

ORDINANCE NO. 10611

AN ORDINANCE REGARDING OCCUPATION TAX AND AMENDING CERTAIN BELLINGHAM MUNICIPAL CODE SECTIONS TO CLARIFY TAXATION OF THE CELLULAR PHONE BUSINESS AND OTHER TELECOMMUNICATION BUSINESSES.

WHEREAS, provisions in Bellingham Municipal Code Chapter 6.06 provide for the taxation of certain utility businesses on gross revenues; and,

WHEREAS, emerging technology, which includes the cellular telephone industry, has caused a need to be clear about the taxation of businesses employing such technology; and,

WHEREAS, the representatives of the cellular telephone industry and others in the private sector and in government, at the request of the State of Washington Department of Revenue, formed a task force which has agreed upon appropriate taxation of cellular telephone businesses; and,

WHEREAS, the Finance Director has reviewed the recommendations of the task force and concludes that the amendments to the City Occupation Tax Chapter which follow are in the best interest of the City; and,

WHEREAS, advancing technology also necessitates some additions to the definition of "telephone business" and "competitive telephone service" to also be consistent with State statutes,

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN AS FOLLOWS:

Section 1: Bellingham Municipal Code section 6.06.020 is amended to read as follows:

6.06.020 DEFINITIONS

In construing the provisions of this chapter, save when otherwise plainly or clearly apparent from the context, the following definitions shall be applied:

- A. ["Gross income" -- unchanged.]
- B. ["Taxpayer" -- unchanged.]
- C. ["Tax year" or "taxable year" -- unchanged.]

D. "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus which is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made. Transmission of communication through cellular telephones is classified as "telephone business" rather than "competitive telephone service."

E. "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, cellular telephone service, or coin telephone services, or providing telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio or television stations.

F. "Cellular telephone service" is a two-way voice and data telephone/telecommunications system based in whole or substantially in part on wireless radio communications and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

Section 2: Bellingham Municipal Code section 6.06.050 is amended to add new subsection I, to read as follows:

**6.06.050 OCCUPATIONS SUBJECT TO TAX -- AMOUNTS.**

- [A. Telephone business.]
- [B. Telegraph business.]
- [C. Gas Suppliers.]
- [D. Electric power business.]
- [E. Water suppliers.]
- [F. Cable TV.]
- [G. Sewer collection.]
- [H. Municipal Golf Course.]
- I. Cellular telephone business.**

(1) With regard to cellular telephone businesses, which are taxed in accordance with subsection A, above, a deduction from gross income shall be allowed, only to those companies which keep their regular books of account on an accrual basis, for cash discounts, credit losses actually sustained, or to reverse a billing or charge that had been made as a result of third-party fraud or other crime not properly a debt of a customer to be phased in as follows: twenty percent for those occurring in 1995, forty percent for those occurring in 1996, sixty percent for those occurring in 1997, eighty percent for those occurring in 1998, and a complete deduction for

those occurring in 1999 and thereafter.

(2) With regard to allocation among taxing jurisdictions based on service address:

(a) Service address: Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

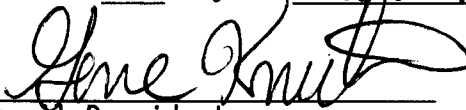
(b) Presumption: There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

(c) Roaming phones: When the service is provided while a subscriber is roaming outside the subscriber's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching office that switched the call.

(d) Dispute resolution: If there is a dispute between or among the City and another city or cities as to the service address of a customer who is receiving cellular telephone services and the dispute is not resolved by negotiation among the parties, then the dispute shall be resolved by the City and the other city or cities by submitting the issue for settlement to the Association of Washington Cities (AWC). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone company shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.


Section 3: Regardless of the effective date of this ordinance, it shall apply to revenues received by affected taxpayers as of January 1, 1995.

PASSED by the Council this 6th day of FEBRUARY, 1995.


  
Council President

APPROVED by me this 14th day of FEBRUARY, 1995.

  
Mayor

ATTEST   
Finance Director

APPROVED AS TO FORM:

  
Office of the City Attorney

Published: 2/16/95

