

ORDINANCE NO. 2004-12-084

AN ORDINANCE OF THE CITY OF BELLINGHAM AMENDING OR MODIFYING CERTAIN PROVISIONS OF BELLINGHAM MUNICIPAL CODE CHAPTER 6.05, ADMINISTRATIVE PROVISIONS FOR CERTAIN TAXES.

WHEREAS in December 2002 the City adopted Ordinance No. 2002-12-106, which set forth new administrative tax provisions; and,

WHEREAS Ordinance No. 2002-12-106 took effect on April 1, 2003; and,

WHEREAS Ordinance No. 2002-12-106 was based upon a 2002 Association of Washington Cities ("AWC") model B&O administrative tax ordinance that was developed in coordination with the business community; and,

WHEREAS Ordinance No. 2002-12-106 is codified in Bellingham Municipal Code Chapter 6.05; and,

WHEREAS in the 2003 Washington State Legislative Session, the Washington State Legislature adopted Engrossed House Bill 2030 (Chapter 79, Laws of 2003) ("EHB 2030") that effectively requires cities with local B&O taxes to revise the 2002 city B&O administrative tax model ordinance and implement certain additional or modified requirements by December 31, 2004; and,

WHEREAS AWC, various cities, and business associations have been working on a revised model city B&O administrative tax provisions ordinance that reflects the new State Legislative mandates incorporated in EHB 2030; and

WHEREAS AWC, various cities, and business associations have developed a revised city B&O administrative tax provisions model ordinance; and,

WHEREAS this Ordinance modifies the City's existing Code regarding administrative provisions for certain taxes, consistent with the revised model ordinance, to reflect the State Legislative mandated changes listed in EHB 2030;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. Bellingham Municipal Code Chapter 6.05.040 is hereby modified as follows:

6.05.040 - When Due And Payable - Reporting Period - Monthly, Quarterly, And Annual Returns - Threshold Provisions Or Relief From Filing Requirements - Computing Time Periods, Failure To File Returns

A. Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter or chapter 6.04 of the Code shall be due and payable in annual installments. At the Director's discretion, businesses may be assigned to a quarterly or monthly reporting period depending on the tax amount owing or type of tax; provided that monthly reporting may be assigned only if it can be demonstrated that the taxpayer is remitting excise tax to the State

of Washington on a monthly basis. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is full and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed. Returns not received on or before the due date are subject to penalties and interest in accordance with this chapter.

D. Notwithstanding subsection (A) of this section, a person shall not owe any tax under this chapter and chapter 6.04 of this Code if the following conditions are met:

(1) The person's gross income of the business from all activities taxable under chapter 6.04 of this Code is less than \$20,000 per year if assigned an annual reporting period or \$5,000 per quarter if assigned a quarterly reporting period; and

(2) The person is not required to collect or pay to the City any other tax or fee which the City is authorized to collect.

Regardless of reporting period assigned, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, does not exceed the threshold amount in the current calendar year or calendar quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

E. A taxpayer who commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity subject to the conditions set forth in subsection D above.

F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

G. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Section 2. Bellingham Municipal Code Chapter 6.05.100 is hereby modified as follows:

6.05.100 - Over Payment Of Tax, Penalty Or Interest - Credit Or Refund - Interest Rate - Statute Of Limitations

A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner as provided in subsection (C) of this section, upon the filing with the Director a certified copy of the order or judgment of the Court.

E. For refunds or credits of amounts paid or other recovery allowed to a taxpayer after the effective day of the ordinance, the rate of interest shall be the federal short term interest rate as outlined for assessments under 6.05.090(B)(2) plus two percentage points.

F. Interest allowed on a credit refund issued after December 31, 2004, shall be computed as follows:

1. If all overpayments for each calendar year and all reporting periods ending with the final month included in a credit refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the credit refund then the interest shall be computed from (a) January 31st following each calendar year included in the credit refund or (b) the last day of the month following the final month included in the credit refund.

2. If the taxpayer has not made all overpayments for each calendar year and all reporting periods on or before the date specified in BMC 6.04.040, interest shall be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a credit refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in the credit refund is not the end of a calendar year.

3. Interest included in a credit notice shall accrue up to the date the taxpayer could reasonably be expected to use the credit notice. If a credit notice is converted to a refund, interest shall be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Section 3. Bellingham Municipal Code Chapter 6.05.110 is hereby modified as follows:

6.05.110 - Late Payment - Disregard Of Written Instruction - Evasion - Penalties

A. If the Director does not receive payment of any tax due on a return to be filed by a taxpayer by the due date, the Director shall add a penalty of:

1. 5% of the amount of the tax if not received by the due date;
2. 15% of the amount of the tax if not received on or before the last day of the month following the due date;
3. 25% of the amount of the tax if not received on or before the last day of the second month following the due date.

B. If the Director determines that any tax is due, there shall be assessed a penalty of five percent (5%) of the amount of the tax determined by the Director to be due; and if payment of any tax determined by the Director to be due is not received by the City by the due date specified in the notice, or any extension thereof, there shall be assessed a total penalty of fifteen percent (15%) of the amount of the tax under this subsection; and if the tax is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there shall be assessed a total penalty of twenty-five percent (25%) of the amount of the tax under this subsection. No penalty so added shall be less than five dollars (\$5).

C. If a warrant is issued by the Director for the collection of taxes, increases, and/or penalties, there shall be added thereto a penalty of ten percent (10%) of the amount of the tax, but not less than ten dollars (\$10).

D. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Finance Department a registration certificate as required by BMC 6.05.030, the Director shall impose a penalty of five percent (5%) of the amount of tax due from that person for the period that the person was not registered as required by BMC 6.05.030. The Director shall not impose the penalty under this subsection (D) if a person who has engaged in business taxable under this title without first having registered, as required by BMC 6.05.030, prior to any notification by the Director of the need to register, obtains a registration certificate from the City.

E. If the Director finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the Director shall add a penalty of ten percent (10%) of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the Finance Department has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the Finance Department has not issued final instructions because the matter is under appeal pursuant to this Municipal Code. The Director shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

F. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent (50%) of the additional tax found to be due shall be added.

G. The penalties imposed under subsections (A) through (D) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

H. The Director may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

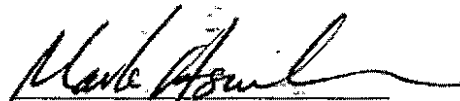
Section 4. Implementation Date.

This ordinance shall take effect pursuant to the terms of the Bellingham City Charter and, thereby, the City will satisfy Engrossed House Bill 2030's requirement to comply by December 31, 2004. Implementation of these requirements will begin for the tax year beginning on January 1, 2005.

PASSED by Council this 6th day of December, 2004.


Council President

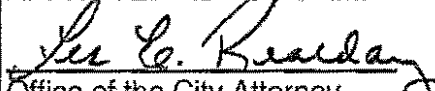
APPROVED by me this 9th day of December, 2004.


Mayor

ATTEST:


Finance Director

APPROVED AS TO FORM:


Office of the City Attorney

Published: December 10, 2004