



Ordinance No. 124384

**CITY OF SEATTLE**

**ORDINANCE** 124384

**COUNCIL BILL** 117975

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3  
4 AN ORDINANCE relating to taxation; repealing Seattle Municipal Code Section 5.45.085  
5 relating to the taxation of related, controlled, or affiliated persons; and directing the  
6 Director of Finance and Administrative Services to adopt rules to determine the proper  
7 amount of business license taxes due from persons engaged in business activities or  
8 transactions with related, controlled, or affiliated persons.

9  
10 WHEREAS, Seattle Municipal Code Chapter 5.45, which is based on the model ordinance in  
11 accordance with Chapter 35.102 RCW, mandates that the City of Seattle's business  
12 license tax is levied upon every person for the act or privilege of engaging in business  
13 activities within the city; and

14 WHEREAS, the City of Seattle desires to continue to tax businesses engaging in business  
15 activities with affiliated persons, to continue to require that taxpayers clearly reflect their  
16 true gross income attributable to business activities between affiliated persons, and  
17 prevent the avoidance of taxes related to such activities; and

18 WHEREAS, in 2009 the City enacted ordinance 123063, which stated how the Director of  
19 Finance of Finance and Administrative Services would determine the gross income on  
20 which the City's business license tax would be calculated when the relationship between  
21 affiliated persons was such that the reported gross income from business activities  
22 between such persons was not indicative of the true gross income attributable to those  
23 business activities; and

24 WHEREAS, the Washington State Legislature passed Second Engrossed Substitute Senate Bill  
25 No. 6143 during the 2010 legislative session that directed the Washington Department of  
26 Revenue to conduct a review and provide a report on the state's taxation of transactions  
27 between affiliated persons; and

28 WHEREAS, both the Washington Department of Revenue and the Director of Finance and  
Administrative Services have engaged in meetings with taxpayers to examine the taxation  
of businesses engaged in transactions between affiliated persons; and

WHEREAS, in order to provide the Director of Finance and Administrative Services with the  
ability and flexibility to establish through the rulemaking process under SMC Section  
5.55.165 the best manner in which to determine the proper amount of Seattle business  
license tax that is attributable to business transactions between related, controlled, or

1 affiliated persons, and to prevent the avoidance of taxes in regards to such activities or  
2 transactions; NOW, THEREFORE,

3 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

4  
5 **Section 1.** Section 5.45.085 of the Seattle Municipal Code is hereby repealed.

6 ~~((5.45.085—Related person transactions.~~

7  
8 A. ~~When the relationship between related, controlled or affiliated persons is such that~~  
9 ~~the gross income from business activities between such persons is not indicative of the market~~  
10 ~~value of the activities or transactions, the Director shall determine the market value upon which~~  
11 ~~the Seattle business license tax shall be levied.~~

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13  
14 ~~The purpose of this section is to ensure taxpayers clearly reflect their true gross income~~  
15 ~~attributable to business activities or transactions between related, controlled or affiliated persons,~~  
16 ~~and to prevent the avoidance of taxes in regards to such activities or transactions. Business~~  
17 ~~activities or transactions between one related, controlled or affiliated person and another will be~~  
18 ~~subject to special scrutiny by the Director to ascertain whether common control is being used to~~  
19 ~~reduce, avoid, or escape taxes. The authority of the Director to determine true taxable income~~  
20 ~~extends to any case in which either by inadvertence, sham, or design the taxable income of a~~  
21 ~~related, controlled or affiliated person is other than it would have been had the person, in the~~  
22 ~~conduct of its affairs, been dealing at arm's length with an unrelated, uncontrolled or unaffiliated~~  
23 ~~person. The Director will consider whether the persons are motivated by business purposes other~~  
24 ~~than tax avoidance or are principally motivated by the desire to avoid taxes.~~

1           ~~B.—— The Director will consider the following to determine whether an arrangement~~  
2 ~~between related, controlled, or affiliated persons results in an improper or inaccurate valuation of~~  
3 ~~the activity:~~

4  
5           ~~1.—— Whether the persons are motivated by business purposes other than tax avoidance~~  
6 ~~or are principally motivated by tax avoidance. In no case shall the mere evasion or avoidance of~~  
7 ~~taxation be regarded as a business purpose.~~

8           ~~2.—— Whether the separate businesses of the related, controlled or affiliated persons~~  
9 ~~have economic substance because a reasonable possibility of obtaining a profit exists, apart from~~  
10 ~~achieving tax benefits.~~

