

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5558

AN ORDINANCE relating to the Business and Occupation Tax Code; amending Bellevue City Code Chapters 4.03.090, 4.03.095, 4.03.100, 4.03.110, 4.03.120, 4.03.140, 4.03.170, 4.03.220, 4.09.030, 4.09.050, 4.09.070, 4.09.075, 4.09.090, 4.09.100 and Sections 1 and 2 of Ordinance No. 5436; adding Section 4.09.076, and establishing an effective date.

WHEREAS, one of the most important functions of a government, including municipal government, in setting and implementing tax policy is to strive for fairness, consistency, equity, and efficiency; and

WHEREAS, the Washington state legislature passed the Model Business and Occupations Tax Code (Engrossed House Bill 2030) which requires municipalities who impose business and occupations taxes based on gross receipts to adopt certain mandatory provisions of the model ordinance by December 31, 2004; and

WHEREAS, adoption of the model ordinance is vital in demonstrating that Bellevue is serious about ensuring that the City's B & O tax is administered fairly, equitably, consistently, and efficiently; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Chapter 4.03.090 of the Bellevue City Code is hereby amended to read as follows:

**4.03.090 Underpayment of tax, interest, or penalty – Interest.**

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 within 30 days from the date of the notice, or within such time as the Director may provide in writing. Interest shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.

1. For the purposes of this section, the rate of interest to be charged to the taxpayer for periods prior to 2005 shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the year immediately preceding the calendar year as published by the United States Secretary of the Treasury. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

2. For the purposes of this section, the rate of interest to be charged to the taxpayer for filing periods beginning in 2005 shall be an average of the federal short-term rate as defined in 26. U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal shor-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

Section 2. Chapter 4.03.095 of the Bellevue City Code is hereby enacted to read as follows:

**4.03.095 Time in which assessment may be made.**

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 incurred, 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. Chapter 4.03.100 of the Bellevue City Code is hereby amended to read as follows:

**4.03.100 Overpayment 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 B of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four 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. Interest on overpayments of taxes for periods beginning on or after January 1, 2005, shall be the average federal short term interest rate as outlined for assessments under 4.03.090(2) plus two (2) percentage points.

F. For refunds or credits of amounts paid or other recovery allowed to a taxpayer after the effective date of the ordinance codified in this chapter, the rate of interest shall be an average of the federal short-term interest rate plus two percentage points, as outlined for assessments under BCC 4.03.090(A)(2).

Section 4. Chapter 4.03.110 of the Bellevue City Code is hereby amended to read as follows:

**4.03.110 Late payment – Disregard of written instructions – Evasion – Penalties.**

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty equal to five (5) percent of the amount of the tax ; and if the tax is not received on or before the last day of the month following the due date, the Director shall add a total penalty equal to fifteen (15) percent of the amount of the tax ; and if the tax is not received on or before the last day of the second month following the due date, the Director shall add a total penalty equal to twenty-five (25) percent of the amount of the tax. No penalty assessed herein shall be less than Five Dollars (\$5.00).

B. A tax deficiency is assessed by the Director, there shall be added a penalty equal to five (5) percent of the amount of the deficiency. If payment of any tax

deficiency assessed by the Director is not received by the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to fifteen (15) percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the Director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to twenty-five (25) percent of the amount of additional tax found due. No penalty added shall be less than Five Dollars (\$5.00).

C. If a citation or criminal complaint is issued by the City for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty of ten (10) percent of the amount due, 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 Director a license as required by BCC 4.03.025, the Director shall impose a penalty of five (5) percent of the amount of tax due from that person for the period that the person was not licensed. No penalty shall be imposed under this subsection (D) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

E. If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty of ten (10) percent of the amount of the additional tax due.

1. A taxpayer fails to follow specific written tax reporting instructions when the Director 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 Director has not issued final instructions because the matter is under appeal pursuant to this chapter. The Director shall not assess the penalty under this subsection upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the Director to that taxpayer.

2. 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.

3. Any specific written instructions by the Director 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, the Director shall assess a penalty of fifty (50) percent of the additional tax found to be due.

