

#22

CITY OF SEATTLE
ORDINANCE _____
COUNCIL BILL 117673

AN ORDINANCE relating to taxation; adopting amendments to the model business license tax ordinance; amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the taxation of digital products by local jurisdictions; and amending sections in chapters 5.30 and 5.45 of the Seattle Municipal Code.

WHEREAS, in 2003 the Washington State Legislature passed HB 2030, now codified as RCW ch. 35.102, which established mandatory provisions of a model ordinance, including definitions and methods of allocating and apportioning income, to be adopted by cities that impose a gross receipts business and occupation tax; and

WHEREAS, the last amendment to the model ordinance occurred in 2007, with changes taking effect by January 2008; and

WHEREAS, in 2009 the Washington State Legislature adopted ESHB 2075, which addressed the state's business and occupation tax on digital products, including definitions related to that tax; and

WHEREAS, in 2010 the Washington State Legislature passed SHB 2620, which amended RCW 35.102.130 to add new provisions to the Model Ordinance to govern the taxation of digital products by local jurisdictions; and

WHEREAS, in accordance with RCW ch. 35.102, a committee of cities led by the Association of Washington Cities, in consultation with the business community, revised the model ordinance to include changes to RCW 35.102 and reflect other changes made to state law since 2008; and

WHEREAS, the model ordinance revisions are now final and all cities with local Business and Occupation (B&O) taxes must adopt the mandatory portions of the model ordinance; and

WHEREAS, the City intends to amend the City's tax code to reflect the amendments to the model ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 5.30.025 of the Seattle Municipal Code, last amended by Ordinance 123704, is amended as follows:

* * *

1
2 L. "Digital automated service," "digital codes," and "digital goods" have the same
3 meaning as in RCW 82.04.192.

4 M. "Digital products" means digital goods, digital codes, digital automated services, and
5 the services described in RCW 82.04.050(2)(g) and (6)(b).

6 ~~(L.)~~N. "Director" means the Director of Finance and Administrative Services of the
7 City or any officer, agent or employee of the City designated to act on the Director's behalf.

8 ~~(M.)~~O. "Distribution affiliate" means a partnership, limited liability company or other
9 entity that sells merchandise to the customer-owners of the distribution cooperative and which is
10 owned 50 percent or more by the distribution cooperative.

11 ~~(N.)~~P. "Distribution cooperative" means a person a) that itself sells, or owns 50 percent
12 or more of a distribution affiliate that sells, merchandise to its customer-owners for resale at
13 retail, b) in which two-thirds of the aggregate outstanding voting ownership interest is owned by
14 its customer-owners, c) that makes distributions to its customer-owners at least partly on the
15 basis of patronage, and d) that qualifies for federal income tax purposes under the provisions of
16 subchapter T of the Internal Revenue Code of 1986, as amended.

17
18
19
20 Section 2. Subsection 5.30.030.B of the Seattle Municipal Code, last amended by
21 Ordinance 123063, is amended as follows:

22 B. "Engaging in business."

23 * * *

24 4. If a person, or its employee, agent, representative, independent contractor, broker or
25 another acting on the person's behalf, engages in no other activities in or with the City but the
26

1 following, it need not register and obtain a business license and pay tax.

2 a. Meeting with suppliers of goods and services as a customer;

3 b. Meeting with government representatives in their official capacity, other than those
4 performing contracting or purchasing functions;

5 c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or
6 other meetings wherein the person does not provide training in connection with tangible personal
7 property sold by the person or on its behalf. This provision does not apply to any board of
8 director member or attendee engaging in business such as a member of a board of directors who
9 attends a board meeting;
10

11 * * *

12 Section 3. Subsection 5.30.035.E of the Seattle Municipal Code, last amended by
13 Ordinance 123099, is amended as follows:

14 E. "Gross proceeds of sales" means the value proceeding or accruing from the sale of
15 tangible personal property, digital goods, digital codes, digital automated services or for other
16 services rendered, without any deduction on account of the cost of property sold, the cost of
17 materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense
18 whatsoever paid or accrued and without any deduction on account of losses.
19

