

Ordinance No. 122270

Council Bill No. 115747

AN ORDINANCE relating to taxation; adopting certain penalty and interest provisions of the Revised Code of Washington into the City's administrative provisions in accordance with state law; amending penalty, interest, and refund calculation provisions; and adding and amending sections in Chapters 5.30 and 5.55 of the Seattle Municipal Code.

CF No. _____

Date Introduced:	Sept. 25, 2006	
Date 1st Referred:	To: (committee) Finance and Budget	
Date Re - Referred:	To: (committee) Full Council	
Date Re - Referred:	To: (committee)	
Date of Final Passage:	Full Council Vote: 8-0	
Date Presented to Mayor:	Date Approved: 10-12-06	
Date Returned to City Clerk:	Date Published: 11	T.O. _____ F.T. <input checked="" type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: McIver
Councilmember

Committee Action:

10-9-06 Passed 8-0 (Excused: Diago)

~~10-9-06~~

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review	OMP Review	City Clerk Review	Electronic Copy Loaded	Indexed
------------------	------------	-------------------	------------------------	---------

ORDINANCE 12227 0

AN ORDINANCE relating to taxation; adopting certain penalty and interest provisions of the Revised Code of Washington into the City's administrative provisions in accordance with state law; amending penalty, interest, and refund calculation provisions; and adding and amending sections in Chapters 5.30 and 5.55 of the Seattle Municipal Code.

WHEREAS, Chapter 35.102 RCW requires that beginning January 1, 2005, all Washington cities that impose a gross receipts business and occupation tax (B & O tax) impose penalties and interest in accordance with parallel provisions contained in Chapter 82.32 RCW for state taxes; and

WHEREAS, the City intends to be in compliance with Chapter 35.102 RCW in the imposition and administration of its gross receipts B & O taxes; and

WHEREAS, the Washington State Legislature passed Chapter 256, Session Laws of 2006, which amended the deficiency assessment penalty provisions contained in RCW 82.32.090 and the City is required to adopt such amendment; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new section 5.30.065 is added to the Seattle Municipal Code as follows:

5.30.065 Definitions – References to Chapter 82.32 RCW.

Where provisions of Chapter 82.32 RCW are incorporated in Chapter 5.55 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in SMC 5.30.025 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

Section 2. Section 5.55.090 of the Seattle Municipal Code is hereby amended as follows:

5.55.090 Interest on underpayment of tax.

A. If, upon examination of any returns, or from other information obtained by the Director, it appears that a ((an-amount-of)) tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add ((interest))



1 thereto interest on the tax only (~~as provided in subsection B of this section. Interest shall be~~
2 ~~added to delinquent tax only and shall not be calculated upon penalty or interest~~). The Director
3 shall notify the person by mail of the additional amount, which shall become due and shall be
4 paid within thirty (30) days from the date of the notice, or within such time as the Director may
5 provide in writing.

6
7 B. After December 31, 2004 the Director shall compute interest in accordance with RCW
8 82.32.050 as it now exists or as it may be amended. If SMC 5.55.090 B is held to be invalid,
9 then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

10 ((Interest calculations on underpayments:

11
12 1. ~~Interest on underpayments of taxes for periods prior to January 1, 2002 shall be~~
13 ~~computed from the date of underpayment until paid at a rate of ten (10) percent~~
14 ~~per year on the balance due.~~

15 2. ~~Interest on underpayments of taxes for periods beginning on or after January 1,~~
16 ~~2002 shall be computed from the last day of the month following the end of the~~
17 ~~reporting period and will continue to accrue until payment is made. In case of a~~
18 ~~deficiency assessment the interest shall be computed from the first day of the~~
19 ~~month following each calendar year or portion thereof included in the assessment.~~
20 ~~The rate of interest to be charged to the taxpayer shall be an average of the federal~~
21 ~~short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two (2) percentage~~
22 ~~points. The rate set for each new year shall be computed by taking an arithmetical~~
23 ~~average to the nearest percentage point of the federal short-term rate, compounded~~
24
25
26
27
28