G. The aggregate of penalties imposed under subsections A and B of this section shall not exceed 30 percent of the tax due and shall not be less than \$20.00.

This subsection does not prohibit or restrict the application of other penalties authorized by law. The penalties imposed under subsections A through F above 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 penalties authorized by subsections E and F of this section shall be assessed in accordance with the provisions of this chapter governing assessment of tax deficiencies. The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

I. For the purposes of this section, "return" means any document a person is required by the City 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.

Section 5. Chapter 4.03.120 of the Bellevue City Code is hereby amended to read as follows:

**4.03.120 Cancellation of penalties and interest.**

A. The Director may cancel any penalties and/or interest imposed under BCC 4.03.110(A) and (B) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director's authority to waive or cancel penalties and/or interest under this subsection shall extend to amounts already paid and also includes any disputes currently pending. The following situations will constitute the only circumstances under which such penalties may be waived or canceled:

1. The return was filed on time, but was inadvertently mailed to another agency or there was a delay or loss related to the postal service. The Director may also cancel interest in this situation.

2. The delinquency was due to written erroneous information given the taxpayer by the department. The Director may also cancel interest in this situation.

3. The delinquency was caused by the death or serious illness of the taxpayer or his/her immediate family, or by the illness or death of his/her tax preparer or a member of the tax preparer's immediate family, prior to the filing date.

4. The delinquency was caused by the unavoidable absence of the taxpayer, prior to the filing date.

5. The delinquency was caused by the destruction, through no fault of the taxpayer, by fire or other casualty of the taxpayer's place of business or business records.

6. The taxpayer, prior to the time of filing the return, made timely application to the department, in writing, for proper forms and these forms were not furnished in sufficient time to permit the completed return to be filed and the tax paid before the delinquent date.

7. The delinquency was the result of an unforeseen and unintentional circumstance, not immediately known to the taxpayer, caused by the malfeasance or misconduct of the taxpayer's employee or accountant.

8. The Director has reasonably determined that the taxpayer made a good faith effort to comply with the provision of this chapter.

9. The taxpayer inadvertently failed to file a tax return because of a good faith belief that the taxpayer qualified for the filing exemption in BCC 4.03.040(D). The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C of this section.

B. A request for cancellation of penalties and/or interest must be received by the Director within 30 days after the date the department mails the notice that the penalties and/or interest are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rest upon the taxpayer.

C. The Director may cancel the penalties in section BCC 4.03.110(A) and (B) one time if a person:

1. Was not licensed, and filing returns,
2. Was unaware of his/her responsibility to file and pay tax, and
3. Obtained business licenses and filed past due tax returns within 30 days after being notified by the department.

D. The Director shall not cancel any interest charged upon amounts due, except under subsections (A)(1) and (2) of this section.

Section 6. Chapter 4.03.140 of the Bellevue City Code is hereby amended to read as follows:

**4.03.140 Correction of tax – Administrative appeal.**

A. Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department may, within 30 days after the

issuance of such notice or within the period covered by any extension of the due date granted by the department, request a correction of the amount of the assessment and a conference for review of the assessment. Interest and penalties assessed shall continue to accrue during the department's review of a request for a correction, except and to the extent that the department later determines that a tax assessment was too high or the delay in issuing a determination is due to unreasonable delays caused by the department. After the conference, the department will make a final determination regarding the assessment and shall notify the taxpayer of the department's determination within 60 days, unless otherwise notified in writing by the department. Such determination shall be subject to appeal pursuant to subsection B of this section. If no request for correction is filed within the time period provided herein, the assessment covered by such notice shall become final and immediately due and payable.

B. Any person aggrieved by the amount of any fee, tax, interest or penalty determined by the department to be due under the provisions of this chapter or Chapter 4.04 BCC, Admission Tax Code; Chapter 4.09 BCC, Business and Occupation Tax Code; Chapter 4.10 BCC, Utility Occupation Tax Code; or Chapter 4.14 BCC, Gambling Tax Code, may appeal such determination pursuant to the following procedures.

