

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5436

AN ORDINANCE adopting two new Bellevue City Code Chapters, 4.03, Tax Administrative Code and 4.09, Business and Occupation Tax Code; repealing Bellevue City Code Chapters 4.02 and 4.08; amending Bellevue City Code sections 4.04.015, 4.04.020, 4.04.025, 4.04.035, 4.10.015, 4.10.020, 4.10.070, 4.14.015, 4.14.020, 5.04.050, 5.12.040, 5.12.110; 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, in recognition of concerns over the business and occupation (B&O) tax, and legislative debates over how to address those concerns, the Association of Washington Cities (AWC) and six B&O tax jurisdictions formed a Task Force to analyze these issues; and

WHEREAS, the Task Force, with the concurrence of the majority of other Washington cities levying gross receipts B&O taxes, has developed a model ordinance that creates greater uniformity and consistency among city gross receipts business and occupation taxes; includes a system of deductions to prevent multiple taxation of the same gross receipts; makes city gross receipts business and occupation taxes simpler, more predictable, and easier to administer; provides examples of activities that constitute “engaging in business” and establishes safe harbors for de minimus activities that a person may engage in without having to register or becoming subject to tax; and contains sufficient flexibility to provide local control over the city tax structure; and

WHEREAS, the model ordinance also strives to minimize any major revenue impact on cities levying gross receipts B&O taxes; retains local control over administration and collection of the B&O tax; and retains local control over B&O tax rates, thus preserving “local control” and revenue-protection measure that are critical to all cities in the State of Washington; and

WHEREAS, adoption of the model ordinance is also vital in demonstrating to the Washington State Legislature that cities are sensitive to legitimate complaints over the local B&O tax and are serious about ensuring that it more fairly, equitably, consistently, and efficiently administered; now, therefore,

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

Section 1. A new Chapter 4.03 of the Bellevue City Code is hereby adopted,  
as follows:

TAX ADMINISTRATIVE CODE  
CHAPTER 4.03

Sections:

- 4.03.010 Purpose.
- 4.03.015 Application of chapter stated.
- 4.03.020 Definitions.
- 4.03.025 Registration/license requirements.
- 4.03.030 Registration/license certificates.
- 4.03.035 City subject to tax.
- 4.03.040 When due and payable - Reporting periods - Monthly, quarterly, and annual returns - Threshold provisions or relief from filing requirements - Computing time periods - Failure to file returns.
- 4.03.050 Payment methods - Mailing returns or remittances - Time extension – Deposits – Recording payments – Payment must accompany return – NSF checks.
- 4.03.060 Records to be preserved - Examination - Estoppel to question assessment.
- 4.03.070 Accounting methods.
- 4.03.080 Public work contracts - Payment of fee and tax before final payment for work.
- 4.03.090 Underpayment of tax, interest, or penalty - Interest - Limitations....
- 4.03.100 Over payment of tax, penalty, or interest – Credit or refund – Interest rate - Statute of limitations.
- 4.03.110 Late payment - Disregard of written instructions - Evasion - Penalties.
- 4.03.120 Cancellation of penalties and interest.
- 4.03.125 Voluntary registration.
- 4.03.130 Taxpayer quitting business - Liability of successor.
- 4.03.140 Correction of tax - Administrative appeal.
- 4.03.150 Judicial review of Hearing Examiner decision.
- 4.03.160 Administration - Director to make rules.
- 4.03.170 Ancillary allocation authority of Director.
- 4.03.180 Mailing of notices.
- 4.03.190 Tax declared additional.
- 4.03.200 Public disclosure – Confidentiality - Information sharing.
- 4.03.210 Tax constitutes debt.
- 4.03.220 Unlawful actions - Violation - Penalties.
- 4.03.230 Suspension or revocation of business registration [license].
- 4.03.240 Closing agreement provisions.
- 4.03.250 Charge-off of uncollectible taxes.

- 4.03.260 Severability.
- 4.03.270 Collection of tax.
- 4.03.280 City subject to tax.
- 4.03.290 Tax amnesty.

**4.03.010 Purpose.**

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

**4.03.015 Application of chapter stated.**

The provisions of this Chapter shall apply with respect to the taxes imposed under Bellevue City Code ("BCC") Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code), 4.14 (Gambling Tax Code) and to such other chapters and sections of the Bellevue City Code in such manner and to such extent as expressly indicated in each such chapter or section.

**4.03.020 Definitions.**

For purposes of this Chapter:

The definitions contained in BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code), and 4.14 (Gambling Tax Code) shall apply equally to the provisions of this Chapter unless the term is defined otherwise in this Chapter. In addition, the following definitions will apply.

