

ORDINANCE NO. 2002-12-105

AN ORDINANCE OF THE CITY OF BELLINGHAM REVISING THE CITY'S BUSINESS AND OCCUPATION TAX BY AMENDING THE BELLINGHAM MUNICIPAL CODE CHAPTER 6.04.

WHEREAS, the City's business and occupation tax code has not been updated for several years; and,

WHEREAS, the business and occupation taxes implemented by other Washington cities can be inconsistent from jurisdiction to jurisdiction; and,

WHEREAS, the City desires to make its business and occupation tax fairer and more consistent with other Washington jurisdictions; and,

WHEREAS, the Association of Washington Cities, in conjunction with a majority of the Washington cities with a business and occupation tax, developed a model ordinance to achieve a fairer and more consistent state wide implementation of business and occupation taxes; and,

WHEREAS, the revisions contained in this ordinance significantly adopt the model ordinance, as tailored to reflect the unique local characteristics of Bellingham; and,

WHEREAS, the City of Bellingham's current business and occupation tax rates presently applicable to various types of business activity are retained in this ordinance in conformance with the provisions of the laws of the state of Washington;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Bellingham Municipal Code Chapter 6.04 as currently written is hereby repealed and replaced in its entirety by this ordinance.

Section 2. Bellingham Municipal Code Chapter 6.04 shall now provide as follows:

6.4.010 Purpose

This Chapter is enacted based upon the model ordinance produced by a coalition of Washington cities that have enacted a business and occupation tax. By enacting this new business and occupation tax chapter the City hopes to create a greater uniformity and consistency among cities implementing a business and occupation tax and to help prevent against multiple taxation among various jurisdictions to the extent possible. This new chapter should make the business and occupation tax simpler, more predictable and easier to administer while preserving sufficient flexibility to provide for the unique characteristics of Bellingham.

6.4.020 Exercise of Revenue License Power

The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code. Please see note 1.

6.04.028 Administrative Provisions

The administrative provisions governing the implementation of the business and occupations tax are found in BMC Chapter 6.05.

6.04.030 Definitions

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular. Please see Note 2 at the end of this chapter.

"Advance" "reimbursement": (1) "Advance" means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees on behalf of the customer or client. (2) "Reimbursement" means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

"Agricultural product" "farmer": (1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets. (2) "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packinghouse. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.

"Business": "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

"By Product": See Product.

"Casual Sale": See Sale.

"Commercial or industrial use": Means the following uses of products, including by-products, by the extractor or manufacturer thereof:

- (1) Any use as a consumer;
- (2) Any use in the manufacturing of products including articles, substances or commodities; or
- (3) Consigning, shipping or transferring extracted or manufactured products to another either without consideration or in the performance of contracts.

"Company": See Person.

"Competitive Telephone Service": "Competitive telephone service" means the providing by any person or telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus 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.

"Consumer": "Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's 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 a consumer other than for the purpose of:

(a) resale as tangible or intangible personal property in the regular course of business;

(b) incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;

(c) incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or

(d) consuming the property 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;

(2) Any person engaged in any business activity taxable under section .050 (5);

(3) Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;

(4) Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in section .030C, other than for resale in the regular course of business;

(5) Any person who is an end user of software;

(6) Any person engaged in the business of "public road construction" in respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly-owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of a publicly-owned street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of a publicly-owned mass public transportation terminal or parking facility;

(7) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;

(8) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(9) Any person engaged in "government contracting." Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

"Director": "Director" means the Finance Director of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

"Eligible gross receipts tax": The term "eligible gross receipts tax" means a tax which:

(1) Is imposed on the act or privilege of engaging in business activities within section .050; and

(2) Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and

(3) Is not, pursuant to law or custom, separately stated from the sales price; and

(4) Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and

(5) Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level.

"Engaging in business": (1) The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. (2) This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

(a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

(b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architects, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting employees, agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(q) Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.

(4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) Mere delivery of goods via common carrier.

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of apply the tax under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

"Extractor": "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, or takes, cultivates, or raises shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; persons cultivating or raising fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession; or persons who fell, cut, or take plantation Christmas trees from the person's own land or from land in which the person has a present right of possession.

"Extractor for Hire" "Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

"Government contracting": See Sale at Retail.