1. Form of Appeal. Any appeal must be in writing and must contain the following:

- a. The name and address of the taxpayer,
- b. A statement identifying the determination of the department from which the appeal is taken,
- c. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the department is alleged to have made in making the determination, and
- d. A statement identifying the requested relief from the determination being appealed.

2. Time and Place to Appeal. Any appeal shall be filed with the Office of the Hearing Examiner with a copy to the Director no later than 30 days following the date on which the determination of the department was mailed to the taxpayer. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.

3. Appeal Hearing. The hearing examiner shall schedule a hearing date, notify the taxpayer and the Director of such hearing date and shall then conduct an appeal hearing in accordance with this chapter and procedures developed by the hearing examiner, at which time the appellant taxpayer and the Director shall have

the opportunity to be heard and to introduce evidence relevant to the subject of the appeal.

4. Burden of Proof. The appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the department is erroneous.

5. Hearing Record. The hearing examiner shall make an electronic sound recording of each appeal unless the hearing is conducted solely in writing.

6. Decision of the Hearing Examiner. Following the hearing, the hearing examiner shall enter a decision on the appeal, supported by written findings and conclusions in support thereof. A copy of the findings, conclusions and decision shall be mailed to the appellant taxpayer and to the Director. The decision shall state the correct amount of the fee, tax, interest or penalty owing.

7. Interest Accrual or Payment. Interest and/or penalties shall continue to accrue on all unpaid amounts, in accordance with BCC 4.03.090 and 4.03.110 notwithstanding the fact that an appeal has been filed. If the hearing examiner determines that the taxpayer is owed a refund, such refund amount shall be paid to the taxpayer in accordance with BCC 4.03.100.

Section 7. Chapter 4.03.170 of the Bellevue City Code is hereby amended to read as follows:

**4.03.170 Ancillary allocation authority of Director.**

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

A. To conduct an audit or joint audit of a taxpayer by using an auditor employed by the city of Bellevue, another city, or a contract auditor; provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;

B. To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.

C. To apply the city's tax prospectively where a taxpayer has no office or place of business within the city and has paid tax on all gross income to another Washington city where the taxpayer is located; provided, that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the city.

Section 8. Chapter 4.03.220 of the Bellevue City Code is hereby amended to read as follows:

**4.03.220 Unlawful actions – Violation – Penalties.**

A. It shall be unlawful for any person liable for fees or taxes under this chapter or Chapter 4.04 BCC, Admission Tax Code; Chapter 4.09 BCC, Business and Occupation Tax Code; Chapter 4.10 BCC, Utility Occupation Tax Code; or Chapter 4.14 BCC, Gambling Tax Code:

1. To violate or fail to comply with any of the provisions of this chapter or Chapters 4.04, 4.09, 4.10 or 4.14 BCC or any lawful rule or regulation adopted by the Director;

2. To make any false statement on any license application or tax return;

3. To aid or abet any person in any attempt to evade payment of a license fee or tax;

4. To fail to appear or testify in response to a subpoena issued pursuant to the rules of procedure of the office of the hearing examiner;

5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$5,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

C. Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

Section 9. Chapter 4.09.030 of the Bellevue City Code is hereby amended to read as follows:

#### **4.09.030 Definitions.**

Legislative intent information

Some of the definitions in this model ordinance are similar or identical to the definitions in the State taxing statutes; some are not. It is intended that the similar or identical language be understood and interpreted in accordance with published case law governing its meaning, if any, existing at the time the ordinance is adopted. The municipalities do 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 RCW.

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.

#### **A. "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.

#### **B. "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 there from in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.

**C. "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.

**D. "Business and occupation tax."** "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

**E. "Chapter."** "Chapter" shall mean BCC Chapter 4.09, as it may be amended or replaced from time to time.

**F. "Commercial or industrial use."** "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; and
2. The manufacturing of articles, substances or commodities

**G. "Competitive telephone service."** "Competitive telephone service" means the providing by any person of 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.

**H. "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 (B)(8);

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 sections .030 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."

