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Glen Lee/kcm
FAS, Tax Information Confidentiality ORD
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ORDINANCE _____

AN ORDINANCE relating to the business license tax; amending the Seattle Municipal Code to provide that all return or tax information is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330; and amending Section 5.55.200 of the Seattle Municipal Code in connection therewith.

WHEREAS, the Washington State Legislature enacted RCW 35.102 in order to encourage greater uniformity with regard to city business and occupation taxes; and

WHEREAS, under RCW 35.102.145, a city that imposes a business and occupation tax may by ordinance provide that return or tax information is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330; and

WHEREAS, the proposed amendment will provide that all return or tax information provided to the City is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 5.55.200 of the Seattle Municipal Code, last amended by Ordinance 121266, is amended as follows:

5.55.200 Public Disclosure -- Confidentiality --Information sharing((-))

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

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

~~2. "Tax information" means:~~

~~a. A taxpayer's identity;~~

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



1 e. Whether the taxpayer's return was, is being, or will be examined or subject to other
2 investigation or processing; or

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

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

7 B. Tax returns and information may be "public records" as that term is defined in RCW
8 42.17.020. The Director shall not disclose tax information if disclosure would violate RCW
9 Chapter 42.17 or any other law prohibiting disclosure.

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

11 1. The Mayor, members of the City Council, City Attorney, City Clerk, or their
12 authorized designees, for official purposes;

13 2. Any agency or officer of the United States of America, the State of Washington, or a
14 tax department of any state, county, city or town, provided that the agency or officer grants
15 substantially similar privileges to the City, and further provided that the agency or officer shall
16 not further disclose the tax information except as authorized in this section.

17 3. The taxpayer to whom it pertains or to such person or persons as the taxpayer may
18 designate in writing as the taxpayer's designee; except that tax information not received from the
19 taxpayer shall not be so disclosed if the Director determines that such disclosure would
20 compromise any investigation or litigation by any federal, state, or local government agency in
21 connection with the civil or criminal liability of the taxpayer or another person, or that such
22 disclosure would identify a confidential informant, or that such disclosure is contrary to any
23 agreement entered into by the Director that provides for the reciprocal exchange of information
24 with other government agencies which agreement requires confidentiality with respect to such
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1 ~~information unless such information is required to be disclosed to the taxpayer by the order of~~
2 ~~any court.~~

3 ~~D. Nothing in this section shall prevent the use of tax information by the Director or any~~
4 ~~other agency in any civil or criminal action involving any license, tax, interest, or penalty.~~

5 ~~E. A person disclosing tax information to a person not entitled to receive that information~~
6 ~~under this section is guilty of a misdemeanor, and if the person violating this privacy requirement~~
7 ~~is an officer or employee of the City, such person may be required to forfeit their office or~~
8 ~~employment.))~~

9
10 A. For purposes of this section:

11 1. "Disclose" means to make known to any person in any manner whatever a
12 return or tax information;

13 2. "Return" means a tax or information return or claim for refund required by, or
14 provided for or permitted under, the Seattle Municipal Code, which is filed with the Director, on
15 behalf of, or with respect to a person, and any amendment or supplement thereto, including
16 supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

17 3. "Tax information" means:

18 a. A taxpayer's identity,

19 b. The nature, source, or amount of the taxpayer's income, payments, receipts,
20 deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies,
21 overassessments, or tax payments, whether taken from the taxpayer's books and records or any
22 other source,

23 c. Whether the taxpayer's return was, is being, or will be examined or subject
24 to other investigation or processing, and



1 d. Other data received by, recorded by, prepared by, furnished to, or collected
2 by the Director with respect to the determination of the existence, or possible existence, of
3 liability, or the amount thereof, of a person under the Seattle Municipal Code for a tax, penalty,
4 interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents
5 that do not disclose information related to a specific or identifiable taxpayer do not constitute tax
6 information under this section. Nothing in this chapter requires any person possessing data,
7 material, or documents made confidential and privileged by this section to delete information
8 from such data, material, or documents so as to permit its disclosure;

9 4. "City agency" means every City office, department, division, bureau, board,
10 commission, or other City agency;

11 5. "Taxpayer identity" means the taxpayer's name, address, telephone number,
12 registration number, or any combination thereof, or any other information disclosing the identity
13 of the taxpayer.

14
15 B. Returns and tax information are confidential and privileged, and except as authorized
16 by this section, neither the Director nor any other person may disclose any return or tax
17 information.