1 annually. ~~That average shall be calculated using the rates from four (4) months:~~
2 ~~January, April, and July of the calendar year immediately preceding the new year,~~
3 ~~and October of the previous preceding year.))~~

4 **Section 3.** Section 5.55.095 of the Seattle Municipal Code is hereby amended as follows:

5 **5.55.095 Time in which assessment may be made.**

6 ~~((A.))~~ The Director shall not assess, or correct an assessment ~~((of))~~ for, additional taxes,
7 ~~((or assessable))~~ penalties, or interest due more than four (4) years after the close of the calendar
8 year in which they were incurred ~~((with the following exceptions)),~~ except that the Director may
9 issue an assessment:
10

11 ~~((1))~~A. Against a person who is not currently registered or licensed or has not
12 filed a tax return as required by this chapter ~~((5))~~ for taxes due within the period
13 commencing ten (10) years prior to the close of the calendar year in which the
14 person was contacted in writing by the Director;

15 ~~((2))~~B. Against a person that has committed fraud or who misrepresented a
16 material fact ~~((, for all taxes due))~~; or
17

18 ~~((3))~~C. Against a person that has executed a written waiver of such limitations ~~((5~~
19 ~~for taxes due within the period authorized by the waiver)).~~
20

21 ~~((B. The Director shall notify the person by mail of the amount of the deficiency, which~~
22 ~~shall become due and shall be paid within thirty (30) days from the date of the notice, or within~~
23 ~~such additional time as the Director may provide in writing.))~~
24



1 **Section 4.** Section 5.55.100 of the Seattle Municipal Code is hereby amended as follows:

2 **5.55.100 Overpayment of tax, penalty, or interest -- Credit or refund -- Interest**
3 **rate -- Statute of limitations.**

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

11
12 B. The execution of a written waiver (~~(pursuant to SMC 5.55.095,)~~) shall extend the
13 time for applying for, or making, a refund or credit of any taxes paid during, or attributable to,
14 the years covered by the waiver if, prior to the expiration of the waiver period, an application for
15 refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is
16 due.
17
18

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

22 D. Any final judgment for which a recovery is granted by any court of competent
23 jurisdiction for tax, penalties, interest or costs paid by any person shall be paid in the same
24



1 manner, as provided in subsection C of this section, upon the filing with the Director a certified
2 copy of the order or judgment of the court.

3 E. Interest calculation on refunds or overpayments. After December 31, 2004 the
4 Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a
5 taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended. If SMC
6 5.55.100 E is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective
7 date of this ordinance shall apply.

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

13 ~~2. Interest on overpayments of taxes for periods beginning on or after January 1,~~
14 ~~2002, shall be the average federal short term interest rate, as defined under SMC~~
15 ~~5.55.090 B(2), less two (2) percentage points.~~

17 ~~3. Interest on overpayments of taxes for periods beginning on or after January 1,~~
18 ~~2005, shall be the average federal short term interest rate as defined under SMC~~
19 ~~5.55.090 B(2), plus two (2) percentage points.))~~

20 **Section 5.** Section 5.55.110 of the Seattle Municipal Code is hereby amended as follows:

21 **5.55.110 Late payment -- Disregard of written instructions -- Evasion -- Penalties.**

22 A. If ~~((the Director does not receive a return or))~~ payment of any tax due on a return to
23 be filed by a taxpayer is not received by the Director ((shown as due on a return)) by the due date,
24 the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it
25
26
27
28



1 may be amended ((equal to five (5) percent of the amount of the tax; and if the return or the tax is
2 not received on or before the last day of the month following the due date, the Director shall add
3 a total penalty equal to fifteen (15) percent of the amount of the tax; and if the return or the tax is
4 not received on or before the last day of the second month following the due date, the Director
5 shall add a total penalty equal to twenty-five (25) percent of the amount of the tax. No penalty
6 assessed herein shall be less than Five Dollars (\$5.00))).