I. **"Day care homes in residences."** "Day care homes in residences" means child and adult day care facilities in residences otherwise occupied as private homes.

**J. "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.

**K. "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 (B); 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.

**L. "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.
3. 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 architectural services, 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. Conducting advertising through the mail.

g. Soliciting sales by phone from a location outside the City

5. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City.

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying 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.

**M. "Extracting."** "Extracting" is the activity engaged in by an extractor and is reportable under the extracting classification.

**N. "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, 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; or persons meeting the definition of farmer.

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

**P. "Gross income of the business."** "Gross income of the business" means the value proceeding or accruing by reason 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, 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.

**Q. "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.

**R. "In this City," "Within this City."** "In this City " or "within this City" includes all federal areas lying within the corporate city limits of the City of Bellevue.

**S. "Manufacturer," "To manufacture."**

1. "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. 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, and not a manufacturer. A business not located in this City that is the owner of materials or ingredients processed for it in this City by a 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. ;  
and
- d. The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

T. **"Manufacturing."** "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

**U. "Newspaper," "Magazine," "Periodical."**

1. "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.

2. "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.

**V. "Non-profit organization."** "Non-profit organization" means an organization exempt from federal income tax under Section 501(c)(3), (4), or (7) of the Internal Revenue Code, or as hereafter amended.

**W. "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, and
2. Where the place of primary use is shown on a telephone billing or a location containing 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.

**X. "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.

**Y. "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.

**Z. "Processing for hire."** "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.

**AA. "Product", "Byproduct."**

1. "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort.

2. "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.

**BB. "Retailing."** "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

**CC. "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.

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

**DD. "Royalties."** "Royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

**EE. "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.

**FF. "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 which is taxable under section .050 (B) (8).

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:

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. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to 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 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, the State of Washington, 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 (public road construction).

7. "Sale at retail" or "retail sale" shall also include 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 (government contracting).

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 should be reported under the service and 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 should be reported under the service and other classification).

**GG. "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 consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service 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.

**HH. "Software", Prewritten software," "Custom software," "Customization of canned software," "Master copies," "Retained rights."**

1. "Prewritten software" or "Canned software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

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 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.

**II. "Taxpayer."** "Taxpayer" means any "person", as herein defined, required to have a business license under Chapter 4.03 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.

**JJ. "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 organization, as defined by the Internal Revenue Code Section 501(c)(3), or as hereafter 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.

**KK. "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.

**LL. "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.

3. Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; of (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

**MM. "Wholesaling."** "Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

Section 10. Section 4.09.050 of the Bellevue City Code is hereby amended to read as follows:

**4.09.050 Imposition of the tax - Tax or fee levied.**

Except as provided in Section 4.09.090 (A), 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 in amounts to be determined by application of rates against the square footage of office space in Bellevue and/or gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

**A. Square footage tax:**

Upon every person within this City who maintains an office(s) or facility(s), the amount of tax shall be equal to \$0.1834 for each quarterly period of a calendar year for each square foot of floor area of office space calculated to the nearest square foot. The tax rate set forth herein shall be administratively adjusted on January 1st of each year, beginning January 1, 2004, by the Director, to reflect any change in the cost of living, as defined and calculated pursuant to BCC 4.03.020(B).

1. As to such person who maintains an office or facility that performs or supports an activity for which such person pays gross receipts business and occupation tax under this Chapter, an exemption from a portion of the tax of this section is granted. The exemption is calculated by taking the proportion that Adjusted Gross Receipts bears to the total gross receipts of the business location multiplied by the Taxable Floor Area (as defined in subsection (2) of this section), used to perform or support the activity subject to gross receipts business and occupation tax (BCC 4.09.050 (B)).

Adjusted Gross Receipts for the purpose of this subsection shall include total gross receipts of the business location less receipts from tangible personal property delivered outside the State deducted pursuant to BCC 4.09.100(F) and not taxed under subsections (B)(1) (extracting tax) or (B)(2) (manufacturing tax) or (B)(5) (printing tax) of this section.

For any person with more than one location in the City, the floor space and receipts from locations within the City shall be combined for the purpose of calculating this exemption.