11           ~~3.—— Whether one person has a significant amount of capital gains, interest, dividend or~~  
12 ~~similar income, but minimal capital, activity, or expenses, because essential business functions~~  
13 ~~are performed for the person by another without arm's length consideration.~~

14           ~~4.—— In determining whether the related persons or entities are motivated by tax~~  
15 ~~avoidance or whether they possess economic substance, the Director shall consider the~~  
16 ~~following:~~

17  
18           ~~a.—— The related person has an identifiable place of business with supporting business~~  
19 ~~records.~~

20  
21           ~~b.—— The related person maintains books and related accounting records.~~

22           ~~c.—— The related person has a staff of employees or has engaged independent~~  
23 ~~contractors adequate in number and with sufficient expertise to conduct its business activities.~~

1           d. ~~—The controlling person so controls and dominates the finances, policy and~~  
2 ~~business activities of the related person that the related person has virtually no separate~~  
3 ~~existence.~~

4           e. ~~—The form employed for conducting business is a sham.~~

5           C. ~~—The Director will use the following methods to assign a value to business~~  
6 ~~activities or transactions between related, controlled, or affiliated persons when the Director~~  
7 ~~determines that a true or market value has not been reported on a tax return:~~

8           1. ~~—Fair market valuation. A value determined by comparing charges made for similar~~  
9 ~~goods or services of like quality and character, in similar quantities, under comparable conditions~~  
10 ~~of sale, to comparable unrelated party purchasers, including subsidies and bonuses.~~

11           2. ~~—Cost basis. If no comparable goods or services can guide the Director in~~  
12 ~~ascertaining the value, then such value may be determined upon a cost plus margin basis. All~~  
13 ~~costs—including direct and indirect overhead costs—attributable to the particular article, good or~~  
14 ~~service shall be included. An appropriate profit margin shall also be added to the costs.~~

15           3. ~~—Amount of dividends or loans received. If a parent corporation or controlling~~  
16 ~~person provides services that are more than general oversight duties to a subsidiary or controlled~~  
17 ~~person and receives no payments, or such payments are not at market value, but then receives~~  
18 ~~dividends or loans from the subsidiary or controlled person for the services rendered, the~~  
19 ~~Director shall deem the dividends or loans received to be compensation for the services rendered.~~  
20 ~~If the total amount received from the subsidiary or controlled person, including such dividends or~~  
21 ~~loans, is less than the market value of such service, the Director will tax the services rendered at~~

1 ~~the market value. If the amount of dividends or loans can be shown to be higher than the market~~  
2 ~~value of the services then the market value will be used.~~

3  
4 ~~General oversight duties of a parent corporation include high level management direction,~~  
5 ~~strategic planning, stewardship duties or assisting in the financing of the controlled persons.~~  
6 ~~These duties can be provided without taxation of the dividends, loans or compensation from~~  
7 ~~subsidiaries or controlled persons. However, providing services for a subsidiary's or controlled~~  
8 ~~person's customers, or providing accounting and administrative services, or providing marketing~~  
9 ~~services, or providing other lower level management duties for a subsidiary or controlled person,~~  
10 ~~or any similar activities will be subject to a market value determination and taxation.~~

11  
12 D.—— The following definitions apply within this section:

13  
14 1.—— "Market value" or "arms length consideration" is the amount that would be paid or  
15 received for similar activities or transactions of like quantity, quality, or character under similar  
16 circumstances and conditions by other persons where no common interest exists between the  
17 persons involved in the activities or transactions.

18  
19 2.—— "Related, controlled or affiliated person" means a person or entity that controls, or  
20 is controlled as the case may be, through common ownership. "Related," "controlled" and  
21 "affiliated" are used interchangeably when describing a subsidiary, however, related and  
22 affiliated can also mean the parent entity. The degree of ownership is unimportant, however the  
23 ability to control or influence the related, controlled or affiliated person is important in  
24

1 ~~establishing whether relationships and transactions serve a business purpose, produce income, or~~  
2 ~~merely avoid taxes.))~~

3  
4 **Section 2.** The Seattle City Council finds that under Seattle Municipal Code Chapter  
5 5.45, as amended by this ordinance, the City's business license tax continues to be levied upon  
6 every person, unless specifically exempted, for the act or privilege of engaging in business  
7 activities within the City, regardless of the person's affiliation to any other person. The repeal of  
8 SMC Section 5.45.085 in Section 1 of this ordinance will provide the Director of Finance and  
9 Administrative Services with the ability and flexibility to establish, through the rulemaking  
10 process authorized under SMC Section 5.55.165, the best manner in which to calculate the  
11 proper amount of the Seattle business license tax due under SMC Chapter 5.45 for business  
12 activities between related, controlled, or affiliated persons, and to prevent the avoidance of taxes  
13 with regard to such activities.  
14

