

ORDINANCE No.

116951

COUNCIL BILL No.

109906

NR

Law Department

33

The City

AN ORDINANCE relating to City excise taxes, amending Seattle Municipal Code Section 5.44.026 to amend the definition of "Sale at retail" or "retail sale"; amending Section 5.44.030 to change the classification of periodicals and magazines; amending Section 5.44.110 to add a deduction for privately operated kindergartens and non-profit organizations providing credit counseling services; and amending Section 5.48.070 to clarify the deduction of excise taxes.

Honorable President:

Your Committee on

to which was referred the within report that we have considered the

COMPTROLLER FILE No.

Introduced: SEP 27 '93	By: WEEKS
Referred: SEP 23 '93	To: Budget
Referred:	To:
Referred:	To:
Reported: NOV 22 1993	Second Reading: NOV 22 1993
Third Reading: NOV 22 1993	Signed: NOV 22 1993
Presented to Mayor: NOV 23 1993	Approved: NOV 23 1993
Returned to City Clerk: NOV 23 1993	Published:
Vetoed by Mayor:	Veto Published:
Passed over Veto:	Veto Sustained:

Full Council

OK



The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

President:

Committee on

was referred the within Council Bill No.

that we have considered the same and respectfully recommend that the same:

Full Council vote 8-0

Tom Thib

Committee Chair

ORDINANCE

116951

1
2 AN ORDINANCE relating to City excise taxes, amending Seattle
3 Municipal Code Section 5.44.026 to amend the definition of
4 "Sale at retail" or "retail sale"; amending Section
5 5.44.030 to change the classification of periodicals and
6 magazines; amending Section 5.44.110 to add a deduction for
7 privately operated kindergartens and non-profit organiza-
8 tions providing credit counseling services; and amending
9 Section 5.48.070 to clarify the deduction of excise taxes.

10 BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

11 Section 1. Effective as of July 1, 1993, Seattle Municipal
12 Code Section 5.44.026 (Ordinance 72630, Section 2, as last
13 amended by Ordinance 113690, Section 1) is further amended as
14 follows:

15 5.44.026 Definitions of "sale".

16 1. "Sale" includes the exchange of property as well as the
17 sale thereof for money, and also includes conditional sale
18 contracts, leases with option to purchase and any other contract
19 under which possession of the property is given to the purchaser
20 but title is retained by the vendor as security for the payment
21 of the purchase price. It shall also be construed to include
22 the furnishing of food, drink, or meals for compensation,
23 whether consumed upon the premises or not.

24 2. "Sale at retail" or "retail sale" means every sale of
25 tangible personal property (including articles produced,
26 fabricated, or imprinted) to all persons irrespective of the
27 nature of their business and including, among others, without
28 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. ~~((p))~~ ~~((p))~~ Purchases for the purpose of resale as
tangible personal property in the regular course of business
without intervening use by such person ~~((7))~~; or

b. ~~((p))~~ ~~((p))~~ Installs, repairs, cleans, alters,
imprints, improves, constructs, or decorates real or personal

1 property of or for consumers, if such tangible personal property
2 becomes an ingredient or component of such real or personal
3 property without intervening use by such person((7))i or

4 c. ((i+i)) ((p)) Purchases for the purpose of consuming
5 the property purchased in producing for a sale a new article of
6 tangible personal property or substance, of which such property
7 becomes an ingredient or component or is a chemical used in
8 processing, when the primary purpose of such chemical is to
9 create a chemical reaction directly through contact with an
ingredient of a new article being produced for sale((7))i or

10 d. ((i+v)) ((p)) Purchases for the purpose of consuming
11 the property purchased in producing ferrosilicon which is
12 subsequently used in producing magnesium for sale, if the
13 primary purpose of such property is to create a chemical
14 reaction directly through contact with an ingredient of
ferrosilicon((7))i or

15 e. ((v)) ((p)) Purchases for the purpose of providing
16 the property to consumers as part of competitive telephone
17 service, as defined in RCW 82.04.065. The term shall include
18 every sale of tangible personal property which is used or
19 consumed or to be used or consumed in the performance of any
20 activity classified as a "sale at retail" or "retail sale" even
21 though such property is resold or utilized as provided in ((i))
22 a, ((i+i)) b, ((i+i+i)) c, ((i+v)) d, or ((v)) e ((above)) of this
23 subsection following such use. The term also means every sale
24 of tangible personal property to persons engaged in any business
25 which is taxable under RCW 82.04.280((7-subsections)) (2) and
(7) and RCW 82.04.290.