The Director may promulgate rules and regulations regarding the manner, means and method of calculating the exemption.

2. The Taxable Floor Area of office space shall be computed on the basis of net rentable area as follows:

a. Rentable Area – Single-Tenancy Floor. The rentable area of a single-tenancy floor, whether above or below grade, shall be computed by measuring to the inside finish of permanent outer building walls, or from the glass line if at least 50 percent of the outer building wall is glass. Rentable area shall include all area within outside walls, less stairs, elevator shafts, flues, pipe shafts, vertical ducts, air-conditioning rooms, fan rooms, janitor closets, electrical closets and such other rooms not actually available to the tenant for his/her furnishings and personnel, and their enclosing walls. Toilet rooms within and exclusively serving only that floor shall be included in the rentable area. No deductions from the rentable area calculation shall be made for columns and projections necessary to the building.

b. Rentable Area – Multiple-Tenancy Floor. The rentable area of a multiple-tenancy floor, whether above or below grade, shall be the sum of all rentable areas on that floor. The rentable area of an office on a multiple-tenancy floor shall be computed by measuring to the inside finish of permanent outer building walls, or to the glass line if at least 50 percent of the outer building wall is glass, to the office side of corridors and/or other permanent partitions, and to the center of partitions that separate the premises from adjoining rentable areas. No deductions from the rentable area calculation shall be made for columns and projections necessary to the building.

c. For purposes of this section, net rentable area shall not include warehouses, company gyms, cafeterias, and the retail selling area of a retail store.

d. When the taxable floor space of an office changes during a reporting period, the tax shall be computed on a monthly basis. For the purposes of this allocation, a month shall be deemed to be 16 or more days during any calendar month.

B. Gross receipts taxes:

1. Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the City for sale or for commercial or industrial use, multiplied by the rate of .1496 of one percent (.001496). 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; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the City, multiplied by the rate of .1496 of one percent (.001496). The measure of the tax is the value of the products, including by-products, so manufactured, 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, as to such persons, 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 .1496 of one percent (.001496).

4. Upon every person engaging within the City in the business of making sales at retail; as to such persons, 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 .1496 of one percent (.001496).

5. Upon every person engaging within the City in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines and periodicals, (d) extracting for hire, and (e) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of .1496 of one percent (.001496).

6. Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such

business shall be equal to the gross proceeds of sales multiplied by the rate of .1496 of one percent (.001496).

7. Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of .1496 of one percent (.001496). 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 developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

Section 11. Section 4.09.070 of the Bellevue City Code is hereby amended to read as follows:

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

Legislative intent information

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.

A. Persons who engage in business activities that are within the purview of two (2) or more subsections of .050 (B) shall be taxable under each applicable subsection.

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

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.

F. Credit for persons that sell within the City products that they print, or publish and print. 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 with respect to the printing, or the printing and publishing, of the products sold within 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.

Section 12. Section 4.09.075 is hereby amended to read as follows:

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

**Legislative intent information**

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.

**Sales.** A taxpayer that has paid an eligible gross receipts tax on the sale to 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 no deduction is allowed. The sale shall be taxed the city where the office or place of business that generated the sale is located.

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 no deduction is allowed. The service income shall be taxed by the city where the office or place of business that generated the sale is located. For both sales and services, the order of taxing rights is delivery city, first; and business office location, second.

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 4.09.050 (7), shall be assigned to the domicile/headquarter's location.

Business Conducted With Other Cities. 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.