"Gross income of the business": "Gross income of the business" means the value proceeding or accruing by reason of the of the business activity engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions,

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210 Lottie Street

Bellingham, Washington 98225

Telephone (360) 676-6903

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dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"Gross proceeds of sales": "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"In this City" or "within this City": "In this City " or "within this City" includes all federal areas lying within the corporate city limits of the City.

"Isolated Sale": See Sale.

"Magazine": See Newspaper.

"Manufacturer" "to manufacture" "processing for hire":

(1) "Manufacturer" means every person whom, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use, any products from the person's own materials or ingredients. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, Materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire. A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.

(2) "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

(a) the production of special made or custom made articles;

(b) the production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; and

(c) crushing and/or blending of rock, sand, stone, gravel, or ore.

(3) "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to twenty percent (20%) or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

"Newspaper" "magazine" "periodical": "Newspaper" means a publication offered for sale regularly at stated intervals at least once a week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind. "Magazine" or "periodical" means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

"Non-profit corporation or non-profit organization": "Non-profit corporation or non-profit organization" means a corporation or organization in which no part of the income can be distributed to its members, directors, or officers and that holds a current tax exempt status as provided under Sec. 501(c)(3) of the Internal Revenue Code, as may hereafter be amended, or is specifically exempted from the requirement to apply for its tax exempt status under Sec. 501(c)(3) of the Internal Revenue Code, or as may hereafter be amended.

"Office" "place of business": "Office" or "place of business" means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:

- (1) Whose address the person uses as its business mailing address;
- (2) Contains a telephone line listed in a public telephone directory or other similar publication under the business name; and
- (3) Where the person holds itself out to the general public as conducting its regular business through signage or other means; and
- (4) Where the person is required to obtain any appropriate state and local business license or registration unless they are exempted by law from such requirement.

A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business. If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the City will be deemed the place of business.

"Person": "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof.

"Precious metal bullion or monetized bullion": "Precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United

States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

“Processing for hire”: See Manufacturer.

“Product” “Byproduct”: “Product” means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort. “Byproduct” means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

“Public road construction”: See Sale at Retail.

“Retail Sale”: See Sale at Retail.

“Retail Service”: “Retail service” 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:

(1) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. “Amusement and recreation services” also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term “amusement and recreation services” does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

(2) Abstract, title insurance, and escrow services;

(3) Credit bureau services;

(4) Automobile parking and storage garage services;

(5) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(6) Service charges associated with tickets to professional sporting events; and

(7) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

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

“Royalties”: “Royalties” means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

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CITY ATTORNEY

210 Lottie Street

Bellingham, Washington 98225

Telephone (360) 676-6903

"Sale," "casual or isolated sale."

(1) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail", "retail sale", or "retail service". It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any 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 also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

"Sale at retail," "retail sale."

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

(b) 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; or

(c) Purchases for the purpose of consuming the property purchased in producing for 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; or

(d) 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; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

(2) "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity that is taxable under BMC 6.04.050(5).

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

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210 Lottie Street

Bellingham, Washington 98225

Telephone (360) 676-6903

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

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

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

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

(e) 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 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services, except network telephone service and cable service, 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 month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) 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 subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(4) "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

(5) "Sale at retail" or "retail sale" shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

(6) "Sale at retail" or "retail sale" shall also include Public Road Construction, which is the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) "Sale at retail" or "retail sale" shall also include Government Contracting, which is the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above 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, whether or not such personal property becomes a part of the realty by virtue of installation.

(8) "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development This is reported under the service or other classification).

(9) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2) (This is reported under the service and other classification).

"Sale at wholesale" "wholesale sale": "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not customers, in respect to real or personal property, if such charge is expressly defined as a retail sale when rendered to or for consumers. Sale at wholesale also includes the sale of network telephone service to a telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

"Software" "canned software" "custom software" "customization of canned software" "master copies" "retained rights":

(1) "Canned software" means software that is created for sale to more than one (1) person. For purposes of this chapter, canned software is deemed to be tangible personal property regardless of the method of delivery—tangible media (e.g., disk or installed on hardware) or intangible (e.g., electronically over telecommunications paths).