18
19 C. This section does not prohibit the Director from:

20 1. Disclosing such return or tax information in a civil or criminal judicial
21 proceeding or an administrative proceeding:

22 a. In respect of any tax imposed under the Seattle Municipal Code if the
23 taxpayer or its officer or other person liable under the Seattle Municipal Code is a party in the
24 proceeding; or



1 b. In which the taxpayer about whom such return or tax information is sought
2 and another City agency are adverse parties in the proceeding;

3 2. Disclosing, subject to such requirements and conditions as the Director
4 prescribes by rules adopted pursuant to Section 5.55.165 such return or tax information regarding
5 a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a
6 request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the
7 extent necessary to comply with a request for information or assistance made by the taxpayer to
8 such other person. However, tax information not received from the taxpayer must not be so
9 disclosed if the Director determines that such disclosure would compromise any investigation or
10 litigation by any federal, state, or local government agency in connection with the civil or
11 criminal liability of the taxpayer or another person, or that such disclosure would identify a
12 confidential informant, or that such disclosure is contrary to any agreement entered into by the
13 Director that provides for the reciprocal exchange of information with other government
14 agencies which agreement requires confidentiality with respect to such information unless such
15 information is required to be disclosed to the taxpayer by the order of any court;

16 3. Publishing statistics so classified as to prevent the identification of particular
17 returns or reports or items thereof;

18 4. Disclosing such return or tax information, for official purposes only, to the
19 Mayor or City Attorney, or to any City agency, or to any member of the City Council or their
20 authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of
21 industry or the professions;

22 5. Permitting the Director's records to be audited and examined by the proper City
23 or state officer, his or her agents and employees;

24 6. Disclosing any such return or tax information to a peace officer as defined in
25 RCW 9A.04.110 or county or City prosecuting attorney, for official purposes. The disclosure
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1 may be made only in response to a search warrant, subpoena, or other court order, unless the
2 disclosure is for the purpose of criminal tax enforcement. A peace officer or county or City
3 prosecuting attorney who receives the return or tax information may disclose that return or tax
4 information only for use in the investigation and a related court proceeding, or in the court
5 proceeding for which the return or tax information originally was sought;

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

12 8. Disclosing any such return or tax information to the United States Department
13 of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department
14 of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection
15 agencies of the United States Department of Homeland Security, the United States Coast Guard,
16 the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury,
17 and the United States Department of Transportation, or any authorized representative of these
18 federal agencies, for official purposes;

19 9. Disclosing, in a manner that is not associated with other tax information, the
20 taxpayer name, entity type, business address, mailing address, revenue tax registration numbers,
21 reseller permit numbers and the status of such permits, North American industry classification
22 system or standard industrial classification code of a taxpayer, and the dates of opening and
23 closing of business. This subsection may not be construed as giving authority to the Director to
24 give, sell, or provide access to any list of taxpayers for any commercial purpose;



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

5 11. Disclosing such return or tax information to the United States department of
6 agriculture for the limited purpose of investigating food stamp fraud by retailers;

7 12. Disclosing to a financial institution, escrow company or title company, in
8 connection with specific real property that is the subject of a real estate transaction, current
9 amounts due the Director for a filed judgment, or lien against the real property;

10 13. Disclosing to a person against whom the Director has asserted liability as a
11 successor under Section 5.55.130 return or tax information pertaining to the specific business of
12 the taxpayer to which the person has succeeded;

13 14. Disclosing real estate excise tax affidavit forms filed under Chapter 5.64 in
14 the possession of the Director, including real estate excise tax affidavit forms for transactions
15 exempt or otherwise not subject to tax; or

16 15. Disclosing such return or tax information to the court or hearing examiner in
17 respect to the Director's application for a subpoena if there is probable cause to believe that
18 records in the possession of a third party will aid the Director in connection with its official
19 duties relating to an audit, collection activity, or a civil or criminal investigation.

20
21 D.1. The Director may disclose return or taxpayer information to a person under
22 investigation or during any court or administrative proceeding against a person under
23 investigation as provided in this subsection 5.55.200.D. The disclosure must be in connection
24 with the Director's official duties relating to an audit, collection activity, or a civil or criminal
25 investigation. The disclosure may occur only when the person under investigation and the person
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1 in possession of data, materials, or documents are parties to the return or tax information to be
2 disclosed. The Director may disclose return or tax information such as invoices, contracts, bills,
3 statements, resale or exemption certificates, or checks. However, the Director may not disclose
4 general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable
5 ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax
6 returns, tax return workpapers, or other similar data, materials, or documents.