20 * * *

21 Section 4. Subsection 5.30.035.J of the Seattle Municipal Code, last amended by
22 Ordinance 123099, is amended as follows:

23 J. "Manufacturer," "to manufacture."
24

25 * * *

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

3 a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible
4 personal property of or for consumers, including charges made for the mere use of facilities in
5 respect thereto, but excluding charges made for the use of coin-operated laundry facilities when
6 such facilities are situated in an apartment house, rooming house, or mobile home park for the
7 exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit
8 health care facilities, and excluding services rendered in respect to live animals, birds and
9 insects;
10

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

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

25 d. The sale of or charge made for labor and services rendered in respect to the cleaning,
26
27
28

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

8
9 e. The sale of or charge made for labor and services rendered in respect to automobile
10 towing and similar automotive transportation services, but not in respect to those required to
11 report and pay taxes under chapter 82.16 RCW;

12 f. The sale of and charge made for the furnishing of lodging and all other services,
13 except telephone business and cable service, by a hotel, rooming house, tourist court, motel,
14 trailer camp, and the granting of any similar license to use real property, as distinguished from
15 the renting or leasing of real property, and it shall be presumed that the occupancy of real
16 property for a continuous period of one month or more constitutes a rental or lease of real
17 property and not a mere license to use or enjoy the same. For the purposes of this subsection, it
18 shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous
19 period of one month or more to a person is a rental or lease of real property and not a mere
20 license to enjoy the same;

21
22
23 g. The installing, repairing, altering, or improving of digital goods for consumers;

24 ~~((g))~~h. The sale of or charge made for tangible personal property, labor and services to
25 persons taxable under (a), (b), (c), (d), (e), ~~((and))~~(f), and (g) of this subsection when such sales
26

1 or charges are for property, labor and services which are used or consumed in whole or in part by
2 such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even
3 though such property, labor and services may be resold after such use or consumption.

4 Nothing contained in this subsection B 3 shall be construed to modify subsection 1 of this
5 subsection B, and nothing contained in subsection B 1 shall be construed to modify this
6 subsection B 3.

7
8 4. "Sale at retail" or "retail sale" shall also include the providing of competitive
9 telephone service to consumers.

10 5. a. "Sale at retail" or "retail sale" shall also include the sale of ~~((earned))~~ prewritten
11 software other than a sale to a person who presents a resale certificate under RCW 82.04.470,
12 regardless of the method of delivery to the end user~~((, but shall))~~ . For purposes of this
13 subsection 5.30.050.5.a the sale of the sale of prewritten computer software includes the sale of
14 or charge made for a key or an enabling or activation code, where the key or code is required to
15 activate prewritten computer software and put the software into use. There is no separate sale of
16 the key or code from the prewritten computer software, regardless of how the sale may
17 characterized by the vendor or by the purchaser.

18
19
20 The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

21 1) Custom ~~((custom))~~ software; or

22 2) The ~~((the))~~ customization of prewritten ~~((earned))~~ software.

23 b. 1. The term also includes the charge made to consumers for the right to access and
24 use prewritten computer software, where possession of the software is maintained by the seller or
25 a third party, regardless of whether the charge for the service is on a per use, per user, per
26

1 license, subscription, or some other basis.

2 2. a. The service described in subsection 5.30.050.B.5.b.1 includes the right to access
3 and use prewritten software to perform data processing.

4 b. For purposes of this subsection 5.30.050.B.5.b.2 “data processing” means the
5 systematic performance of operations on data to extract the required information in an
6 appropriate form or to convert the data to usable information. Data processing includes
7 check processing, image processing, form processing, survey processing, payroll
8 processing, claim processing, and similar activities.

10 * * *

11 11. “Sale at retail” or “retail sale” shall also include the following sales to consumers of
12 digital goods, digital codes, and digital automated services:

13 a. Sales in which the seller has granted the purchaser the right of permanent use;

14 b. Sales in which the seller has granted the purchaser a right of use that is less than
15 permanent;

16 c. Sales in which the purchaser is not obligated to make continued payment as a
17 condition of the sale; and

18 d. Sales in which the purchaser is obligated to make continued payment as a condition of
19 the sale.