26 ((a-)) 3. The term "((S))sale at retail" or "retail sale"
27 shall include the sale of or charge made for tangible personal
28 property consumed and/or for labor and services rendered in
respect to the following:

1 a. ((±)) ((¢)) The installing, repairing, cleaning,
2 altering, imprinting, or improving of tangible personal property
3 of or for consumers, including charges made for the mere use of
4 facilities in respect thereto, but ~~((excluding charges made for
5 the use of coin operated laundry facilities when such facilities
6 are situated in an apartment house, hotel, motel, rooming house,
7 trailer camp or tourist camp for the exclusive use of the
8 tenants thereof, and aise))~~ excluding sales of laundry service
9 to members by nonprofit associations composed exclusively of
10 nonprofit hospitals, and excluding services rendered in respect
11 to live animals, birds and insects;

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

22 c. ((±±±)) ((¢)) The charge for labor and services
23 rendered in respect to constructing, repairing, or improving any
24 structure upon, above, or under any real property owned by an
25 owner who conveys the property by title, possession, or any
26 other means to the person performing such construction, repair,
27 or improvement for the purpose of performing such construction,
28 repair, or improvement and the property is then reconveyed by
title, possession, or any other means to the original owner;

 d. ((±v)) ((¢)) The sale of or charge made for labor
and services rendered in respect to the cleaning, fumigating,
razing or moving of existing buildings or structures, but shall

1 not include the charge made for janitorial services; and for
2 purposes of this section the term "janitorial services" shall
3 mean those cleaning and caretaking services ordinarily performed
4 by commercial janitor service businesses including, but not
5 limited to, wall and window washing, floor cleaning and waxing,
6 and the cleaning in place of rugs, drapes and upholstery. The
7 term "janitorial services" does not include painting, papering,
8 repairing, furnace or septic tank cleaning, snow removal or
9 sandblasting;

10 e. ~~((v))~~ ~~((t))~~ The sale of or charge made for labor
11 and services rendered in respect to automobile towing and
12 similar automotive transportation services, but not in respect
13 to those required to report and pay taxes under chapter 82.16
14 RCW;

15 f. ~~((vi))~~ ~~((t))~~ The sale of and charge made for the
16 furnishing of lodging and all other services by a hotel, rooming
17 house, tourist court, motel, trailer camp, and the granting of
18 any similar license to use real property, as distinguished from
19 the renting or leasing of real property, and it shall be
20 presumed that the occupancy of real property for a continuous
21 period of one (1) month or more constitutes a rental or lease of
22 real property and not a mere license to use or enjoy the same;

23 g. ~~((vii))~~ ~~((t))~~ The sale of or charge made for
24 tangible real property, labor and services taxable under ~~((t))~~
25 a, ~~((ii))~~ b, ~~((iii))~~ c, ~~((iv))~~ d, ~~((v))~~ e and ~~((vi))~~ f ~~((above))~~
26 of this subsection when such sales or charges are for property,
27 labor and services which are used or consumed in whole or in
28 part by such persons in the performance of any activity defined
as a "sale at retail" or "retail sale" even though such
property, labor and services may be resold after such use or
consumption. Nothing contained in this ~~((paragraph))~~ subsection
shall be construed to modify ~~((the-first-paragraph))~~ subsection

1 1 of this section and nothing contained in ~~((the--first~~
2 ~~paragraph))~~ subsection 1 of this section shall be construed to
3 modify this ~~((paragraph))~~ subsection.

4 ~~((b-))~~ 4. The term "~~((S))~~sale at retail" or "retail sale"
5 shall include the sale of or charge made for personal business
6 or professional services, including amounts designated as
7 interest, rents, fees, admission, and other service emoluments
8 however designated, received by persons engaging in the
9 following business activities:

10 a. ~~((i))~~ ~~((a))~~ Amusement and recreation ~~((businesses))~~
11 services including but not limited to golf, pool, billiards,
12 skating, bowling, ski lifts, ~~((and))~~ tows, and others;

13 b. ~~((ii))~~ ~~((a))~~ Abstract, title insurance and escrow
14 ~~((businesses))~~ services;

15 c. ~~((iii))~~ ~~((e))~~ Credit bureau ~~((businesses))~~
16 services;

17 d. ~~((iv))~~ ~~((a))~~ Automobile parking and storage garage
18 ~~((businesses))~~ services~~((-))~~;

19 e. Landscape maintenance and horticultural services
20 but excluding horticultural services provided to farmers;

21 f. Service charges associated with tickets to
22 professional sporting events;

23 g. Guided tours and guided charters; and

24 h. The following personal services: physical fitness
25 services, tanning salon services, tattoo parlor services,
26 massage services, steam bath services, Turkish bath services,
27 escort services, and dating services.

28 ~~((e-))~~ 5. The term shall also include the renting or
leasing of tangible personal property to consumers and the
rental of equipment with an operator.

~~((d-))~~ 6. The term shall also include the providing of
competitive telephone service, as defined in RCW 82.04.065, to

1 consumers.

2 ((e-)) 7. The term shall not include the sale of or charge
3 made for labor and services rendered in respect to the building,
4 repairing, or improving of any street, place, road, highway,
5 easement, right-of-way, mass public transportation terminal or
6 parking facility, bridge, tunnel, or trestle which is owned by
7 a municipal corporation or political subdivision of the state or
8 by the United States and which is used or to be used primarily
9 for foot or vehicular traffic including mass transportation
vehicles of any kind((7)).