(2) "Custom software" means software created for a single person.

(3) "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to

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CITY ATTORNEY

210 Lottie Street

Bellingham, Washington 98225

Telephone (360) 676-6903

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work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

(4) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

(5) "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

(6) "Software" means any information, program, or routine, or any set of one (1) or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients regardless of the media upon which that documentation is provided, that describes the code and its use, operation, and maintenance and that typically is delivered with the code to the consumer. All software is classified as either canned or custom.

Please see Note 3 at the end of this Chapter 6.04.

"Taxpayer": "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

"Tuition fee": "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a non-profit corporation or a non-profit organization, as defined by the Internal Revenue Code Section 501(c)(3), as may hereafter be amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

"Value proceeding or accruing": "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. The value proceeding or accruing from sales on the installment plan

under conditional contracts of sale shall be reported as of the dates when the payments become due.

“Value of products”:

(1) The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

(2) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.

“Wholesale sale”: See Sale at Wholesale.

6.04.040 Agency - sales and services by agent, consignee, bailee, factor or auctioneer

A. Sales in own name - sales or purchases as agent.

1. Every person, including agents, consignees, bailees, factors or auctioneers having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in it's the person's own name and actually so selling shall be deemed the seller of such tangible personal property within the meaning of this chapter.

2. The burden shall be upon the taxpayer in every case to establish the fact that such taxpayer is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales or making purchases for a principal. Such claim will be recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

(a) The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

(b) The books and records show the amount of the principal's gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal's gross sales must not be reflected as the agent's income on any of the agent's

books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

(c) No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement. Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.

(d) Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

B. If the above requirements are not met the consignor, bailor, principal or other shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer.

C. Services in own name - procuring services as agent.

1. For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured.

2. Any person who claims to be acting merely as agent in obtaining services for a principal will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

(a) The books and records of the agent show that the services were obtained in the name and for the account of the principal, and show the actual principal for whom the purchase was made.

(b) The books and records show the amount of the service that was obtained for the principal, the amount of commissions and any other income derived by the agent for acting as such. Amounts received from the principal as advances and reimbursements must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

Please see note 4 at the end of this Chapter 6.04.

6.04.050 Imposition of the tax - tax or fee levied

Except as provided in BMC 6.05.040(D), there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(1) Upon every person engaging within the City in business as an extractor, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted for sale or for commercial or industrial use, multiplied by the rate of

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seventeen one-hundredths percent (.017%). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(2) Upon every person engaging within the City in business as a manufacturer, the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured or processed, multiplied by the rate of seventeen one-hundredths percent (.017%). The measure of the tax is the value of the products, including by-products, so manufactured or processed, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(3) Upon every person engaging within the City in the business of making sales at wholesale, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of seventeen one-hundredths percent (.017%).

(4) Upon every person engaging within the City in the business of making sales at retail or retail services, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of seventeen one-hundredths percent (.017%).

(5) Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of forty-four one-hundredths of one percent (.044%). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a sale at retail or a sale at wholesale.

6.04.060 Doing business with the City

A. Persons or businesses which do any work or perform services for, or provide materials, supplies or equipment to, the City of Bellingham are required to register and to pay business and occupation tax on the act or privilege of entering into a contract for such transactions with the City, regardless of whether the business activity involved is performed or takes place within or without the City and whether or not such person has an office or place of business within or without the City.

B. The amount of tax shall be equal to the gross contract price multiplied by the rate under section .050 that would otherwise apply if the sale or service were taxable pursuant to that section.

6.04.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes

A. Persons who engage in business activities that are within the purview of two (2) or more subsections of 6.04.050 shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if the Finance Director finds that the imposition of the City's tax would place an undue burden upon interstate commerce or violate

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constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

C. To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied and that the taxpayer paid the amount of tax sought to be credited.

D. Credit for persons that sell in the city products that they extract or manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a) with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

E. Credit for persons that manufacture products in the city using ingredients they extract. Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

Please see note 5 at the end of this BMC Chapter 6.04.

6.04.075 Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. A taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

2. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill may deduct from the measure of the tax on those amounts the gross income used in measuring the eligible gross receipts tax paid to the other jurisdiction where the person's headquarters is located.