20 A retail sale of digital goods, digital codes, or digital automated services under this
21 subsection 5.30.050.B.11 includes any services provided by the seller exclusively in connection
22 with the digital goods, digital codes, or digital automated services, whether or not a separate
23 charge is made for such services. For purposes of this subsection 5.30.050.B.11, “permanent”
24

1 means perpetual or for an indefinite or unspecified length of time. A right of permanent use is
2 presumed to have been granted unless the agreement between the seller and the purchaser
3 specifies or the circumstances surrounding the transaction suggest or indicate that the right to use
4 terminates on the occurrence of a condition subsequent.

5 12. "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or
6 improving of digital goods for consumers.

7
8 Section 6. Subsection 5.30.050.C of the Seattle Municipal Code, last amended by
9 Ordinance 123704, is amended as follows:

10 C. "Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means
11 any sale of tangible personal property, digital goods, digital codes, or digital automated services,
12 prewritten computer software, or services described in subsection 5.30.050.B.5.b.1, which is not
13 a retail sale, and any charge made for labor and services rendered for persons who are not
14 consumers, in respect to real or personal property and retail services, if such charge is expressly
15 defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale
16 also includes the sale of telephone business to another telecommunications company for the
17 purpose of resale, as contemplated by RCW 35.21.715.
18

19 ***

20
21 Section 7. Section 5.45.081 of the Seattle Municipal Code, last amended by Ordinance
22 123704, is amended as follows:

23 **SMC 5.45.081 Assignment of revenues.**
24
25
26
27

1 Beginning on January 1, 2008, and with the exception of those persons subject to the
2 provisions of chapter 82.14A RCW, this section will be used to assign revenue for purposes of
3 the business license tax imposed under Section 5.45.050.

4 A. Gross income derived from all activities other than those taxed under subsections
5 5.45.050.E, 5.45.050.F, and 5.45.050.G shall be assigned to the location where the activity takes
6 place.

7 B. For sales of tangible personal property, the activity takes place where delivery to the
8 buyer occurs.

9 C. In the case of sales of digital products, the activity takes place where delivery to the
10 buyer occurs. The delivery of digital products will be deemed to occur at:

11 1. The seller's place of business if the purchaser receives the digital product at the seller's
12 place of business;

13 2. If not received at the seller's place of business, the location where the purchaser or the
14 purchaser's donee, designated as such by the purchaser, receives the digital product, including
15 the location indicated by instructions for delivery to the purchaser or donee, known to the seller;
16

17 3. If the location where the purchaser or the purchaser's donee receives the digital
18 product is not known, the purchaser's address maintained in the ordinary course of the seller's
19 business when use of this address does not constitute bad faith;
20

21 4. If no address for the purchaser is maintained in the ordinary course of the seller's
22 business, the purchaser's address obtained during the consummation of the sale, including the
23 address of a purchaser's payment instrument, if no other address is available, when use of this
24 address does not constitute bad faith; and
25

1 5. If no address for the purchaser is obtained during the consummation of the sale, the
2 address where the digital good or digital code is first made available for transmission by the
3 seller or the address from which the digital automated service or service described in RCW
4 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely
5 provided the digital transfer of the product sold.

6 D. If none of the methods in subsection 5.45.081.C for determining where the delivery of
7 digital products occurs are available after a good faith effort by the taxpayer to apply the
8 methods provided in subsections 5.45.081.C.1 through 5.45.081.C.5, then the city and the
9 taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of
10 income from the sale of digital products. The taxpayer will be responsible for petitioning the
11 city to use an alternative method under this subsection 5.45.081.D. The city may employ an
12 alternative method for allocating the income from the sale of digital products if the methods
13 provided in subsections 5.45.081.C.1 through 5.45.081.C.5 are not available and the taxpayer
14 and the city are unable to mutually agree on an alternative method to effectuate an equitable
15 allocation of income from the sale of digital products.

16 E. For purposes of subsections 5.45.081.C.1 through 5.45.081.C.5, "Receive" has the
17 same meaning as in RCW 82.32.730.

