

ORDINANCE NO. 2007-12-100

AN ORDINANCE OF THE CITY OF BELLINGHAM AMENDING BELLINGHAM MUNICIPAL CODE CHAPTER 6.05, ADMINISTRATIVE PROVISIONS FOR CERTAIN TAXES, TO REFLECT STATE LAW CHANGES.

WHEREAS, in December 2002 Council adopted a new Business and Occupations (B&O) Tax Code that was based on a model ordinance prepared in coordination with several B&O tax cities, including Bellingham, and the Washington business community; and,

WHEREAS, in December 2004, Council amended the B&O Tax code as required by Engrossed House Bill 2030 (EHB 2030), as codified in RCW Chapter 35.102; and,

WHEREAS, Section 13 of EHB 2030 required all local B&O Tax cities to adopt allocation and apportionment provisions of gross income for B&O Tax purposes as part of an updated city B&O tax model ordinance by January 1, 2008; and,

WHEREAS, several of the B&O tax cities, including Bellingham, in cooperation with the Association of Washington Cities, worked with representatives of various stakeholders such as the Association of Washington Business, the Governor's office, and the Department of Revenue, to develop a model ordinance that incorporates additional changes required by state law, including revisions to applicable administrative provisions; and,

WHEREAS, this Ordinance modifies the City's existing B&O Tax Code, consistent with the model ordinance, to reflect the State Legislature's mandated changes included in EHB 2030;

NOW, THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. BMC Chapter 6.05 is hereby amended to add a new section entitled BMC 6.05.021 as follows:

6.05.021 – Definitions – References to RCW Chapter 82.32

Where provisions of RCW Chapter 82.32 are incorporated herein and in BMC Chapter 6.04, the term "Department" as used in the RCW shall refer to the "Director" as defined in BMC 6.04.030 and "warrant" as used in the RCW shall mean "citation or criminal complaint".

Section 2. BMC 6.05.090 is hereby amended as follows:

6.05.090 - Underpayment Of Tax, Interest Or Penalty - Interest - Limitations

A. If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional

amount, which shall become due and shall be paid in full within 30 days from the date of the notice, or within such time as the Director may provide in writing.

B. Interest due. The Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may hereafter be amended. If this subsection is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

C. The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were due, except that the Director may issue an assessment:

1. Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director.

2. Against a person that has committed fraud or who misrepresented a material fact;

OR

3. Against a person that has executed a written waiver of such limitations.

Section 3. BMC 6.05.100 is hereby amended 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 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. The Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or may hereafter be amended. If this subsection is held invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

Section 4. BMC 6.05.110 is hereby amended 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 in accordance with RCW 82.32.090(1) as it now exists or as it may hereafter be amended.

B. If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2) as it now exists or as it may hereafter be amended.

C. If a warrant, citation, or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest, and/or penalties, there shall be added thereto a penalty of in accordance with RCW 82.32.090(3) as it now exists or as it may hereafter be amended.

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 in accordance with RCW 82.32.090(4) 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 in accordance with RCW 82.32.090(5) as it now exists or as it may hereafter be amended.

F. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, the Director shall assess a penalty in accordance with RCW 82.32.090(6) as it now exists or as it may hereinafter be amended.

G. The penalties imposed under subsection A through E 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.

I. For purposes of this section, "return" means any document a person is required by the City of Bellingham to file to satisfy or establish a tax or fee obligation that is administered or collected by the City and that has a statutorily defined due date.

J. If incorporation in the City of Bellingham code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

Section 5. Effective Date and Implementation Date.

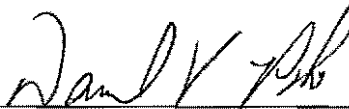
This Ordinance shall take effect pursuant to the terms of the Bellingham City Charter but the implementation of these requirements will begin for the tax year beginning on January 1, 2008.

PASSED by Council this 10th day of December, 2007.



Council President

APPROVED by me this 31st day of December, 2007.



Mayor

Attest:



Finance Director

An Ordinance Amending BMC
Chapter 6.05, Administrative Provisions - 4

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Approved as to Form:


Office of the City Attorney

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