8 B. If ((a tax deficiency is assessed by)) the Director determines that any tax has been
9 substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in
10 accordance with RCW 82.32.090(2), as it now exists or as it may be amended ((equal to five (5)
11 percent of the amount of the deficiency. If payment of any tax deficiency assessed by the
12 Director is not received by the due date specified in the notice, or any extension thereof, the
13 Director shall assess a penalty equal to fifteen (15) percent of the amount of the additional tax
14 found due. If payment of any tax deficiency assessed by the Director is not received on or before
15 the thirtieth day following the due date specified in the notice, or any extension thereof, the
16 Director shall assess a penalty equal to twenty-five (25) percent of the amount of additional tax
17 found due. No penalty added shall be less than Five Dollars (\$5.00))).

20 C. If a citation or criminal complaint is issued by the Director for the collection of taxes,
21 fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with
22 RCW 82.32.090(3), as it now exists or as it may be amended ((of ten (10) percent of the amount
23 due, but not less than Ten Dollars (\$10))).
24
25
26
27
28



1 D. If the Director finds that a person has engaged in any business or performed any act
2 upon which a tax is imposed under this title and that person has not obtained from the Director a
3 license as required by Section 5.55.030, the Director shall impose a penalty in accordance with
4 RCW 82.32.090(4), as it now exists or as it may be amended (~~of five (5) percent of the amount~~
5 ~~of tax due from that person for the period that the person was not licensed~~). No penalty shall be
6 imposed under this subsection D if the person who has engaged in business without a license
7 obtains a license prior to being notified by the Director of the need to be licensed.

9 E. If the Director determines that all or any part of a deficiency resulted from the
10 taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a
11 penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended (~~of ten~~
12 ~~(10) percent of the amount of the additional tax due.~~

14 ~~1. A taxpayer fails to follow specific written tax reporting instructions when the~~
15 ~~Director has informed the taxpayer in writing of the taxpayer's tax obligations and~~
16 ~~the taxpayer fails to act in accordance with those instructions. The Director shall~~
17 ~~not assess the penalty under this subsection, SMC 5.55.110E, upon any taxpayer~~
18 ~~that has made a good faith effort to comply with the specific written instructions~~
19 ~~provided by the Director to that taxpayer.~~

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



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

4 F. If the Director finds that all or any part of the deficiency resulted from an intent to
5 evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6),
6 as it now exists or as it may be amended ~~((of fifty (50) percent of the additional found to be~~
7 ~~due))~~.

8 G. The penalties imposed under subsections A through ~~((E))~~ D of this section can each
9 be imposed on the same tax found to be due. This subsection does not prohibit or restrict the
10 application of other penalties authorized by law.

11 H. ~~((The penalties authorized by subsections E and F of this section shall be assessed in~~
12 ~~accordance with the provisions of this chapter governing assessment of tax deficiencies.))~~ The
13 Director shall not impose both the evasion penalty and the penalty for disregarding specific
14 written instructions on the same tax found to be due.

15 I. For the purposes of this section, "return" means any document a person is required by
16 the City of Seattle to file to satisfy or establish a tax or fee obligation that is administered or
17 collected by the City, and that has a statutorily defined due date.

18 J. If incorporation into the Seattle Municipal Code of future changes to RCW 82.32.090
19 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is
20 effective shall apply.



1 **Section 6.** Section 5.55.120 of the Seattle Municipal Code is hereby amended as follows:

2 **5.55.120 Cancellation of penalties.**

3 A. The Director may cancel any penalties imposed by SMC subsections 5.55.110 A and
4 B if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause
5 and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised
6 ordinary business care and prudence in making arrangements to file the return and pay the tax but
7 was, nevertheless, due to circumstances beyond its control, unable to file or pay by the due date.
8 ((The Director has no authority to cancel any other penalties or to cancel penalties for any other
9 reason except as provided in subsection C of this section.))
10