18 ((E))F. Gross income derived from international investment management services taxed
19 under subsection 5.45.050.F and from service and other business activity taxed under subsection
20 5.45.050.G shall be apportioned to the city by multiplying apportionable income by a fraction,
21 the numerator of which is the payroll factor plus the service and other business activity income
22 factor and the denominator of which is two.

1 1. The payroll factor is a fraction, the numerator of which is the total amount paid for
2 compensation in the city during the tax period by the taxpayer and the denominator of which is
3 the total compensation paid everywhere during the tax period. Compensation is paid in the city
4 if:

5 a. The individual or employee is primarily assigned within the city;

6 b. The individual is not primarily assigned to any place of business for the tax period and
7 the employee performs fifty percent (50%) or more of his or her service for the tax period in the
8 city; or
9

10 c. The individual is not primarily assigned to any place of business for the tax period, the
11 individual does not perform fifty percent (50%) or more of his or her service in any city, and the
12 employee resides in the city.

13 2. The service and other business activity income factor is a fraction, the numerator of
14 which is the total service and other business activity income of the taxpayer in the city during the
15 tax period, and the denominator of which is the total service and other business activity income
16 of the taxpayer everywhere during the tax period. Service and other business activity income is
17 in the city if:
18

19 a. The customer location is in the city; or
20

21 b. The income-producing activity is performed in more than one (1) location and a
22 greater proportion of the service-income-producing activity is performed in the city than in any
23 other location, based on costs of performance, and the taxpayer is not taxable at the customer
24 location; or
25

1 c. The service and other business activity income producing activity is performed within
2 the city, and the taxpayer is not taxable in the customer location.

3 3. If the allocation and apportionment provisions of this subsection do not fairly
4 represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer
5 does business, the taxpayer may petition for or the tax administrators may jointly require, in
6 respect to all or any part of the taxpayer's business activity, that one of the following methods be
7 used jointly by the cities to allocate or apportion gross income, if reasonable:
8

9 a. Separate accounting;

10 b. The use of a single factor;

11 c. The inclusion of one or more additional factors that will fairly represent the taxpayer's
12 business activity in the city; or

13 d. The employment of any other method to effectuate an equitable allocation and
14 apportionment of the taxpayer's income.

15 ((D))G. The definitions in this subsection apply throughout this section.

16 1. "Apportionable income" means the gross income of the business taxable under the
17 service and other business activity classification, including income received from activities
18 outside the city if the income would be taxable under the service and other business activity
19 classification if received from activities within the city, less any exemptions or deductions
20 available.
21

22 2. "Compensation" means wages, salaries, commissions, and any other form of
23 remuneration paid to individuals for personal services that are or would be included in the
24 individual's gross income under the federal Internal Revenue Code.
25
26

1 3. "Individual" means any individual who, under the usual common law rules applicable
2 in determining the employer-employee relationship, has the status of an employee of that
3 taxpayer.

4 4. "Customer location" means the city or unincorporated area of a county where the
5 majority of the contacts between the taxpayer and the customer take place.

6 5. "Primarily assigned" means the business location of the taxpayer where the individual
7 performs his or her duties.
8

9 6. "Service-taxable income" or "service income" means gross income of the business
10 subject to tax under the service and other business activity classification, including but not
11 limited to royalty income.

12 7. "Tax period" means the calendar year during which tax liability is accrued. If taxes are
13 reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the
14 factors for the previous calendar year for reporting in the current calendar year and correct the
15 reporting for the previous year when the factors are calculated for that year, but not later than the
16 end of the first quarter of the following year.
17

18 8. "Taxable in the customer location" means either that a taxpayer is subject to a gross
19 receipts tax in the customer location for the privilege of doing business, or that the government
20 where the customer is located has the authority to subject the taxpayer to gross receipts tax
21 regardless of whether, in fact, the government does so.
22

23 ((E))H. Assignment or apportionment of revenue under this section shall be made in
24 accordance with and in full compliance with the provisions of the Interstate Commerce Clause of
25 the United States Constitution where applicable.
26

1 ((F))I. This section does not apply to allocate gross income of motor carriers included in
2 the measure of the tax pursuant to subsection 5.45.050.E of the Seattle Municipal Code.
3 However, this section does apply to allocate gross receipts of motor carriers included in the
4 measure of the tax pursuant to any other subsection of Section 5.45.050.