- A. "Chapter."** Unless otherwise clearly indicative by the context, the word "Chapter" used in this Chapter shall mean BCC Chapter 4.03, as it may be amended from time to time.
- B. "Cost of living adjustment."** "Cost of living adjustment." Whenever a cost of living adjustment is required or permitted pursuant to any section of BCC Title 4, such adjustment shall be an amount equal to the amount and direction of change determined by reference to the U.S. City Average Urban Wage Earners and Clerical Workers Consumer Price Index (CPI) for each 12-month period ending

on September 30th as published by the United States Department of Labor. To calculate this adjustment, the current rate will be multiplied by one plus or minus, as the case may be, the annual change in the CPI.

- C. "Department."** "Department" means the finance department or successor department.
- D. "Director."** "Director" means the director of the finance department or his or her designee or other person designated by the city manager.
- E. "Family. "** "Family" means one or more persons (but not more than six unrelated persons) living together as a single housekeeping unit. For purposes of this definition, children with familial status within the meaning of Title 42 United States Code, Section 3602(k) and persons with handicaps within the meaning of Title 42 United States Code, Section 3602(h) will not be counted as unrelated persons.
- F. "Reporting period."** "Reporting period" means:
1. A one-month period beginning the first day of each calendar month (monthly);  
or
  2. A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
  3. A twelve-month period beginning the first day of January of each year (annual).
- G. "Return."** "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.
- H. "Successor."** "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.
- I. "Tax year," "Taxable year."** "Tax year" or "taxable year" means the calendar year.

#### **4.03.025 Registration/license requirements.**

Any person who engages in any business or performs any act which is subject to the provisions of BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and

Occupation Tax Code), 4.10 (Utility Occupation Tax Code) or 4.14 (Gambling Tax Code), even if such person is not subject to any tax imposed thereby, shall apply under such rules and regulations as the Department may prescribe and, upon approval, receive from the Department a registration certificate applicable to all such business engaged in or activity performed.

No person shall engage in any business without being registered in compliance with the provisions of this section except the following:

- A. Any farmer who is exempt from the business and occupation tax pursuant to BCC 4.09.090(I); or
- B. Any "family" as defined in BCC 4.03.020(E).
- C. Any person who performs activities subject to the provisions of BCC Chapter 4.09 and meets the requirements of BCC 4.09.030(K)(4). This exemption does not apply to any person engaged in activities that are subject to the provisions of other chapters of Title 4.

#### **4.03.030 Registration/license certificates.**

A registration fee of \$25.00 shall be due at the time of filing of the application. Such registration certificate shall be personal and nontransferable and shall be valid as long as the taxpayer continues in such business and pays any tax imposed by the City.

The registration fee shall be administratively adjusted by the Director on January 1, 2004 in an amount equal to the cost of living adjustment applicable for that year. The amount of the registration fee so calculated shall be rounded to the nearest \$1.00.

In the event business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted shall be required. Such additional certificates shall be issued at no additional fee. Where a taxpayer changes the nature of business conducted or conducts additional activities upon which a tax is imposed by BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code) or 4.14 (Gambling Tax Code) such taxpayer shall apply for and receive a new registration certificate at no additional fee.

Each registration certificate shall be numbered and shall show the name, business location, mailing address and such other information as the Department deems necessary. The certificate of registration shall be posted in a conspicuous place at the place of business for which it is issued.

Where a place of business of the taxpayer is changed, the taxpayer shall notify the Department and upon approval a new certificate will be issued free of charge for the new place of business.

**4.03.035 City subject to tax.**

Whenever the City through any department or division engages in any business activity taxable under BCC Chapter 4.10 (Utility Occupation Tax Code), which if engaged in by any person would require a certificate of registration, the filing of returns and the payment of a registration fee or tax by such person, the city department or division engaging in such business activity shall, at the same time and in the same manner as persons are required hereunder, prepare returns and pay the registration fees or taxes imposed in BCC Chapter 4.10, unless specifically exempted in the applicable tax code.

**4.03.040 When due and payable - Reporting periods - Monthly, quarterly, and annual returns - Threshold provisions or relief from filing requirements - Computing time periods - Failure to file returns.**

- A.** Other than any annual license fee or registration fee assessed under this Chapter, the tax imposed by BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code) and 4.14 (Gambling Tax Code) shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.
- B.** Taxes shall be paid as provided in this Chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true to the best of their belief and knowledge
- C.** Tax returns must be filed and returned by the due date whether or not any tax is owed.
- D.** Notwithstanding subsection (A) above, the Director may relieve any person of the requirement to file returns if the person meets exemption criteria under BCC 4.04.035(B), 4.04.035(C), 4.09.090(A), 4.14.040(A), or 4.14.040(B).
- E.** A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity subject to the conditions set forth in subsection (D) above.