11 B. A request for cancellation of penalties must be received by the Director within thirty
12 (30) days after the date the Director ((Department)) mails the notice that the penalties are due.
13 The request must be in writing and contain competent proof of all pertinent facts supporting a
14 reasonable cause determination. In all cases the burden of proving the facts rests upon the
15 taxpayer.
16

17 C. ((The Director may cancel the penalties imposed by SMC subsections 5.55.110 A and
18 B one time only if a person:

- 19 1. ~~Is not currently licensed and filing returns;~~
20 2. ~~Was unaware of its responsibility to file and pay tax;~~
21 3. ~~Obtained business licenses and filed past due tax returns within thirty (30) days~~
22 ~~after being notified by the Department; and~~
23 4. ~~Owes no tax for the delinquent tax periods.~~
24
25
26
27
28

1 D.)) The Director shall not cancel any interest charged upon amounts due.

2 ((E))D. The Director ((of Finance)) shall adopt administrative rules for the cancellation
3 of penalties imposed under this chapter.

4 **Section 7.** Interpretation. Sections 1 through 7 of this ordinance are intended to comply
5 with and implement the mandates of Chapter 35.102 RCW, including but not limited to RCW
6 35.102.040, .080, .090, and .140.

7 **Section 8.** Severability. If any part, provision or section of this chapter is held to be void
8 or unconstitutional as applied to any person or circumstance, then all other parts, provisions, and
9 sections of this chapter not expressly so held to be void or unconstitutional shall continue in full
10 force and effect with respect to all other persons and all other circumstances.

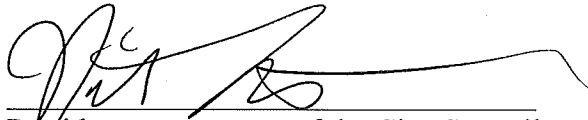
11 **Section 9.** Ratification of Prior Acts. Any acts by City of Seattle officials and employees
12 that took place prior to the effective date of this ordinance and that fall within the scope of the
13 authority granted herein are hereby ratified and confirmed.

14 **Section 10.** Instructions to the Code Reviser. To make a cross reference elsewhere in the
15 SMC consistent with the amendment made to SMC 5.55.090 by the section 2 of this ordinance,
16 the City's code reviser is instructed to update the cross reference in SMC 6.10.080 C from "SMC
17 5.55.090 B2" to "SMC 5.55.090 B."
18
19
20
21
22
23
24
25
26
27
28

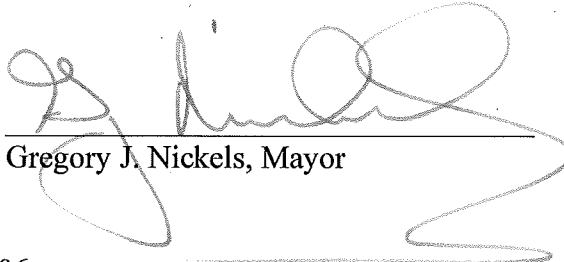


1 **Section 11.** This ordinance shall take effect and be in force thirty (30) days from and
2 after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10)
3 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

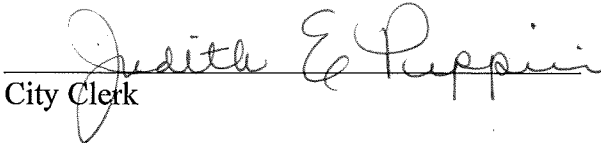
4 Passed by the City Council the 9th day of October, 2006, and signed by me in open
5 session in authentication of its passage this 9th day of October, 2006.