5 Section 8. Subsection 5.45.090.N of the Seattle Municipal Code, last amended by
6 Ordinance 123063, is amended as follows:

7
8 **SMC 5.45.090 Exemptions.**

9 The provisions of this Chapter 5.45 and the licensing requirement in SMC5.55.030 shall
10 not apply to the following:

11 * * *

12 N. Insurance Business. This chapter shall not apply to amounts received by any person
13 who is an insurer or their appointed insurance producer upon which a tax based on gross
14 premiums is paid to the state pursuant to RCW 48.14.020, ~~((nor shall this chapter apply to~~
15 ~~amounts received by an agent as defined in RCW 48.17.010; provided that the provisions of this~~
16 ~~subsection shall not exempt any person engaging in the business of insurance as a broker as~~
17 ~~defined in RCW 48.17.020 or as a solicitor as defined in RCW 48.17.030;)) and provided further,~~
18 that the provisions of this subsection shall not exempt any bonding company from tax with
19 respect to gross income derived from the completion of any contract as to which it is a surety, or
20 as to any liability as successor to the liability of the defaulting contractor.

21
22 Section 9. Subsection 5.45.100.G of the Seattle Municipal Code, last amended by
23 Ordinance 123877, is amended as follows:

24
25 **SMC 5.45.100 Deductions.**

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

3 * * *

4 G. Interest on Investments or Loans Secured by Mortgages or Deeds of Trust. In
5 computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the
6 measure of tax by those engaged in banking, loan, security or other financial businesses, amounts
7 derived from interest received on investments or loans primarily secured by first mortgages or
8 trust deeds on non-transient residential properties.
9

10 Section 10. The provisions of this ordinance shall apply prospectively and also
11 retroactively to January 1, 2013.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Section 11. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this ____ day of _____, 2012.

President _____ of the City Council

Approved by me this ____ day of _____, 2012.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

Monica Martinez Simmons, City Clerk

(Seal)

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
FAS	Glen Lee/4-8079	Jennifer Devore/5-1328

Legislation Title:

AN ORDINANCE relating to taxation; adopting amendments to the model business license tax ordinance; amending the Seattle Municipal Code due to changes in the Revised Code of Washington as it pertains to the taxation of digital products by local jurisdictions; and amending sections in chapters 5.30 and 5.45 of the Seattle Municipal Code.

Summary of the Legislation:

This legislation amends Title 5 of the Seattle Municipal Code (SMC) to comply with amendments completed in October to the Municipal Tax Model Ordinance (Model Ordinance). The Model Ordinance was amended by the Association of Washington Cities (AWC), due to changes in State law and the need to clarify definitions and deductions. The Model Ordinance was last amended in 2008, at which time legislation was passed to amend the SMC.

The proposed amendments includes a revised definition of digital goods, and incorporates the sale of digital goods within the retail B&O tax definition; provides allocation criteria for the sale of digital goods; places a limitation on the first mortgage interest deduction; makes technical corrections to the Insurance exemption; and makes technical corrections to the definition of engaging in business as it relates to members of governing boards.

This proposed legislation adopts the updates to the Model Ordinance, thereby ensuring that the City's business and occupation tax complies with State law. The City of Seattle, in order to comply with State law as it is changed, notifies tax payers of any adjustments to Seattle Business and Occupation tax and updates the revenue forecast to reflect any revenue implications.

Background:

In 2003, the Washington State Legislature enacted RCW Chapter 35.102, which states all cities who levy a business and occupation tax adopt appropriate municipal code authorizing that the taxes complies with the mandatory components of the Model Ordinance. The Model Ordinance provides the basic framework for the cities including definitions and methods of allocating and apportioning income. The Model Ordinance is amended periodically to reflect changes in State law or relevant court rulings, and cities must ordain these amendments after they are completed.