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

B. Person manufacturing products within and without the City. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the

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City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

6.04.080 Reserved for any future additions

6.04.090 Exemptions

The provisions of this chapter shall not apply to the following:

A. Adult family homes. This chapter does not apply to adult family homes which are licensed as such, or which are specifically exempt from licensing, under rules of the Washington State Department of Social and Health Services.

B. Child care. This chapter does not apply to persons providing day care for preschool or school children, whether in private homes or elsewhere; provided, that nothing herein shall relieve such persons of the responsibility from complying with all other applicable laws and regulations.

C. Child care resource and referral services by non-profit organizations. This chapter does not apply to non-profit organizations in respect to amounts derived from the provision of child-care resource and referral services.

D. Non-profit corporations or organizations - credit and debt services. This chapter does not apply to non-profit corporations or organizations in respect to amounts derived from provision of the following services:

(i) Presenting individual and community credit education programs including credit and debt counseling;

(ii) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(iii) Establishing and administering negotiated repayment programs for debtors; or

(iv) Providing advice or assistance to a debtor with regard to subsection (a), (b), or (c) of this section.

E. Certain fraternal and beneficiary organizations. This chapter shall not apply to fraternal benefit societies or fraternal fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations.

F. Credit unions. This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States.

G. Health maintenance organization, health care service contractor, certified health plan.

1. This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201. However, per RCW 48.14.0201 (7), this exemption is not intended to, and shall not, impair the City's ability to impose a tax hereunder upon the health care services directly delivered by the employees of a health maintenance organization under RCW chapter 48.46.

2. The gross income received by any religious society, religious association or religious corporation, through the operation of any hospital, clinic, resort or other institution devoted exclusively to the care of healing of human beings; provided, that no exemption is granted where the income therefore inures to the benefit of any physician, surgeon, stockholder, or individual by the virtue of ownership or control of such hospital, clinic, resort, or other institution.

H. Public utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of Bellingham Municipal Code Chapter 6.06.

I. Investments - dividends from subsidiary corporations. This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

J. Insurance business. This chapter shall not apply to amounts received by any person or agent who is an insurer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020; provided that the provisions of this subsection shall not exempt any person engaging in the business of insurance as a broker as defined in RCW 48.17.020 or as a solicitor as defined in RCW 48.17.030; and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

K. Farmers - agriculture. This chapter shall not apply to any farmer in respect to amounts received from selling fruits, vegetables, berries, butter, eggs, fish, milk poultry, meats or any other agricultural product that is raised, caught, produced, or manufactured by such persons.

L. Boxing/Wrestling exhibitions. This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Boxing Commission.

M. Racing. This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Washington State Horse Racing Commission.

N. Ride sharing. This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.

O Employees.

1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent

contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as may be amended hereafter.

2. A booth renter, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter.

P. Amounts derived from sale, lease or rental of real estate. This chapter shall not apply to gross proceeds derived from the sale, lease or rental of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions.

Q. Mortgage brokers' third-party provider services trust accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

R. Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW 82.36.440, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

S. Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

T. Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

U. Short-term public event. This chapter shall not apply to persons participating in a short-term public event such as a fair, whether indoors or outdoors, for which a single blanket license has been issued by the Finance Director in accordance with the rules applicable thereto, issued in policy form in accordance with the provisions of this chapter; provided that such participants have written authorization from the sponsor of the event, and the sponsor accepts responsibility for each participant. Businesses otherwise registered with the City but not approved by the event sponsor may not participate in that short-term public event.

V. Accommodation sales. This Chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

X. Taxes collected as trust funds. This Chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

6.04.100 Deductions

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

A. Membership fees and certain service fees by non-profit youth organization. For purposes of this subsection, "non-profit youth organization" means a non-profit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a non-profit youth organization:

1. As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization's facilities; or
2. From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

B. Fees, dues, charges. In computing tax, there may be deducted from the measure of tax amounts derived from bona fide:

1. initiation fees;
2. dues;
3. contributions;
4. donations;
5. tuition fees;
6. charges made by a non-profit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the non-profit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public;
7. charges made for operation of privately operated kindergartens; and
8. endowment funds.

This subsection shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.