6
7 
8 _____
9 President _____ of the City Council

9 Approved by me this 10th day of October, 2006.

10
11 
12 _____
13 Gregory J. Nickels, Mayor

14 Filed by me this 12 day of Oct, 2006.

15 
16 _____
17 City Clerk

18 (Seal)



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

September 12, 2006

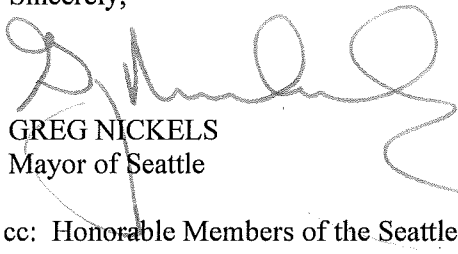
Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Licata:

The attached proposed Council Bill amends the City's business license tax code to comply with state regulations regarding interest and penalty provisions associated with the City's Business and Occupation tax. Specifically, the proposed legislation will change the method for computing deficiency penalties on the B&O tax, and allow the City to codify future such amendments to RCW 82.32 without having to amend the Seattle Municipal Code.

The proposed legislation brings the City's Business and Occupation tax code into compliance with state law, while simplifying the process for future codification. Thank you for your consideration of this legislation. Should you have any questions in this regard, please contact Ken Nakatsu, at 684-0505, or Mel McDonald, at 233-0071.

Sincerely,



GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

600 Fourth Avenue, 7th Floor, P.O. Box 94749, Seattle, WA 98124-4749

Tel: (206) 684-4000, TDD: (206) 684-8811 Fax: (206) 684-5360, Email: mayors.office@seattle.gov

An equal employment opportunity, affirmative action employer. Accommodations for people with disabilities provided upon request.



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Executive Administration	Mel McDonald/3-0071	Carolyn Iblings/4-5211

Legislation Title:

AN ORDINANCE relating to taxation; adopting certain penalty and interest provisions of the Revised Code of Washington into the City's tax administrative provisions as required by state law; amending penalty, interest, and refund calculation provisions; and adding and amending sections in Chapters 5.30 and 5.55 of the Seattle Municipal Code.

• **Summary of the Legislation:**

Chapter 35.102 RCW requires that any Washington city that imposes a gross receipts business and occupation (B & O) tax impose penalties and interest consistent with the state's B&O tax provisions contained in Chapter 82.32 RCW. The proposed legislation amends the City's B&O tax interest and penalty provisions to comply with the provisions of Chapter 35.102 RCW.

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

In 2003, the Washington State Legislature adopted the Model Ordinance (Chapter 79, Session Laws of 2003), codified in Chapter 35.102 RCW, establishing mandatory provisions to be implemented by all Washington cities imposing gross receipt B & O taxes by December 31, 2004. The intent of the Model Ordinance is to promote uniformity and fairness in the imposition of B&O taxes throughout Washington State. In anticipation of the Model Ordinance, the City amended its B & O tax code in December 2001 through Ordinance 120668. The City subsequently adopted Ordinances 121266 and 121679 to incorporate mandatory provisions of the Model Ordinance not previously adopted through Ordinance 120668.



Two years ago, the state added a 5% deficiency penalty for the underpayment of taxes. As required by RCW 35.102.090, the City adopted the state's new deficiency penalty provision, which resulted in annual revenue increases of approximately \$200,000. This year, the Washington State Legislature passed Chapter 256, Session Laws of 2006, amending the deficiency assessment penalty provisions of Chapter 82.32 RCW (Chapter 256, Session Laws of 2006). The new provision changes the method for computing the deficiency penalty. The City is required by RCW 35.102.090 to adopt the revised penalty provisions contained in RCW 82.32.090, which will eliminate most of the penalty and its resulting revenues.

To keep the City consistent with state interest and penalty provisions as required by RCW 35.102.080 and RCW 35.102.090, this legislation will provide a mechanism to codify by reference any future changes to the provisions of Chapter 82.32 RCW.

- 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.)

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

***Appropriations:** This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2006 Appropriation	2007 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes: There are no appropriations associated with this legislation.



Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2006 Revenue	2007 Revenue
General Fund 00100	Department of Executive Administration	Business and Utility taxes	(\$100,000)	(\$200,000)
TOTAL			(\$100,000)	(\$200,000)

Notes: The change in the method used to compute interest on underpaid taxes will likely result in an additional small loss in City revenue; however, our analysis indicates that the effect will be immaterial. The State's interest provisions have generally been more favorable to taxpayers with a historically lower interest rate on assessments in the late 1990s through 2001, and a high interest rate on refunds during the same period and during 2002-2004.

