 in revenue annually.

Interest Rates on Refunds

- Beginning on January 1, 2005, the City will be required to give the same interest rate on refunds as the City receives on assessments. Presently, there is a 4% difference since the City can not earn interest at the higher rate and the differential rates act as an incentive for the taxpayer to report correctly at time of filing. This higher interest rate on refunds will add about \$125,000 to our budget expenditures.

Items clarified or ordinance clean up items.

- SMC 5.45.075 takes the place of revenue assignment deductions that are currently maintained in SMC 5.45.100 Q and R. There is a slight change in the reporting or tax requirements, as follows. If multiple cities maintain an eligible gross receipts tax and have nexus over the transaction, the current codes gives first priority to the city of delivery, then to the city where the customer is located, and finally to the city where the seller is located. Under this ordinance the priority goes to delivery city and then to the seller's city. The customer's city is left out of the revenue assignment picture. This change is in response to the agreement between the Association of Washington Cities (AWC), the Association of Washington Businesses (AWB), and the Department of Revenue (DOR).
- SMC 5.45.080 was redrafted to reflect more accurately the City's actual practice. The current code is not as specific or as detailed as both the City and taxpayers need.
- The definition of "Artistic and Cultural" was changed to reflect the admission tax code rewrite currently before the Council. The proposed definition now reads like the State's definition.
- SMC 5.55.060 provides more specific authority for the director to investigate places of business to ascertain whether taxes and fees are being accurately reported.

New additions or deletions to Title 5

Trucking

- Adds a trucking tax classification that revamps the measure of the tax. Existing law taxes all hauls to and from the city and hauls done within the state by a trucking firm located in Seattle. This has proven to be very difficult to enforce and has been burdensome for taxpayers. The proposed approach would tax only those hauls that are picked up within Seattle. This will insure that there will be no double taxation

between two or more cities with an eligible gross receipts tax, and will treat truckers located within the cities the same as truckers located outside the cities.

- Treats a trucker acting only as agent the same as a trucking company with interstate authority.
- Establishes the exemption of the pickup of an empty container associated with a roundtrip haul.

We do not have the ability to ascertain what sort of revenue impact this will have. The current system's complex rules have clearly led to underreporting by trucking firms. We expect that the new system will increase compliance and will likely not reduce or expand City revenues.

Civil Penalties

- Adds civil penalties and due process procedures for non compliance with the City's licensing and tax requirements. Presently, there are only criminal penalties. DEA believes that civil penalties will make the enforcement of our laws easier and less onerous on the taxpayer. Criminal penalties will continue to be used if the civil penalties fail to obtain compliance or as other needs arise.

Deletes the High Tech R & D Credit

- In the 2003 legislative session ESHB 1462 was passed that prohibits the City of Seattle from taxing the creation of intellectual property. Prior to the passage of this legislation Seattle taxed the development of software and biotech substances and then provided a high tech R & D credit to partially offset the tax. Since the new legislation prohibits the City from taxing the creation of intellectual property no credit is needed to offset the now nonexistent tax.

Evidence Gathering Authority

- The ordinance adds clear seizure authority for enforcement officers to obtain evidence to be used in enforcing business license and regulatory licenses requirements, and the ticket scalping law.

Background: *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):* See above summary.

- Please check one of the following:

 This legislation does not have any financial implications. *(Stop here and delete the remainder of this document prior to saving and printing.)*

 X **This legislation has financial implications.** *(Please complete all relevant sections that follow.)*

Increase in Expenses. Due to the increase of interest paid out on refund request starting in January 1, 2005, the 2005 budget and subsequent budgets will have to be increased by

approximately \$125,000 annually. The 2003 and 2004 budgets will not be affected due to the delayed nature of the legislation.

Increase in Revenues. Since the penalty section has been amended to follow EHB 2030 of the 2003 State legislative session beginning in January 1, 2004 the revenue from increased penalties will be approximately \$435,000. The State legislated a 5% penalty on all assessments, and our assessments have averaged approximately \$5,000,000 annually. At 5%, the increase from the assessments equals \$250,000. The State also legislated that any payment later than thirty (30) days would be assessed a 15% penalty (previously 10%), and any payment later than sixty (60) days would be assess a 25% penalty (previously 20%). The increase penalty revenue from this change is approximately \$185,000

Appropriations (in \$1,000s): (Please only reflect the dollar amount actually appropriated by this legislation.)

Fund Name and Number	Department	Budget Control Level*	2003 Appropriation	2004 Anticipated Appropriation
General Fund	DEA	C8510	0	\$0
TOTAL			\$0	\$0

* This is line of business for operating budgets, and program or project for capital improvements

Notes: There is no expenditure impact in 2003 or 2004. Only after January 1, 2005 will the City see an increase in interest expense equal to approximately \$125,000 per year.