C. Day care activities. In computing tax, there may be deducted from the measure of tax amounts derived from day care activities by any organization organized and operated for charitable, educational, or other purposes which is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; provided, however, that amounts derived from selling, altering or repairing tangible personal property shall not be deductible.

D. Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

E. Interest on obligations of the state, its political subdivisions, and municipal corporations. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the State of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.

F. Receipts from tangible personal property delivered outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is received by the purchaser or its agent outside the State of Washington.

G. Cash discount taken by purchaser. In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

H. Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

I. Repair, maintenance, replacement, etc., of residential structures and commonly held property - eligible organizations.

1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership; or

b. An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

c. An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area that all hold the same property in common within the area.

2. For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

3. To qualify for the deductions under this subsection:

a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association; and,

c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

J. Sales at wholesale or retail of precious metal bullion and monetized bullion. In computing tax, there may be deducted from the measure of tax amounts representing the sale at wholesale or retail of precious metal bullion and monetized bullion. However, no deduction is allowed on amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, and no deduction or offset is allowed against such commissions on account of salaries or commissions paid to salesmen or other employees.

K. Amounts representing rental of real estate for boarding homes. In computing tax, there may be deducted from the measure of the tax amounts derived from the value of the rental of real estate for "boarding homes." To qualify for the deduction, the boarding home must meet the definition of "boarding home, and licensed by the State of Washington under RCW 18.20. The deduction shall be in the amount of twenty-five percent (25%) of the gross monthly billing when the boarder has resided within the boarding home for longer than thirty (30) days.

L. Radio and television broadcasting - advertising agency fees - national, regional, and network advertising - interstate allocations. In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:

1. advertising agencies' fees when such fees or allowances are shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;

2. actual gross receipts from national network, and regional advertising or a "standard deduction" as provided by RCW 82.04.280; and

3. local advertising revenue that represent advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director may issue a rule that provides detailed guidance as to how these deductions are to be calculated.

M. Constitutional prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the city is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

6.04.110 Application to City's business activities

Any non-general fund department, division, employee association, or other subsection of the City that engages in any business activity which if engaged in by any person would under this chapter require a business registration and the payment of any tax or fee shall make application, file returns, and pay any taxes or fees imposed by this chapter.

6.04.120 Tax part of overhead

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

6.04.130 Severability

If any provision of this chapter or its application to any person or circumstance is held invalid for any reason, the remainder of the chapter or the application of the provision or chapter to other persons or circumstances shall not be affected.

6.04.140 Miscellaneous

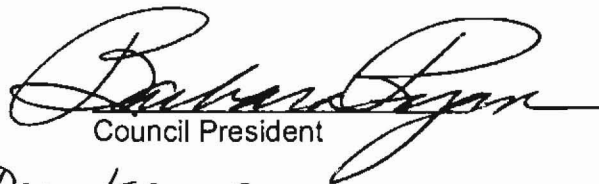
A. Short title. This provisions of this Chapter 6.04 shall be known as the Bellingham Business and Occupations Tax Code.

B. Headings. The headings contained in this ordinance are for convenience only and shall not be deemed to govern, limit, modify or otherwise affect the scope, meaning or intent of the provisions contained herein in any manner.

C. The former provisions of Bellingham Municipal Code Chapter 6.04, which are being repealed and replaced with the provisions of this new Code Chapter 6.04 (Ordinance No. 10388 AND OTHERS), shall remain in full force and effect until the effective date of this new Code Chapter 6.04 (Ordinance No. 2002-12-105), which is April 1, 2003.

Section 3. This Ordinance shall take effect on April 1, 2003.

PASSED by Council this 16TH day of DECEMBER, 2002.


Council President

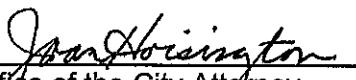
APPROVED by me this 30th day of December, 2002.


Mayor

ATTEST:


Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published: DECEMBER 20, 2002

**NOTES TO BELLINGHAM MUNICIPAL CODE CHAPTER 6.04 REGARDING
LEGISLATIVE INTENT**

1. 6.04.020 (Exercise of Revenue Power) This section implements Washington Constitution Article XI, Sec. 12 and RCW 35A.82.020 and 35A.11.020 (code cities); 35.22.280(32) (first class cities); RCW 35.23.440(8) (second class cities); 35.27.370(9) (fourth class cities and towns), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. See *Enterprise Leasing v. City of Tacoma*, 139 Wn.2d 546 (1999). It is intended that this model ordinance be uniform among the various municipalities adopting it. Uniformity with provisions of State tax laws should not be presumed, and references in this section to statutory or administrative rules changes do not mean state tax statutes or rules promulgated by the Department of Revenue.