7 2. Before disclosure of any tax return or tax information under this subsection
8 5.55.200.D, the Director must, through written correspondence, inform the person in possession
9 of the data, materials, or documents to be disclosed. The correspondence must clearly identify
10 the data, materials, or documents to be disclosed. The Director may not disclose any tax return or
11 tax information under this subsection 5.55.200.D until the time period allowed in subsection
12 5.55.200.D.3 has expired or until the court has ruled on any challenge brought under subsection
13 5.55.200.D.3.

14 3. The person in possession of the data, materials, or documents to be disclosed
15 by the Director has twenty days from the receipt of the written request required under subsection
16 5.55.200.D.2 to petition the superior court of the county in which the petitioner resides for
17 injunctive relief. The court must limit or deny the request of the Director if the court determines
18 that:

19 a. The data, materials, or documents sought for disclosure are cumulative or
20 duplicative, or are obtainable from some other source that is more convenient, less burdensome,
21 or less expensive;

22 b. The production of the data, materials, or documents sought would be
23 unduly burdensome or expensive, taking into account the needs of the Director, the amount in
24 controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or



1 c. The data, materials, or documents sought for disclosure contain trade secret
2 information that, if disclosed, could harm the petitioner.

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

6 5. Requesting information under subsection 5.55.200.D.2 that may indicate that a
7 taxpayer is under investigation does not constitute a disclosure of tax return or tax information
8 under this section.

9
10 E. Service of a subpoena issued by the court or a hearing examiner does not constitute a
11 disclosure of return or tax information under this section. Notwithstanding anything else to the
12 contrary in this section, a person served with a subpoena issued by the court or a hearing
13 examiner may disclose the existence or content of the subpoena to that person's legal counsel.

14
15 F. Any person acquiring knowledge of any return or tax information in the course of his
16 or her employment with the Director and any person acquiring knowledge of any return or tax
17 information as provided under subsection C.4, C.5, C.6, C.7, C.8 or C.11 of Section 5.55.200,
18 who discloses any such return or tax information to another person not entitled to knowledge of
19 such return or tax information under the provisions of this Section 5.55.200, is guilty of a
20 misdemeanor. If the person guilty of such violation is an officer or employee of the City, such
21 person must forfeit such office or employment and is incapable of holding any public office or
22 employment in this City for a period of two years thereafter.

23 Section 2. The provisions of this ordinance are declared to be separate and severable. If
24 one or more of the provisions of this ordinance shall be declared by any court of competent



1 jurisdiction to be contrary to law, the provision shall be severed from the rest of the ordinance
2 and all other provisions shall remain valid.

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

7
8 Passed by the City Council the ____ day of _____, 2011, and
9 signed by me in open session in authentication of its passage this
10 ____ day of _____, 2011.

11
12 _____
13 President _____ of the City Council

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15 Approved by me this ____ day of _____, 2011.

16
17 _____
18 Michael McGinn, Mayor

19
20 Filed by me this ____ day of _____, 2011.

21
22 _____
23 Monica Martinez Simmons, City Clerk

24 (Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
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Legislation Title:

AN ORDINANCE relating to the business license tax; amending the Seattle Municipal Code to provide that all return or tax information is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330; and amending Section 5.55.200 of the Seattle Municipal Code in connection therewith.

Summary of the Legislation:

The amendment to SMC 5.55.200 will allow the City to give the same level of protection to confidential tax information that the State Department of Revenue is able to provide under RCW 82.32.330. In effect, the amendment adopts 82.32.330 with appropriate amendments to account for the differences between the City and State tax code.

Background:

The Washington State Legislature enacted RCW 35.102 in order to encourage greater uniformity with regard to city business and occupation taxes. The legislature provided in RCW 35.102.145 that a city that imposes a business and occupation tax may by ordinance provide that return or tax information is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330, which is the statute that governs disclosure of tax information by the Department of Revenue. This statute expressly provides greater protection to tax information than the current provision in the Seattle Municipal Code. In addition, the Public Records Act specifically recognizes in RCW 42.56.230 that information covered by an ordinance adopted under RCW 35.102.145 is exempt from disclosure. Thus, the amendment will provide that all return or tax information provided to the City is confidential, privileged, and subject to disclosure in the well-recognized manner provided by Chapter 82.32.330 RCW.

Please check one of the following:

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