10 8. The term ((nor)) shall also not ((it)) include sales
11 of feed, seed, seedlings, fertilizer, agents for enhanced
12 pollination, including insects such as bees, and spray materials
13 to persons who participate in the federal conservation reserve
14 program or its successor administered by the United States
15 department of agriculture, or to farmers for the purpose of
16 producing for sale any agricultural product ((whatsoever,
17 including plantation Christmas trees and milk, eggs, wool, fur,
18 meat, honey, or other substances obtained from animals, birds,
19 or insects but only when such production and subsequent sale are
20 exempt from tax under RCW 92.04.330)), nor shall it include
21 sales of chemical sprays or washes to persons for the purpose of
22 post-harvest treatment of fruit for the prevention of scald,
23 fungus, mold, or decay.

24 ((f-)) 9. The term shall not include the sale of or charge
25 made for labor and services rendered in respect to the
26 constructing, repairing, decorating, or improving of new or
27 existing buildings or other structures under, upon, or above
28 real property of or for the United States, any instrumentality
thereof, or a county or city housing authority created pursuant
to Chapter 35.82 RCW, including the installing, or attaching of
any article of tangible personal property therein or thereto,

1 whether or not such personal property becomes a part of the
2 realty by virtue of installation. Nor shall the term include
3 the sale of services or charges made for the clearing of land
4 and the moving of earth of or for the United States, any
5 instrumentality thereof, or a county or city housing authority.

6 ((3-)) 10. "Sale at wholesale" has the meaning contained
7 in RCW 82.04.060, as now existing or hereafter amended.

8 ((4-)) 11. In construing the provisions of this chapter,
9 "wholesale sale," "sale at wholesale," "retail sale," and "sale
10 at retail" do not include the sale of precious metal bullion or
11 monetized bullion.

12 a. In computing tax under this chapter on the
13 business of making sales of precious metal bullion or monetized
14 bullion, the tax shall be imposed on the amounts received as
15 commissions upon transactions for the accounts of customers over
16 and above the amount paid to other dealers associated in such
17 transactions, but no deduction or offset is allowed on account
18 of salaries or commissions paid to salesmen or other employees.

19 b. For purposes of this subsection, "precious metal
20 bullion" means any precious metal which has been put through a
21 process of smelting or refining, including, but not limited to,
22 gold, silver, platinum, rhodium, and palladium, and which is in
23 such state or condition that its value depends upon its contents
24 and not upon its form. For purposes of this section, "monetized
25 bullion" means coins or other forms of money manufactured from
26 gold, silver or other metals and theretofore, now, or hereafter
27 used as a medium of exchange under the laws of this state, the
28 United States, or any foreign nation, but does not include coins
or money sold to be manufactured into jewelry or works of art.

Section 2. Effective as of July 1, 1993, Seattle Municipal
Code Section 5.44.030 (Ordinance 72630, Section 3, as last
amended by Ordinance 116461, Section 1) is further amended as

1 follows:

2 5.44.030 Tax levied.

3 There is levied upon and shall be collected from and paid
4 as hereinafter provided by every person on account and for the
5 privilege of engaging in business activities, a license fee or
6 occupation tax, sometimes herein referred to as the "tax." The
7 tax, except as hereinafter provided, shall be in amounts to be
8 determined by application of rates given against value of
9 products, gross proceeds of sale, or gross income of business,
10 as the case may be, for the three calendar months next preceding
11 the beginning of each quarterly period as follows:

11 A. Upon every person engaging within this City in business
12 as an extractor; as to such persons the amount of the tax with
13 respect to such business shall be equal to the value of the
14 products extracted for sale or commercial use, multiplied by the
15 rate of two hundred fifteen (215) one-thousandths of one percent
16 (1%). The measure of the tax is the value of the products so
17 extracted, regardless of the place of sale or the fact that
18 deliveries may be made to points outside the City.

18 B. Upon every person engaging within this City in business
19 as a manufacturer; as to such persons the amount of the tax with
20 respect to such business shall be equal to the value of the
21 products manufactured, multiplied by the rate of two hundred
22 fifteen (215) one-thousandths of one percent (1%). The measure
23 of the tax is the value of the products so manufactured,
24 regardless of the place of sale or the fact that deliveries may
25 be made to the points outside the City.

25 C. Upon every person engaging within this City in the
26 business of making sales at wholesale or retail, except persons
27 taxable under subsection (d) of this section; as to such
28 persons, the amount of tax with respect to such business of
making sales at wholesale or retail shall be equal to the gross

1 proceeds of such sales of the business without regard to the
2 place of delivery of articles, commodities, or merchandise sold,
3 multiplied by the rate of two hundred fifteen (215) one-
4 thousandths of one percent (1%).

5 D. Upon every person engaging within this City in the
6 business of buying wheat, oats, corn, barley and rye, but not
7 including any manufactured or processed products thereof, and
8 selling the same at wholesale, the tax imposed shall be equal to
9 the gross proceeds derived from such sales multiplied by the
10 rate of two hundred fifteen (215) ten-thousandths of one percent
11 (1%).