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE Impact: *This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Position Title and Department*	Fund Name	Fund Number	Part-Time/Full Time	2006 Positions	2006 FTE	2007 Positions**	2007 FTE**
TOTAL							

* List each position separately

** 2007 positions and FTE are total 2007 position changes resulting from this legislation, not incremental changes. Therefore, under 2007, please be sure to include any continuing positions from 2006

Notes: There are no position changes associated with this legislation.

- **Do positions sunset in the future?** (If yes, identify sunset date): Not applicable.



Spending/Cash Flow: *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

Fund Name and Number	Department	Budget Control Level*	2006 Expenditures	2007 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes: Not applicable.

- **What is the financial cost of not implementing the legislation?** The financial cost of not implementing the legislation is not known. This legislation is intended to ensure the City's tax code is consistent with state law.
- **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.)

None. The City of Seattle is mandated by the State of Washington to adopt business and occupation tax penalty provisions consistent with Chapter 82.32 RCW.

- **Is the legislation subject to public hearing requirements:**
No special public hearing requirements.
- **Other Issues:** None.

Please list attachments to the fiscal note below: None.



STATE OF WASHINGTON – KING COUNTY

--SS.

203652
CITY OF SEATTLE, CLERKS 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:122270 ORDINANCE

was published on

10/18/06

The amount of the fee charged for the foregoing publication is the sum of \$ 552.00, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

10/18/06

Notary public for the State of Washington,
residing in Seattle

State of Washington

City of Seattle

ORDINANCE 122270

AN ORDINANCE relating to taxation; adopting certain penalty and interest provisions of the Revised Code of Washington into the City's administrative provisions in accordance with state law; amending penalty, interest, and refund calculation provisions; and adding and amending sections in Chapters 5.30 and 5.55 of the Seattle Municipal Code.

WHEREAS, Chapter 35.102 RCW requires that beginning January 1, 2005, all Washington cities that impose a gross receipts business and occupation tax (B & O tax) impose penalties and interest in accordance with parallel provisions contained in Chapter 82.32 RCW for state taxes; and

WHEREAS, the City intends to be in compliance with Chapter 35.102 RCW in the imposition and administration of its gross receipts B & O taxes; and

WHEREAS, the Washington State Legislature passed Chapter 256, Session Laws of 2006, which amended the deficiency assessment penalty provisions contained in RCW 82.32.090 and the City is required to adopt such amendment; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new section 5.30.065 is added to the Seattle Municipal Code as follows:

5.30.065 Definitions - References to Chapter 82.32 RCW.

Where provisions of Chapter 82.32 RCW are incorporated in Chapter 5.55 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in SMC 5.30.025 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

Section 2. Section 5.55.090 of the Seattle Municipal Code is hereby amended as follows:

5.55.090 Interest on underpayment of tax.

Section 4. Section 5.55.100 of the Seattle Municipal Code is hereby amended as follows:

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

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

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

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

E. Interest calculation on refunds or overpayments. After December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended. If SMC 5.55.100 E is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply.

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

2- Interest on overpayments of taxes for periods beginning on or after January 1, 2002, shall be the average federal short-term interest rate, as defined under SMC 5.55.090 B(2), less two (2) percentage points.

3- Interest on overpayments of taxes for periods beginning on or after January 1, 2006, shall be the average federal short-term interest rate as defined under SMC 5.55.090 B(2), plus two (2) percentage points.)

Section 5. Section 5.55.110 of the Seattle Municipal Code is hereby amended as follows:

5.55.110 Late payment -- Disregard of written instructions -- Evasion -- Penalties.

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

B. If ((a tax deficiency is assessed by)) the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended (equal to five (5) percent of the amount of the deficiency. If payment of any tax deficiency assessed by the Director is not received by the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to fifteen (15) percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the Director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to twenty-five (25) percent of the amount of additional tax found due. No penalty added shall be less than Five Dollars (\$5.00)).