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 shall assign those gross receipts to the jurisdiction where the person is domiciled (its 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. 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 City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Section 13. There is hereby enacted a new section of Chapter 4.09 of the Bellevue City Code to read as follows:

**4.09.076 Assignment of gross income derived from intangibles.**

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

Section 14. Chapter 4.09.090 of the Bellevue City Code is hereby amended to read as follows:

**4.09.090 Exemptions.**

A. Tax exemption thresholds. Any person engaging in any one or more business activities which are otherwise taxable pursuant to BCC 4.09.050 (B), whose value of products, gross proceeds of sale, or gross income of business, less applicable deductions and exemptions, is less than or equal to \$125,000 for an annual reporting period, regardless of assigned reporting frequency, shall be exempt from taxation under such section. In addition, any person whose net taxable income plus receipts from tangible personal property delivered outside the State is less than or equal to \$125,000 shall be exempt from taxation from BCC 4.09.050 (A). The exemption level set forth in this subsection shall be administratively adjusted by the Director on January 1st of each year, beginning on January 1, 2006, to reflect any change in the cost of living, as defined and calculated pursuant to BCC 4.03.020(B). The amount of the exemption level so calculated shall be rounded to the nearest \$5,000.

Any person otherwise taxable pursuant to BCC 4.09.050 (A) and whose total floor area of office space does not exceed 250 taxable square feet shall be exempt from taxation under BCC 4.09.050 (A).

B. Non-profit corporations or non-profit organizations. This Chapter shall not apply to non-profit organizations exempt from federal income tax under Section 501(c)(3), (4), or (7) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons.

C. Adult family homes. This chapter shall 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.

D. Health maintenance organization, health care service contractor, certified health plan. Beginning on January 1, 2000 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.

E. 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 BCC Chapter 4.10.

F. Gambling taxes. 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 BCC Chapter 4.14.

G. 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.

H. International banking facilities. This Chapter shall not apply to the gross receipts of an international banking facility. As used in this subsection, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).

I. Insurance business. This Chapter shall not apply to insurance agents. In addition, this Chapter shall not apply to amounts received by any person 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.

J. 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.

K. Athletic 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.

L. 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.

M. Real estate salesperson and associate broker commissions.

Where a real estate brokerage office has paid the gross receipts tax due under this Chapter on real estate commissions earned, salespersons or associate brokers within the same brokerage office shall not be required to pay a similar tax upon the same transaction.

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 hereafter amended.

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 of real estate. This Chapter shall not apply to gross proceeds derived from the sale 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. 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 days to reimburse in kind a previous accommodation sale by the buyer to the seller.

V. 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.

W. Day Care Homes in Residences. This Chapter shall not apply to any "day care homes in residences" as defined in BCC 4.09.030(I).

X. City Exempt from Tax. The City of Bellevue is exempt from the tax levied by this Chapter.

Section 15. Section 4.09.100 of the Bellevue City Code is hereby amended to read as follows:

**4.09.100 Deductions.**

In computing the tax imposed by this Chapter, the following items may be deducted from the measure of tax. The square footage tax levied pursuant to BCC 4.09.050 (A) shall not apply unless otherwise noted.

A. 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. endowment funds; and
7. Charges made for operation of privately operated kindergartens.

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 subsection.

B. Compensation from public entities for health or social welfare services - exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, "employee benefit plan" includes the military benefits program authorized in 10 USC Sec. 1071 et seq., as amended, or amounts payable pursuant thereto.

C. 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.

D. 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.

E. Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives. In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a

lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.

F. Receipts from tangible personal property delivered outside the State. 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. The square footage tax pursuant to 4.09.050 (A) shall apply to deductions for receipts from tangible personal property delivered outside the State.

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;

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 who 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;

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 the tax, amounts derived from 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 tax amounts representing 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.

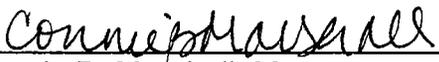
M. Constitutional prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

Section 16. The provisions of this Ordinance shall take effect and be in force on December 31, 2004, and shall apply to and govern all taxes due for tax reporting periods beginning on and after that date.

Section 17. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this 15<sup>th</sup> day of November, 2004, and signed in authentication of its passage this 15<sup>th</sup> day of November, 2004.

(SEAL)

  
\_\_\_\_\_  
Connie B. Marshall, Mayor

Approved as to form:

Lori M. Riordan, Acting City Attorney

  
\_\_\_\_\_  
Patrice C. Cole, Assistant City Attorney

Attest:

  
\_\_\_\_\_  
Myrna L. Basich, City Clerk

Published November, 19, 2004