12 Upon every person engaging within this City in the business
13 of manufacturing wheat into flour; the tax imposed shall be
14 equal to the value of the flour manufactured, multiplied by the
15 rate of two hundred fifteen (215) ten-thousandths of one percent
16 (1%).

17 E. Upon every person engaging within this City in the
18 business of: (1) printing and of publication of newspapers ((7
19 ~~periodicals or magazines~~)); (2) building, repairing or improving
20 any publicly owned street, place, road, highway, bridge or
21 trestle which is used, or to be used, primarily for foot or
22 vehicular traffic; as to such persons the amount of tax on such
23 business shall be equal to the gross income of the business
24 multiplied by the rate of two hundred fifteen (215) one-
25 thousandths of one percent (1%).

26 F. Upon every other person engaging within this City in
27 any business activity other than or in addition to those
28 enumerated in subsections A, B, C, D, and E above; as to such
persons the amount of tax on account of such activities shall be
equal to the gross income of the business multiplied by the rate
of four hundred fifteen (415) one-thousandths of one percent
(1%). This subsection includes, among others, and without

1 limiting the scope hereof (whether or not title to material used
2 in the performance of such business passes to another by
3 accession, confusion or other than by outright sale), persons
4 engaged in the business of rendering any type of service which
5 does not constitute a sale at retail or a sale at wholesale.
6 This subsection also includes, as authorized by RCW 82.14A,
7 subject to and in accordance with the definitions, deductions
8 and exemptions set forth in RCW Chapter 82.04 insofar as the
9 same may be applicable, national banks, state banks, trust
10 companies, mutual savings banks, building and loan associations,
11 savings and loan associations, loan companies, and other
12 banking, loan, security or financial institutions.

12 Section 3. Effective as of July 31, 1993, Seattle
13 Municipal Code Section 5.44.110 (Ordinance 72630, Section 10 as
14 last amended by Ordinance 116099, Section 2) is further amended
15 as follows:

15 **5.44.110 Deductions allowed in computing**
16 **license fees.**

17 In computing the license fee or tax there may be deducted
18 from the measure of tax the following items:

19 A. Amounts derived by persons, other than those engaged in
20 banking, loan, security or other financial businesses, from
21 investments or the use of money as such;

22 B. Amounts derived from bona fide initiation fees, dues,
23 contributions, donations, tuition fees, charges made for
24 operation of privately operated kindergartens, and endowment
25 funds. The provisions of this subsection shall not be construed
26 to exempt any person, association or society from tax liability
27 upon selling tangible personal property or upon providing
28 facilities or services for which a special charge is made to
members or others; provided, that dues which are for, or
graduated upon, the amount of service rendered by the recipient
thereof are not permitted as a deduction under this chapter;

1 C. The amount of cash discount actually taken by the
2 purchaser. This deduction is not allowed in arriving at the
3 taxable amount under the extractive and/or manufacturing
4 classifications with respect to articles produced or
5 manufactured, the reported values of which, for the purposes of
6 this tax, have been computed according to the provisions of
7 Section 5.44.060;

8 D. The amount of credit losses actually sustained by
9 taxpayers whose regular books of account are kept upon an
10 accrual basis;

11 E. Amounts derived from business which the city is
12 prohibited from taxing under the constitution or laws of the
13 state or the Constitution or laws of the United States, and any
14 amounts collected by the taxpayer as an excise tax, including
15 but not limited to the leasehold excise tax, retail sales and
16 use tax, and admissions tax and gambling tax;

17 F. Amounts received from the United States or any
18 instrumentality thereof or from the state of Washington or any
19 municipal corporation or political subdivision thereof as
20 compensation for, or to support, health or social welfare
21 services rendered by a health or social welfare organization or
22 by a municipal corporation or political subdivision. The terms
23 "health or social welfare services" and "health or social
24 welfare organization," have the meanings contained in RCW
25 82.04.431, enacted as Chapter 196, Laws of 1979, 1st. Ex. Sess.
26 Section 6, as now existing or hereafter amended;

27 G. Amounts excluded by allocation or apportionment
28 pursuant to Section 5.44.070 through 5.44.078 inclusive,
provided, no allocation or apportionment by Section 5.44.072
through 5.44.076 inclusive shall reduce taxes payable with
respect to extracting or manufacturing under subsections A and
B of Section 5.44.030.

1 H. With respect to any non-profit, tax-exempt
2 organization, as defined in SMC Section 5.40.010 C and
3 registered as provided in SMC Section 5.40.080 through 5.40.085,
4 revenues from admission charges, as defined in SMC Section
5 5.40.010, to an opera, concert, dance recital, or like musical
6 entertainment, a play, puppet show or dramatic reading, an
7 exhibition of painting, sculpture, or artistic or historical
8 objects or a museum, historic vessel or science center, when
admission taxes do not apply under SMC Section 5.40.020.