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

D. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by Section 5.55.030, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be amended ((of five (5) percent of the amount of tax due from that person for the period that the person was not licensed)). No penalty shall be imposed under this subsection D if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

E. If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended ((of ten (10) percent of the amount of the additional tax due.

1. A taxpayer fails to follow specific written tax reporting instructions when the Director has informed the taxpayer in writing of the taxpayer's tax obligations and the

C. ((The Director may cancel the penalties imposed by SMC subsections 5.55.110 A and B one time only if a person:

- 1- Is not currently licensed and filing returns;
- 2- Was unaware of its responsibility to file and pay tax;
- 3- Obtained business licenses and filed past due tax returns within thirty (30) days after being notified by the Department; and
- 4- Owes no tax for the delinquent tax periods.

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

((E)) D. The Director ((of Finance)) shall adopt administrative rules for the cancellation of penalties imposed under this chapter.

Section 7. Interpretation. Sections 1 through 7 of this ordinance are intended to comply with and implement the mandates of Chapter 35.102 RCW, including but not limited to RCW 35.102.040, 080, 090, and 140.

Section 8. Severability. If any part, provision or section of this chapter is held to be void or unconstitutional as applied to any person or circumstance, then all other parts, provisions, and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect with respect to all other persons and all other circumstances.

Section 9. Ratification of Prior Acts. Any acts by City of Seattle officials and employees that took place prior to the effective date of this ordinance and that fall within the scope of the authority granted herein are hereby ratified and confirmed.

Section 10. Instructions to the Code Reviser. To make a cross reference elsewhere in the SMC consistent with the amendment made to SMC 5.55.090 by the section 2 of this ordinance, the City's code reviser is instructed to update the cross reference in SMC 6.10.080 C from "SMC 5.55.090 B" to "SMC 5.55.090 B."

Section 11. 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 9th day of October, 2006, and signed by me in open session in authentication of its passage this 9th day of October, 2006.

Nick Licata
President of the City Council
Approved by me this 12th day of October, 2006.
Gregory J. Nickels, Mayor
Filed by me this 13th day of October, 2006.
(Seal) Judith Pippin
City Clerk
Publication ordered by JUDITH PIPPIN,
City Clerk
Date of publication in the Seattle Daily Journal of Commerce, October 18, 2006.
10/18(203652)

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

B. After December 31, 2004 the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended. If SMC 5.55.090 B is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply. (Interest calculations on underpayments:

- 1- Interest on underpayments of taxes for periods prior to 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 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. 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. That average shall be calculated using the rates from four (4) months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.)

Section 3. Section 5.55.095 of the Seattle Municipal Code is hereby amended as follows:

5.55.095 Time in which assessment may be made.

- (A) The Director shall not assess, or correct an assessment (of) for, additional taxes, (or assessable) penalties, or interest due more than four (4) years after the close of the calendar year in which they were incurred (with the following exceptions), except that the Director may issue an assessment:
 - (1) A. 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) B. Against a person that has committed fraud or who misrepresented a material fact ((-for all taxes due)); or
 - (3) C. 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 4. Section 5.55.100 of the Seattle Municipal Code is hereby amended as follows:

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 more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.
- B. The execution of a written waiver ((pursuant to SMC 5.55.095)) shall extend the time for applying for, or making, a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.
- C. Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check, warrant or wire transfer drawn upon and payable from such funds as the City may provide.
- D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest or costs paid by any person shall be paid in the same manner, as provided in subsection C of this section, upon the filing with the Director a certified copy of the order or judgment of the court.
- E. Interest calculation on refunds or overpayments. After December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended. If SMC 5.55.100 E is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance shall apply.