Anticipated Revenue/Reimbursement (in \$1,000s) Resulting From This Legislation:

Fund Name and Number	Department	Revenue Source	2003 Revenue	2004 Revenue
General Fund	DEA		\$0	\$435
TOTAL				

Notes: This amount is made up of increased penalties for assessments and increased penalties for late payments.

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact:

Position Title*	Part-Time/ Full Time	2003 Positions	2003 FTE	2004 Positions**	2004 FTE**
N/A					
TOTAL		None		None	

- **Fund Name and Number:** N/A
- **Department:** N/A

* List each position separately

** 2004 positions and FTE are total 2004 position changes resulting from this legislation, not incremental changes from 2003.

- **Do positions sunset in the future?** (If yes, identify sunset date):

N/A

Spending/Cash Flow (in \$1,000s): (Please complete this section only in those cases where part or all of the funds will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects.)

Fund Name and Number	Department	Budget Control Level*	2003 Expenditures	2004 Anticipated Expenditures
N/A				
TOTAL				

* This is line of business for operating budgets, and program or project for capital improvements

Notes:

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

If the proposed legislation covering the penalty provisions and interest expense is not adopted, the city essentially would forfeit the ability to maintain its gross receipt tax system because of the State mandate that we adopt these penalties.

The cost of not clarifying the apportionment methodology contained in SMC 5.45.080 would be increased litigation due to the confusion over the interpretation of the current apportionment code.

The cost of not creating the civil penalties and evidence gathering authority would be increase enforcement time and effort and increased litigation to collect what is owed to the City

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** *(Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)*

N/A

- **Is the legislation subject to public hearing requirements:** *(If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)*

No.

- **Other Issues** *(including long-term implications of the legislation):*

None

**RECAP OF
2003 AMENDMENTS TO MODEL TAX ORDINANCE**

- Sec. 1. 5.45.050 Imposition of the tax – Tax or fee levied**
[p. 1] Adds reference to \$50,000 no-tax threshold in 5.55.040; deletes reference to public road construction in selling classification as unnecessary; adds motor carrier classification at tax rate of .00415.
- Sec. 2. 5.45.060 Doing business with the City**
[p. 4] Deletes redundancies relating to tax on City contracts.
- Sec 3. 5.45.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes**
[p. 5] Deletes reference to local level of gross receipts tax as unnecessary because eligible gross receipts tax is defined as only a local tax.
- Sec. 4. 5.45.075 Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax**
[p. 6] New section - moves the 5.45.100 Q and R deductions for activities taking place in more than one city to their own section.
- Sec. 5. 5.45.080 Persons conducting business both within and without the City**
[p. 7] Clarifies provision for allocation by businesses maintaining an office or place of business in Seattle and elsewhere;

provides that this section does not apply to allocate re motor carriers pursuant to 5.45.050 F.

Sec. 6. 5.45.082 Ancillary activities of motor carriers and freight brokers

[p. 10]

New section - Adds new provisions relating to ancillary services of motor carriers and freight brokers.

Sec. 7. 5.45.090 Exemptions

[p. 10]

Corrects technical references to the Internal Revenue Code; clarifies that qualification for exclusion from tax as an accommodation sale is only available to persons regularly engaged in business as a retailer; adds exclusion from tax for taxes collected as trust funds (previously a deduction).

Sec. 8. 5.45.100 Deductions

[p. 12]

Corrects technical references to the Internal Revenue Code; deletes 100 Q and R deductions for activities taking place in more than one city (new section 5.45.075); deletes deduction for trust fund taxes (moved to 5.45.090); adds empty container and interstate transport deductions to tax imposed by new SMC 5.45.050 F (trucking).

Sec. 9. 5.45.105 High Tech R&D Credit - Repealed in its entirety

[p. 17]

Sec. 10. 5.30.020 Definitions

[p. 17]

Clarifies artistic and cultural exhibition; adds definition of business.



Sec.11. 5.30.025 Definitions

[p. 20] Amends definition of competitive telephone service; amends definition of consumer to delete lessors of tax exempt machinery & equipment on repair costs.

Sec.12. 5.30.030 Definitions

[p. 23] Amends definition of engaging in business; adds definition of freight broker.

Sec. 13. 5.30.035 Definitions

[p. 28] Deletes reference to intangible property in definition of gross proceeds of sale; defines processor for hire as person contributing less than 20% of its own materials to product; amends the definition of to manufacture to exclude software development, production, and duplication; adds definition of motor carrier.

Sec. 14. 5.30.040 Definitions

[p. 31] Clarifies definition of processing for hire; adds definition of retail service.

Sec. 15. 5.30.050 Definitions

[p. 33] Separates retail services from definition of retail sale; clarifies definition of wholesale sale; clarifies definition of software.

Sec. 16. 5.30.060 Definitions

[p. 46] Establishes that installment sales are taxable on the dates payments are due.

Sec. 17 5.55.040 When due and payable – reporting periods...