9 I. Amounts received by artistic or cultural organizations
10 which represent income derived from business activities
11 conducted by the organizations, if the artistic or cultural
12 organization is registered as provided in SMC Section 5.40.080
13 through 5.40.085. The term "artistic or cultural organization"
14 has the meanings contained in RCW 82.04.4328, as now existing or
15 hereafter amended.

16 J. Amounts received by nonprofit organizations in respect
17 to (1) presenting individual and community credit education
18 programs including credit and debt counseling; (2) obtaining
19 creditor cooperation allowing a debtor to repay debt in an
20 orderly manner; (3) establishing and administering negotiated
21 repayment programs for debtors; or (4) providing advice or
22 assistance to a debtor with regard to subsection (1), (2), or
23 (3) of this section.

24 Section 4. Effective as of July 31, 1993, Seattle
25 Municipal Code Section 5.48.070 (Ordinance 62662, Section 7 as
26 last amended by Ordinance 116462, Section 1) is further amended
27 as follows:

28 5.48.070 Exceptions and deductions.

 A. There shall be excepted and deducted from the total
gross income upon which the license fee or tax is computed(~~(7-
much thereof as is)~~) amounts derived from business which the

1 City is prohibited from taxing under the Constitution or laws of
2 the United States, the Constitution or laws of the state, or the
3 Charter of the City; and any amounts collected (~~paid~~) by the
4 taxpayer (~~to the United States, the state, or the City~~) as an
5 excise tax (~~levied or imposed upon the sale or distribution~~
6 ~~of property or services~~) and remitted to the taxing authority,
7 including but not limited to the leasehold excise tax, retail
8 sales and use tax, admission tax, and gambling tax .

9 B. Any person subject to a license fee or tax under the
10 provisions of any ordinance of the city, other than this chapter
11 or Ordinance 98776, on account of engaging in any activity for
12 which he or she is liable for tax under this chapter, may deduct
13 the amount of such fee or tax from the amount of fee or tax
14 imposed by this chapter on account of such activity, but such
15 person shall nevertheless, in the manner provided for in this
16 chapter, apply for and procure an occupation license.

17 C. There shall be excluded from the total gross income
18 upon which the license fee or tax is computed the amount of
19 state excise taxes, imposed pursuant to RCW 82.18.010 through
20 RCW 82.18.080 upon persons using the service of a refuse
21 collection business and collected by the refuse collection
22 business.

23 D. There shall be excluded from the total gross income
24 upon which the license fee or tax is computed charges by a
25 taxpayer engaging in a telephone business to a
26 telecommunications company, as defined in RCW 80.04.010, for
27 network telephone service that the purchaser buys for the
28 purpose of resale.

Section 5. This ordinance shall take effect and be in
force thirty days from and after its passage and approval, if
approved by the Mayor; otherwise it shall take effect at the
time it shall become a law under the provisions of the City

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Charter.

Passed by the City Council the 22nd day of November, 1993, and signed by me in open session in authentication of its passage this 22nd day of November, 1993.

Bob Benson
President of the City Council

Approved by me this 26 day of November, 1993.

Norman B. Rice
Norman B. Rice, Mayor

Filed by me this 29 day of November, 1993.

Margaret Carter
Deputy Clerk

(SEAL)

Published _____

Your
Seattle

Department of Licenses and Consumer Affairs



Dale H. Tiffany, Director
Norman B. Rice, Mayor

August 20, 1993

The Honorable Tom Weeks
Seattle City Council
1100 Municipal Building
600 Fourth Avenue
Seattle, Washington 98104

Via: Mayor's Office

Attention: Diana Gale, Director
Office of Management and Budget

Subject: Proposed Business and Occupation Tax Ordinance
Seattle Municipal Code (SMC 5.44)-Proposed Changes

Dear Councilmember Weeks:

The attached ordinance implements a number of Business and Occupation tax changes recently implemented at the State level, as well as making certain housekeeping changes.

EXECUTIVE SUMMARY

Introduction

During the 1993 legislative session, the State legislature passed, and the Governor signed into law, 2nd ESSB 5967. This amendment to the State tax law Chapter 82 RCW, imposed the state and local sales tax on a wide variety of services previously exempt from this tax. At the same time, these service activities were redefined as retail sale activities for the purpose of the State Business and Occupations tax. This redefinition, or reclassification, effectively reduced the state B&O tax on these activities since the retail activity classification incurs a lower tax rate than the service activity classification.

This same law also implemented changes to the way the State B&O tax is imposed upon printing and publishing activities. The law also exempted certain credit counseling and hospital service activities from the B&O tax.

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Effective July 1, 1993, the State of Washington, Department of Revenue made revisions to the Revenue Code of Washington (RCW), Chapter 82.04 (Business & Occupation Tax) implementing these revisions to the State tax laws.

The Department of Licenses and Consumer Affairs administers the business and occupations (B&O) tax at the city level. The city's B&O tax is modeled after the state B&O tax and generally includes the same exemptions from the city tax as the state does, as well as imposing the tax in a similar manner. As the state adopts changes to the B&O tax, the department evaluates the applicability of these changes at the local level and recommend making those changes which are appropriate to the city. Our objective in recommending these changes is to ensure as consistent as possible treatment of like taxpayers under the B&O tax at the state and local level.