15  
16 **Section 3.** The repeal of SMC Section 5.45.085 in Section 1 of this ordinance shall not  
17 alter the obligation of related, controlled, or affiliated persons engaged in business activities  
18 within the City to pay the City's business license tax, nor shall it affect any existing right  
19 acquired, liability or obligation incurred, or any rule, order, or proceeding previously adopted  
20 under that Section of the Code.  
21

22  
23 **Section 4.** The Director of Finance and Administrative Services shall adopt rules to  
24 determine the proper amount of the Seattle business license tax due under the Seattle Municipal  
25 Code from persons engaged in business activities or transactions with related, controlled or  
26

1 affiliated persons. This ordinance does not alter the authority of the City to tax persons engaged  
2 in business activities or transactions with related, controlled, or affiliated persons.

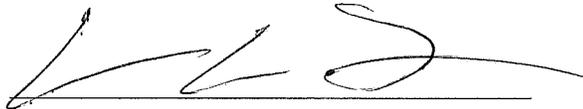
3 **Section 5.** This ordinance shall take effect and be in force 30 days after its approval by  
4 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
5 shall take effect as provided by Seattle Municipal Code Section 1.04.020.  
6

7  
8 Passed by the City Council the 16<sup>th</sup> day of Dec., 2013, and  
9 signed by me in open session in authentication of its passage this  
10 16<sup>th</sup> day of Dec., 2013.

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12 

13 President \_\_\_\_\_ of the City Council

14  
15 Approved by me this 23<sup>rd</sup> day of December, 2013.

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18 Michael McGinn, Mayor

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20 Filed by me this 23<sup>rd</sup> day of December, 2013.

21  
22 

23 Monica Martinez Simmons, City Clerk

24 (Seal)

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Finance and Administrative Services	Glen Lee/684-8079	Jennifer Devore/615-1328

**Legislation Title:** AN ORDINANCE relating to taxation; repealing Seattle Municipal Code Section 5.45.085 relating to the taxation of related, controlled, or affiliated persons; and directing the Director of Finance and Administrative Services to adopt rules to determine the proper amount of business license taxes due from persons engaged in business activities or transactions with related, controlled, or affiliated persons.

**Summary of the Legislation:**

This Ordinance repeals Seattle Municipal Code Section 5.45.085, which contains an unutilized procedure provided to City tax administrators to assess business and occupation tax on gross receipts from transactions between related, affiliated, or mutually controlled entities.

**Background:**

The business and occupation tax is assessed on the gross receipts earned by all entities conducting business in Seattle. This includes gross receipts earned from transactions between entities that are legally related to one another, such as subsidiaries. In 2009, the City enacted Ordinance Number 123063. One provision of this ordinance gave City tax administrators specific authority to estimate tax liabilities by way of assigning values to transactions between related entities as if the transactions were conducted on the open market between non-related firms.

This particular provision, however, has proven difficult to effectively implement and was made less relevant due to subsequent court decisions regarding tax liabilities of related entities. In addition, some taxpayers have complained that this provision creates confusion about how to fulfill their tax liabilities. Since 2009, the City has not used this specific authority nor has a practical means of doing so in the future.

Please check one of the following:

**This legislation does not have any financial implications.**

**This legislation has financial implications.**

**Appropriations:**

Fund Name and Number	Department	Budget Control Level*	2013 Appropriation	2014 Anticipated Appropriation
<b>TOTAL</b>				

Appropriations Notes: There are no budget appropriations or budget decreases associated with this ordinance.

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

Fund Name and Number	Department	Revenue Source	2013 Revenue	2014 Revenue
<b>TOTAL</b>			<b>\$ 0</b>	<b>\$0</b>

Revenue/Reimbursement Notes: The intent of the relevant sections of Ordinance 123063 was to ensure that entities would continue to identify and pay their true tax liabilities associated with gross earnings from transactions with related entities. City tax administrators perceived at the time that some businesses were developing corporate structures and tax reporting practices that would allow them to avoid paying their true tax liabilities. As a result, tax administrators did not believe that Ordinance 123063 would result in net new tax revenue to the City, but rather would allow the City to continue to collect the true tax obligations from related entity transactions paid at that time.