[p. 47] threshold provisions – computing time periods...

Clarifies that a person having less than \$50,000 in annual taxable gross receipts must file a return even though no tax is due; clarifies that city and federal holidays are excluded from the calculation of time periods.

Sec. 18. 5.55.060 Records to be preserved – Examination

[p. 49] Estoppel to question assessment

Establishes that a taxpayer's business premises shall be open for inspection and adds search warrant provision; precludes contest in court of a tax assessed for periods when inspection was denied.

Sec. 19 5.55.090 Interest on underpayment of tax

[p. 51] Changes heading to conform to content of section; changes method for calculating interest rate on underpayments.

Sec. 20. 5.55.095 Time in which assessment may be made

[p. 53] Clarifies that statute of limitations for assessment from 4 years after the close of the calendar year in which taxes were due to 4 years after the close of the calendar year in which taxes were incurred – no change in practice.

Sec. 21. 5.55.100 Overpayment of tax, penalty, or interest...

[p. 53] Provides new interest calculation on refunds of overpayments for periods beginning Jan. 1, 2005.



**Sec. 22. 5.55.110 Late payment – Disregard of written instructions
– Evasion – Penalties**

[p. 55]

To comply with new state requirements, imposes penalty for failure to timely file return; provides graduated penalties on delinquent returns and tax payments; adds 5% penalty on deficiencies assessed and graduated penalties on delinquent payments of assessments.

**Sec. 23. 5.55.140 Review of Director's assessment or denial of
refund**

[p. 58]

Clarifies that compliance with SMC 5.55.060 is a prerequisite to challenging a tax assessment or refund denial; clarifies procedures for challenging a tax assessment or refund denial.

Sec. 24. 5.55.150 Appeal to Hearing Examiner

[p. 59]

Clarifies that an appeal to the hearing examiner must comply with requirements in SMC 5.55.140.

Sec. 25. 5.55.170 Ancillary authority of Director

[p. 59]

Establishes standards for the Director to follow in allocating or apportioning between cities.

**Sec. 26. 5.55.200 Public disclosure – Confidentiality – information
sharing**

[p. 60]

Adds conditions on disclosure of tax information to taxpayers.

Sec. 27. 5.55.215 Civil penalty

[p. 62] New section - Adds civil penalty for violation of 5.52.020, 5.40.080, or 5.55.030, or failure to transmit a tax return. City has burden of proving existence of the violation.

Sec. 28. 5.55.216 Notice of violation

[p. 63] New section - Adds provision for notice of violation per 215 above.

Sec. 29. 5.55.220 Unlawful actions – Violation – Penalties

[p. 64] Changes punishment for continuation in business after license revocation from felony (which city has no power to create) to gross misdemeanor and adds provisions for criminal penalties.

Sec. 30. 5.55.225 Police powers of special commissioned officers

[p. 67] New section - Adds provision for police powers of special commissioned officers.

Sec. 31. 5.48.050 Occupations subject to tax – Amount

[p. 67] Changes reference from consumers to customers from requirement for imposition of tax on telephone business– no change in practice.

Sec. 32. 5.48.072 Anti-pyramiding credit for haulers of CDL Waste

[p. 68] Correction only - reference to another subsection.

Inger Faraz - B&O Ordinance version 9

From: Carlton Seu
To: Peyer, Lisa
Date: 08/21/2003 10:51 AM
Subject: B&O Ordinance version 9
CC: Inger Faraz; Mel McDonald; Sandra Cohen

Dear Ms. Peyer,

I have reviewed the attached version 9 of the 2003 B & O Ordinance, including the changes to subsection 5.45.100 T, and hereby approve of said version 9.

Carlton Seu
Assistant City Attorney
carlton.seu@seattle.gov

STATE OF WASHINGTON – KING COUNTY

--SS.

163362
City of Seattle, Clerk's Office

No.

Affidavit of Publication

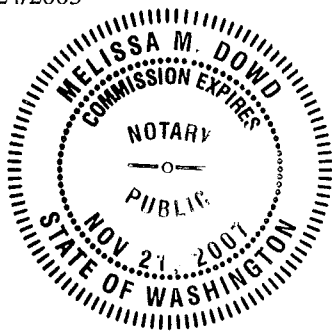
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

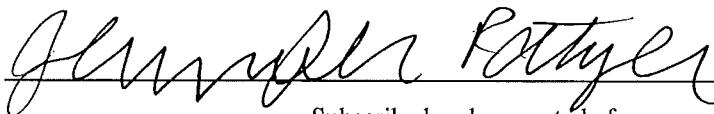
CT:121266 ORD IN FULL

was published on

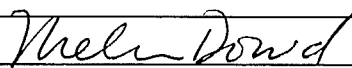
9/24/2003



Affidavit of Publication


Subscribed and sworn to before me on

9/24/2003


Notary public for the State of Washington,
residing in Seattle