The tax changes implemented by the State through the recent tax rule changes are set out below. A more detailed explanation of these changes and their impact on existing City businesses is attached.

- I. (These changes at the State level are recommended for imposition at the City level.)
 - A. Reclassification for publishers of periodicals or magazines from 'Printing and Publishing' to 'Manufacturing', 'Wholesaling', 'Retailing' or 'Service' classifications. (Section 1 of the proposed ordinance.)
 - B. Extension of the definition of 'Sale at Retail' to include certain 'consumer' business service activities; and reclassification of these consumer services to the 'Service' classification. (Section 2 of the proposed ordinance.)
- II. (These changes at the State level are not recommended for imposition at the City level.)
 - C. Reclassification of certain 'service' type businesses to a 'Selected Service' classification and imposition of a higher state B&O tax rate.

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Page Three

Imposing a B&O tax classification commensurate with the State's new 'Selected Service' classification would increase the B&O tax 33.3% on these specific service businesses. The services identified by the State include secretarial and clerical services, computer, data processing and information services, legal services, accounting tax preparation and similar services, engineering and architectural services, business and management consulting, protective services, public relations and advertising, and surveying, geological consulting and real estate appraisal services.

- D. B&O tax rate increase and surcharge for the remaining 'Service and Other Activities.'
- E. Creation of a new 'Financial Services' classification with a B&O tax rate increase for financial service businesses.

In keeping with Mayor Rice's goal of minimizing tax increases, the proposed ordinance does not include language increasing existing B&O tax rates or imposing a surcharge.

III. (These changes at the State level are already included within the City's B&O tax code.)

- F. Imposition of the B&O tax on the income of non profit and publicly operated hospitals (The city currently exempts only the income earned by non-profit, religious entities providing hospital services.)

IV. (The below changes are recommended for implementation in addition to the above changes implemented under recent State rule change.)

- G. Extension of the city's day care business exemption from the B&O tax. (Section 3 of the proposed ordinance.) (The city currently exempts certain types of income earned by day care givers from the B&O tax.)
- H. Exemption of credit counseling service activities from the B&O tax. (Section 4 of the proposed ordinance.)

August 20, 1993

Page Four

- V. The proposed ordinance also includes a housekeeping section which includes language to clarify the City's existing occupation utility tax deduction for state and local excise taxes (e.g., sales tax and fuel taxes) paid by the utility.

A copy of the proposed ordinance implementing the recommended City B&O tax changes is attached. This proposed ordinance would impose the majority of these changes within the City B&O tax, equate the city's day care exemption with that currently in effect at the state level, and clarify the City's existing occupation utility tax deduction for state and local excise taxes paid by the utility.

We are not recommending, and this proposed ordinance does not incorporate, any tax increases at the local level.

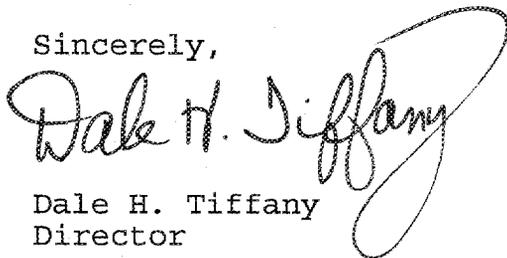
The primary fiscal impact of these changes lies with the change in the tax classification of those service activities now being taxed by the State under the sales tax. OMB has previously estimated this fiscal impact, including both the loss in B&O tax revenues and the gain in local sales tax revenues.

The other changes to the City B&O tax will have a negligible fiscal impact, ranging from \$130,000 to \$150,000. The majority of this impact results from the exemption for certain day care services, up to \$131,000. The remainder represents the fiscal impact of the exemption of credit counseling services.

I hope the above is sufficient to support your review of this proposed ordinance implementing changes to the business and occupation tax code.

Thank you for your attention to this request. If you have any questions or need additional information, please contact me at 4-8444.

Sincerely,



Dale H. Tiffany
Director

DHT:dh
Attachment

Attachment I: Summary of the proposed legislation.

Section 1. - Amends SMC Section 5.44.026 (2)

The proposed ordinance extends the definition of "sale at retail" or "retail sale" to include a number of 'consumer' services. These changes in definitions were made at the State, effective July 31, 1993, in order to effect the implementation of the state and local sales and use tax to the income from these service activities. With this change, the State also shifted the requirement to report the income from these activities from the Service B&O tax classification to the Retailing B&O tax classification.

This same change in reporting status is implemented at the City level with the proposed change in definition of retail sale. The service activities affected will be subject to the retailing B&O tax, at .215%, and rather than the service B&O tax, at .415%.