Since City tax administrators never utilized the related provisions provided for in Ordinance 123063, repealing this section of the Code should not result in revenue losses to the City. In addition, State of Washington court decisions regarding tax liabilities from related entity transactions affirm the City's ability to continue to assess the business and occupation tax on gross receipts from these transactions.

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:**

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2013 Positions	2013 FTE	2014 Positions*	2014 FTE*
<b>TOTAL</b>							

Position Notes: None.

**Do positions sunset in the future?** Not applicable.

**Spending/Cash Flow:**

<b>Fund Name &amp; #</b>	<b>Department</b>	<b>Budget Control Level*</b>	<b>2013 Expenditures</b>	<b>2014 Anticipated Expenditures</b>
<b>TOTAL</b>			<b>\$ 0</b>	<b>\$ 0</b>

Spending/Cash Flow Notes: none.

**Other Implications:**

- a) **Does the legislation have indirect financial implications, or long-term implications?**  
No.
- b) **What is the financial cost of not implementing the legislation?**  
None.
- c) **Does this legislation affect any departments besides the originating department?**  
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**  
None.
- e) **Is a public hearing required for this legislation?** No.
- f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?** No.
- g) **Does this legislation affect a piece of property?** No.
- h) **Other Issues:** None.

**List attachments to the fiscal note below:** None.

FILED  
CITY OF SEATTLE

2014 FEB -6 PM 4: 22

CITY CLERK

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STATE OF WASHINGTON -- KING COUNTY

--SS.

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306496  
CITY OF SEATTLE, CLERKS OFFICE

No. 124380,381,382,383,384,85

**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 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

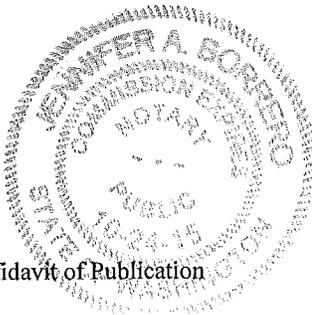
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TITLE ONLY ORDINANCES

was published on

01/15/14

The amount of the fee charged for the foregoing publication is the sum of \$119.60 which amount has been paid in full.



Affidavit of Publication

*Paula Olesky*

Subscribed and sworn to before me on

01/15/2014

*John F. [Signature]*

Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle Title Only Ordinances

The full text of the following legislation, passed by the City Council on December 16, 2013, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>.

Contact: Office of the City Clerk at (206) 684-8344.

#### ORDINANCE NO. 124380

AN ORDINANCE regarding the Seattle Indian Services Commission, a City-chartered public corporation (the "Commission"); approving the Commission's transfer of the Leschi Center to the Seattle Indian Health Board subject to certain terms and conditions; authorizing the Mayor or his designee to negotiate and execute an amendment to the Leschi Center Cooperation Agreement authorized by Ordinance 117014, most recently amended by Ordinance 120730; and authorizing the Mayor or his designee to review, approve, and execute any additional documents necessary for the Commission to effect the transfer in compliance with all legal requirements.

#### ORDINANCE NO. 124381

AN ORDINANCE relating to the City Light Department; authorizing the General Manager and Chief Executive Officer to execute an agreement with Union Square LLC, one of three participants in the Department's Pay for Performance pilot program.

#### ORDINANCE NO. 124382

AN ORDINANCE relating to the City Light Department; authorizing the General Manager and Chief Executive Officer to execute an agreement with Talon Portfolio Services, LLC, one of three participants in the Department's Pay for Performance pilot program.

#### ORDINANCE NO. 124383

AN ORDINANCE relating to the City Light Department; authorizing the General Manager and Chief Executive Officer to execute an agreement with Lake Union Building LLC, one of three participants in the Department's Pay for Performance pilot program.

#### ORDINANCE NO. 124384

AN ORDINANCE relating to taxation; repealing Seattle Municipal Code Section 5.45.085 relating to the taxation of related, controlled, or affiliated persons; and directing the Director of Finance and Administrative Services to adopt rules to determine the proper amount of business license taxes due from persons engaged in business activities or transactions with related, controlled, or affiliated persons.

#### ORDINANCE NO. 124385

AN ORDINANCE relating to the 2008 Parks and Green Spaces Levy; transferring jurisdiction of the Morningside Substation Property from Seattle City Light to the Department of Parks and Recreation for open space, park, and recreation purposes; and increasing appropriations to the Department of Parks and Recreation in the 2013 Budget; all by a three-fourths vote of the City Council.

Date of publication in the Seattle Daily Journal of Commerce, January 15, 2014.

1/15(306496)