Following are the changes implemented in the October 2012 Model Ordinance:

Digital Goods (Sections 1, 3, 4, 5, 6 & 7):

In 2009, the State of Washington defined digital goods and included the sale of digital goods within the definition of a retail sale. This changed the retail definition in the Model Ordinance mandatory provision due to RCW 35.102, where the State of Washington definition of a retail



sale is to be used as the baseline definition for the model ordinance B&O retail sale definition. The Model Ordinance B&O cities, along with AWC, proactively worked with the State of Washington's Department of Revenue (DOR) to synchronize the tax base and cooperated with DOR to encourage the legislature to amend RCW 35.102 to ensure the digital goods retail sourcing was aligned at the local and State levels.

The change to the definition of a retail sale did change the tax classification used for collecting B&O and sales tax on digital goods. The adoption of these changes by taxpayers occurred in 2009; the fiscal implications were built into the city's revenue forecasts as part of the sales tax and B&O tax revenue assumptions.

Members of Governing Boards (Section 2):

In 2010, The State of Washington adopted legislation (Second Engrossed Substitute Senate Bill 6143, Part VII -- Chapter 23, Laws of 2010 1st Special Session) to clarify the definition of engaging in business for individuals who serve on governing boards. This change was effective July 1, 2010. The Association of Washington B&O cities amended the Model Ordinance mandatory provision for members of governing boards to align the definition of engaging in business with the State of Washington's definition. The definitions make clear governing board members are independent contractors and are subject to securing a business license and subject to the B&O tax.

Insurance Industry (Section 8):

In 2008, the State of Washington amended certain terms contained in RCW 48.14 relating to the Insurance Industry. The Association of Washington B&O cities amended the Model Ordinance to align the terminology contained within the Model Ordinance Insurance exemption with the State of Washington's terminology. Insurance Broker and Insurance agent designations were changed to Insurance Producer and Appointed Insurance producer designations.

First Mortgage Deduction (Section 9):

In 2012, the State of Washington limited the B & O tax deduction for income derived from first mortgage interest to financial institutions operating in ten or fewer states. As this was a change to State law which affects the Model Ordinance, the Municipal B & O tax cities are required to comply with RCW 82.14A, license fees or taxes on financial institutions. This change amends the City's deduction for first mortgage interest deduction to comply with State law and remain consistent with the Model Ordinance.

The City must amend its code to enact these changes to the Model Ordinance effective January 1, 2013.

Please check one of the following:

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



This legislation has financial implications.

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

Digital Goods (Sections 1, 3, 4, 5, 6 &7): The fiscal impact of this change has been incorporated into the B&O tax revenue forecast.

First Mortgage Deduction (Section 9): The fiscal impact of this change has been incorporated into the B&O tax revenue forecast.

b) What is the financial cost of not implementing the legislation? State Law requires that these changes to our municipal code be implemented.

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? N/A

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:

List attachments to the fiscal note below: N/A





City of Seattle
Office of the Mayor

November 20, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit this proposed Council Bill which brings the Seattle Municipal Code (SMC) regarding Business and Occupation Tax in line with current State law.

This legislation amends Title 5 of the SMC to comply with changes made in October 2012 to the Municipal Tax Fairness Model Ordinance. The Model Ordinance was amended by the Association of Washington Cities (AWC), due to changes in State law and the need to clarify definitions and deductions. The Model Ordinance was last amended in 2008, at which time legislation was passed to amend the SMC.

The proposed amendments include a revised definition of digital goods; incorporates the sale of digital goods within the retail B&O tax definition; provides allocation criteria for the sale of digital goods; places a limitation on the first mortgage interest deduction; makes technical corrections to the Insurance exemption; and makes technical corrections to the definition of engaging in business as it relates to members of governing boards.

This proposed legislation adopts the amendments to the Model Ordinance, thereby ensuring that the City's business and occupation tax complies with State law. These changes would likely result in offsetting revenue gains and losses, and were incorporated into the B&O tax revenue forecast.

Thank you for your consideration of this legislation. Should you have questions, please contact Glen Lee at 684-8079.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