The following 'consumer' services have been added to the retail tax classification:

- * Equipment rental with operator - Equipment rental with operator services is now defined as retail B&O. However, where the charge is not for the rental of equipment with an operator, but is for providing subcontract services, the income will be taxable based on the nature of the services performed. For example a person who provides transportation services will continue to be taxable under the service B&O classification. (The existing exclusion eliminated.)
- * Landscape maintenance and horticultural services. - This includes grass cutting, hedge trimming, watering lawns and other plants, pruning or trimming of trees and shrubs, fertilizing, pest spraying, etc.
- * Service Charges for professional sports tickets. - This includes the fee charged by independent ticket agents for handling the sale of tickets to attend professional sporting events
- * Guided tours and charters. - Charges for guided tours and charters.
- * Physical fitness services. - This includes all service activities relating to physical fitness such as, weight lifting, running tracks, exercise equipment, aerobics classes, personal trainers, etc. Certain activities as swimming, tennis, etc. were previously a retail B&O activity and continue to be taxable as such.

- * Tanning and tattoo services.
- * Steam, sauna and Turkish baths.
- * Massage services. - Massage services which are performed as part of physical therapy services will not be considered retail. For this rule, "physical therapy services" is defined as a treatment plan for physical illness, injury, or accident ordered or prescribed by a doctor. Physical therapy services will not be considered to be retail activities regardless of who performs the services. Physical therapy services, when performed under a doctor's order, will continue to be taxable under the service B&O classification, including any massage services which are part of the physical therapy. The therapist must keep a copy of the doctor's referral on file.
- * Escort and dating services
- * Coin-operated laundry facilities. - This includes coin-operated laundry facilities in apartment houses, hotels, motels, or similar locations where the facilities are for the exclusive use of the tenants.

Additionally, exemption from the definition of sale (and therefore from the State and local sales tax and continued taxation under the Service classification) is provided for agents of enhanced pollination. The exemption is expanded for spray materials from farmers of specific products to all farmers.

This reclassification of certain service B&O activities to retail B&O classification will result in a 47% reduction in B&O tax collection. The Service tax rate is .00415 while the retail tax rate is .00215. The decrease in B&O receipts will be more than offset by the 1% local sales tax that will be collected from the reclassification. It was this imposition of the State and local sales tax on these service activities which precipitated the changes in the classification for B&O tax purpose

Impact on City B&O Tax and Taxpayers:

The proposed ordinance revises the current Business and Occupation Tax Ordinance, SSMC Chapter 5.44.026(2) to extend the definition of "Sales at Retail" and to impose the Retailing B&O tax rate of .215% on these service activities.

On the taxpayer level, businesses performing the above services will report all revenue activity under the Retailing classification and will benefit from a tax rate reduction from .00415 to .00215.

Section 2. - Amends SMC Section 5.44.030 (E)

Publishers of periodicals or magazines are no longer taxable under the printing and publishing B&O tax classification. These businesses, effective July 31, 1993, will be taxable under the wholesaling or retailing B&O tax classification on income from the sales of periodicals or magazines made inside the state. The income from sales to persons outside the state will be taxable under the manufacturing B&O tax.

Sales of advertising by publishers will be taxable under the Service and Other Business B&O tax classification.

Impact on City B&O Tax and Taxpayers:

The proposed ordinance revises the current Business and Occupation Tax Ordinance, SMC Chapter 5.44.030(E) to include the above proposed changes. When subscription sales of magazines or periodicals are reclassified from Printing and Publishing to Manufacturing, Wholesaling or Retailing the B&O tax rate will not change. However, when advertising revenues are reclassified from Printing and Publishing to Service, taxes collected will increase from .215% to .415% of taxable gross income, because of the higher tax rate of the Service B&O tax classification.

On the taxpayer level, publishers of periodicals or magazines will report subscription revenues under the Manufacturing (out-of-state) or the Wholesaling or Retailing (in-state) classification whichever is appropriate and report advertising revenues under the Service tax classification. The impact of this change is an increase from a .215% rate to a .415% rate on advertising sales because of the higher Service rate.

Section 3. - Amends SMC Section 5.44.110 (J)

The proposed revision to Seattle Municipal Code, Chapter 5.44 (Business and Occupation Tax) provides a deduction for nonprofit organizations providing credit services. This exemption has been adopted by the state as an amendment to RCW 82.04 The effective date of this proposed change is July 31, 1993.

The deduction for non-profit credit service organizations is for amounts received by the organization for providing individual and community credit education programs, obtaining creditor cooperation in repayment programs and administering negotiated repayment programs.

The revenue impact for city B&O tax will result in a minimal decrease. The revenue impact to the state from this change effected one business and reduced annual state B&O revenue by \$21,000.

Section 4. - Amends SMC Section 5.44.110 (b)

Also, effective July 31, 1993 a deduction for privately operated kindergartens is proposed and is consistent with the deduction as authorized by the state in RCW 82.04.4282. Although the deduction identifies only privately operated kindergartens, the State has interpreted this deduction to apply to all income earned by profit and nonprofit nursery schools and preschools, and to that income earned by day care centers for the care of children below the first grade level. Kindergartens are generally for children below the first grade level and it appears the state allowed this deduction for all child care services under this grade level.