2. 6.04.030 (Definitions) The definitions contained in this chapter are similar to or identical to the definitions in the State taxing statutes; however, some are not. It is intended that the similar or identical language be understood in accordance with published case law governing its meaning, if any, existing at the time the ordinance is adopted. The City does not intend to adopt or incorporate administrative interpretations of similar language by the Department of Revenue, whether now existing or later promulgated, unless specifically required by the Revised Code of Washington.

3. 6.04.030 ("Software" definition) A software program is intangible property that may be delivered to consumers via tangible or intangible media. It is intended that the taxation of the production and licensing of software programs not be determined by the method by which they are delivered, whether by tangible media, electronically or otherwise. The model ordinance classifies software production and licensing for tax purposes on the basis of whether the program was developed for the mass market or at the behest of a particular customer. Software is defined as either "custom" or "canned" regardless of the method of delivery.

4. 6.04.040 (Agency) A person is taxable on all gross income it receives unless it can prove that the gross income does not belong to the person, or a specific deduction or exemption is provided. A taxpayer that receives gross income as an agent is not liable to pay tax on those gross receipts only if it meets the criteria of this section. This section is specifically designed to set out criteria that is somewhat different than the criteria established by the Washington State Department of Revenue Rule 111 and the cases interpreting that rule.

5. 6.04.070 (Multiple Activities Credit) This section provides a tax credit for taxpayers engaged in multiple taxable activities. The section provides a credit against eligible selling or manufacturing taxes imposed by the City for extracting or manufacturing taxes paid to the City or to any other local jurisdiction with respect to the same products. The tax credit does not depend upon whether a person that sells in the City extracts or manufactures in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The tax credit does not depend on whether a person that manufactures in the City extracts in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The credit is available to any person that pays an eligible

gross receipts tax on the applicable activities, regardless of where it conducts business. The result of this section is that a city in which selling takes place gives up the tax to the manufacturing jurisdiction and the manufacturing jurisdiction gives up the tax to the extracting jurisdiction, whether those jurisdictions are inside or outside the State of Washington.

6. 6.04.075 (Deductions to Prevent Multiple Taxation of Transactions Involving More Than One City with an Eligible Gross Receipts Tax) This section establishes deductions to be applied when a single taxable activity is taxable by more than one jurisdiction that imposes an eligible gross receipts tax. Under Washington State Law, more than one city that has established nexus can include 100% of the gross receipts from that transaction in its tax base. However, to eliminate the possibility of the same sale or service being taxed more than once by cities that maintain nexus and an eligible gross receipts tax, the cities have provided this deduction to taxpayers.

a. Sales. A taxpayer that has paid an eligible gross receipts tax on the sale of the jurisdiction where the product is delivered may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on the sale. If a taxpayer has not paid tax to the jurisdiction where the product is delivered, then the sale shall be taxed by the city where the office or place of business that generated the sale is located.

b. Service. A taxpayer that has paid an eligible gross receipts tax on services to the jurisdiction where the service is performed may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on that service. If a taxpayer has not paid tax to the jurisdiction where the service is performed, then the service income shall be taxed by the city where the office or place of business that generated the sale is located.

c. For both sales and services, the order of taxing rights is delivery city first and business office location second.

d. General Business Activities Other Than Services. The eligible gross receipts tax on income derived from intangibles such as royalties, licenses, trademarks, patents and goodwill, and reportable under the general business classification under BMC 6.04.050, shall be assigned to the headquarters office. A taxpayer that has paid an eligible gross receipts tax on such activities to the jurisdiction where the taxpayer maintains an headquarters office may deduct the gross receipts used to measure that tax from the measure of the tax owed to the other jurisdictions on the same activity.

e. Business Conducted With Another City. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with a city may deduct the contract price used to measure the tax from the measure of the tax owed to another city on the same activity.