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

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

Section 5. Section 5.55.110 of the Seattle Municipal Code is hereby amended as follows:

5.55.110 Late payment -- Disregard of written instructions -- Evasion -- Penalties.

- A. If ((the Director does not receive a return or)) payment of any tax due on a return to be filed by a taxpayer is not received by the Director (shown as due on a return) by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended (equal to five (5) percent of the amount of the tax and if the return or the tax is not received on or before the last day of the month following the due date, the Director shall add a total penalty equal to fifteen (15) percent of the amount of the tax, and if the return or the tax is not received on or before the last day of the second month following the due date, the Director shall add a total penalty equal to twenty-five (25) percent of the amount of the tax. No penalty assessed herein shall be less than Five Dollars (\$5.00)).
- B. If (a tax deficiency is assessed by) the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended (equal to five (5) percent of the amount of the deficiency. If payment of any tax deficiency assessed by the Director is not received by the

taxpayer fails to act in accordance with these instructions. The Director shall not assess the penalty under this subsection, SMC 5.55.110E, upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the Director to that taxpayer.

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.)

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 in accordance with RCW 82.32.090(6), as it now exists or as it may be amended ((of fifty (50) percent of the additional found to be due)).

G. The penalties imposed under subsections A through ((E)) D of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

H. ((The penalties authorized by subsections E and 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.

I. For the purposes of this section, "return" means any document a person is required by the City of Seattle 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.

J. If incorporation into the Seattle Municipal Code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

Section 6. Section 5.55.120 of the Seattle Municipal Code is hereby amended as follows:

5.55.120 Cancellation of penalties.

- A. The Director may cancel any penalties imposed by SMC subsections 5.55.110 A and B if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax, but was, nevertheless, due to circumstances beyond its control, unable to file or pay by the due date. ((The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C of this section.))
- B. A request for cancellation of penalties must be received by the Director within thirty (30) days after the date the Director ((Department)) mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.
- C. ((The Director may cancel the penalties imposed by SMC subsections 5.55.110 A and B one time only if a person:
 - 1- Is not currently licensed and filing returns;
 - 2- Was unaware of its responsibility to file and pay tax;
 - 3- Obtained business licenses and filed past due tax returns within thirty (30) days after being notified by the Department; and
 - 4- Owes no tax for the delinquent tax periods:D-)) The Director shall not cancel any interest charged upon amounts due.
- ((E)) D. The Director ((of Finance)) shall adopt administrative rules for the cancellation of penalties imposed under this chapter.

Section 7. Interpretation. Sections 1 through 7 of this ordinance are intended to comply with and implement the mandates of Chapter 35.102 RCW, including but not limited to RCW 35.102.040, 080, 090, and 140.

Section 8. Severability. If any part, provision or section of this chapter is held to be void or unconstitutional as applied to any person or circumstance, then all other parts, provisions, and sections of this chapter not expressly so held to be void or unconstitutional shall continue in full force and effect with respect to all other persons and all other circumstances.

Section 9. Ratification of Prior Acts. Any acts by City of Seattle officials and employees that took place prior to the effective date of this ordinance and that fall within the scope of the authority granted herein are hereby ratified and confirmed.

Section 10. Instructions to the Code Reviser. To make a cross reference elsewhere in the SMC consistent with the amendment made to SMC 5.55.090 by the section 2 of this ordinance, the City's code reviser is instructed to update the cross reference in SMC 6.10.080 C from "SMC 5.55.090 B2" to "SMC 5.55.090 B."

Section 11. 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 9th day of October, 2006, and signed by me in open session in authentication of its passage this 9th day of October, 2006.

Nick Licata
President of the City Council
Approved by me this 12th day of October, 2006.
Gregory J. Nickels, Mayor
Filed by me this 13th day of October, 2006.
(Seal) Judith Pippin
City Clerk
Publication ordered by JUDITH PIPPIN, City Clerk
Date of publication in the Seattle Daily Journal of Commerce, October 18, 2006
10/18(203652)

State of Washington

City of Seattle

ORDINANCE 122270

AN ORDINANCE relating to tax; adopting certain penalty and interest provisions of the Revised Code of Washington.