We estimate the revenue impact of no more than \$131,500, annually from exempting income earned by day care and related organizations. This estimate represents a maximum as it is based on reported income from day care, nurseries and pre-schools of all types and does not incorporate the state's "1st grade" criterion for exemption. (A further discussion of this issue is included in March 12, 1993 memo to OMB, attached.)

Section 5. - Amends SMC Section 5.48.070 (A)

This revision to the Seattle Municipal Code, Chapter 5.48 (Occupation Utility Tax) is a housekeeping ordinance change intended to clarify the existing language allowing a deduction from the measure of the tax, i.e., gross income, for certain excise taxes paid by the utility. The criteria for deductibility is whether the utility collects the tax from the customer for the taxing body. This criteria then limits the deductible excise taxes to the sales tax, leasehold excise tax, and a variety of vehicle and fuel taxes, the latter already being deductible under the City B&O tax.

This change should not generate a fiscal impact as it is simply a clarification of existing law.

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Tom Mark

_____	_____
_____	_____
_____	_____
_____	_____

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

City of Seattle

Executive Department—Office of Management and Budget

Diana Gale, Director
Norman B. Rice, Mayor



OK
[Signature]
9/21/93

September 21, 1993

The Honorable Mark Sidran
City Attorney
City of Seattle

Dear Mr. Sidran:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING DEPARTMENT Licenses and Consumer Affairs

SUBJECT: AN ORDINANCE relating to City excise taxes, amending Seattle Municipal Code Section 5.44.026 to amend the definition of "Sale at retail" or "retail sale"; amending Section 5.44.030 to change the classification of periodicals and magazines; amending Section 5.44.110 to add a deduction for privately operated kindergartens and non-profit organizations providing credit counseling services; and amending Section 5.48.070 to clarify the deduction of excise taxes.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMB. Any specific questions regarding the legislation can be directed to Anne Fiske at 684-5572.

Sincerely,

Norman B. Rice
Mayor

by

DIANA GALE
Budget Director

DG/af/rs

Enclosure

STATE OF WASHINGTON - KING COUNTY

37586
City of Seattle

—ss.

No. IN FULL

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

ORD:116951

was published on
12/10/93

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

H. Baker

Subscribed and sworn to before me on
12/10/93

S. Swift

Notary Public for the State of Washington,
residing in Seattle

City of Seattle
ORDINANCE 116951

ORDINANCE relating to City excise taxes, amending Seattle Municipal Code Section 5.44.026 to amend the definition of "Sale at retail" or "retail sale"; amending Section 5.44.030 to change the classification of periodicals and magazines; amending Section 5.44.110 to add a deduction for privately operated kindergartens and non-profit organizations providing credit counselling services; and amending Section 5.48.070 to clarify the deduction of excise taxes.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Effective as of July 1, 1993, Seattle Municipal Code Section 5.44.026 (Ordinance 71630, Section 2, as last amended by Ordinance 113690, Section 1) is further amended as follows:

5.44.026 Definitions of "sale".

1. "Sale" includes the exchange of property as well as the sale thereof for money, and also includes conditional sale contracts, leases with option to purchase and any other 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 shall also be construed to include the furnishing of food, drink, or meals for compensation, whether consumed upon the premises or not.

2. "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. ((i)) ((p)) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person((r)); or

B. ((ii)) ((t)) 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((r)); or

C. ((iii)) ((p)) Purchases for the purpose of consuming the property purchased in producing for a 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((r)); or

D. ((iv)) ((p)) 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((r)); or

sandblasting;

E. ((v)) ((t)) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 42.16 RCW;

F. ((vi)) ((t)) The sale of and charge made for the furnishing of lodging and all other 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 (1) month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

G. ((vii)) ((t)) The sale of or charge made for tangible real property, labor and services taxable under A. ((i)) B. ((ii)) C. ((iv)) D. ((v)) E and ((vi)) F ((above)) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this ((paragraph)) subsection shall be construed to modify ((the first paragraph)) subsection 1 of this section and nothing contained in ((the first paragraph)) subsection 1 of this section shall be construed to modify this ((paragraph)) subsection.

((b*)) 1. The term "((B)) sale at retail" or "retail sale" 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:

A. ((i)) ((a)) Amusement and recreation ((businesses)) services including but not limited to golf, pool, billiards, skating, bowling, ski lifts, ((and)) tows, and others;

B. ((ii)) ((a)) Abstract, title insurance and escrow ((businesses)) services;

C. ((iii)) ((c)) Credit bureau ((businesses)) services;

D. ((iv)) ((a)) Automobile parking and storage garage ((businesses)) services((--));

E. Landscape maintenance and horticultural services but excluding horticultural services provided to farmers;

F. Service charges associated with tickets to professional sporting events;

G. Guided tours and guided charters; and

H. The following personal services: physical fitness services, tanning salon services, tattoo parlor services, massage services, steam bath services, Turkish bath services,