- F.** Except as otherwise specifically provided by any other provision of this Chapter, in computing any period of days prescribed by this Chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.
- G.** If any taxpayer fails, neglects or refuses to make a return as and when required in this Chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

**4.03.050 Payment methods – Mailing returns or remittances – Time extension – Deposits – Recording payments – Payment must accompany return – NSF checks.**

- A.** Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.
- B.** A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.
- C.** If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.
- D.** The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

- E. For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this Chapter.
- F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "non-sufficient funds" (NSF) charge of twenty dollars (\$20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars (\$20.00) NSF fee) is received.
- G. The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this Chapter.

**4.03.060 Records to be preserved - Examination - Estoppel to question assessment.**

Every person liable for any fee or tax imposed by this Chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

- A. If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.
- B. Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax or fees payable by

obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

**4.03.070 Accounting methods.**

- A. A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.
- B. The taxes imposed and the returns required, hereunder, shall be upon a calendar year basis.

**4.03.080 Public work contracts - Payment of fee and tax before final payment for work.**

The Director may, before issuing any final payment to any person performing any public work contract for the City, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

**4.03.090 Underpayment of tax, interest, or penalty - Interest - Limitations.**

- A. If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.
  - 1. 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.
  - 2. For the purposes of this section, the rate of interest to be charged to the taxpayer 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.

- B.** 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.

**4.03.100 Over payment of tax, penalty, or interest – Credit or refund – Interest rate - Statute of limitations.**

- A.** If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (B) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.
- B.** The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the Director discovers that a refund or credit is due.
- C.** Refunds shall be approved by the Director and made by the issuance of a City check or warrant drawn upon and payable from such funds as the City may provide.
- D.** Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (C) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

- E. For refunds or credits of amounts paid or other recovery allowed to a taxpayer before the effective date of the Ordinance, the rate of interest shall be an average of the federal short term interest rate plus two percentage points, as outlined for assessments under subsection .090(A)(2).
- F. For refunds or credits of amounts paid or other recovery allowed to a taxpayer after the effective date of the Ordinance, the rate of interest shall be an average of the federal short term interest rate plus two percentage points, as outlined for assessments under subsection .090(A)(2).

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

- A. If the Director does not receive payment of any tax due on a return to be filed by a taxpayer by the due date, the Director shall add a penalty equal to the greater of five percent (5%) of the amount of the tax, or ten dollars (\$10.00); 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 the greater of ten percent (10%) of the amount of the tax, or fifteen dollars (\$15.00); 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 the greater of twenty percent (20%) of the amount of the tax, or twenty dollars (\$20.00).
- B. If payment of any tax assessed by the Director is not received by the due date specified in the notice, or any extension thereof, the Director shall add a penalty equal to the greater of ten percent (10%) of the amount of the additional tax found due, or ten dollars (\$10.00).
- C. 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 twenty-five percent (25%) 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. 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 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.
- D. 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 percent (50%) of the additional tax found to be due.
- E. The aggregate of penalties imposed under subsections (A) and (B) of this section shall not exceed thirty percent (30%) of the tax due and shall not be less than twenty dollars (\$20.00). This subsection does not prohibit or restrict the application of other penalties authorized by law.
- F. The penalties authorized by subsection (C) and (D) shall be assessed in accordance with the provisions of this Chapter governing assessment of tax. 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.

#### **4.03.120 Cancellation of penalties and interest.**

- A. The Director may cancel any penalties and/or interest imposed under subsections .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).

- 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 subsections .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.

#### **4.03.125 Voluntary registration**

In the case of any unregistered taxpayer doing business in the City of Bellevue that voluntarily registers prior to being contacted by the Department, the Department

shall not assess for back taxes or interest for more than four calendar years prior to the year of registration. In addition, the late payment penalty imposed under section 4.03.110(A) shall not apply.

**4.03.130 Taxpayer quitting business - Liability of successor.**

- A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.
- B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the City from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.
- C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.
- D. Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

**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 section .140(B). 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 BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code) or 4.14 (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 Director with a copy to the Office of the Hearing Examiner 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 Director shall transmit the appeal to the Office of the Hearing Examiner. 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.

**4.03.150 Judicial review of Hearing Examiner decision.**

The decision of the Hearing Examiner may be appealed to the Superior Court of King County by the appellant taxpayer or by the Director by filing a proper request for a writ of review with the Superior Court. A request for a writ of review must be filed within 30 calendar days following the date that the decision of the Hearing Examiner was mailed to the parties. Review by the Superior Court shall be on, and shall be limited to, the record on appeal created before the Hearing Examiner.

**4.03.160 Administration - Director to make rules.**

The administration of this Chapter and BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code) and 4.14 (Gambling Tax Code) shall be accomplished under the direction of the Director.

The Director may prescribe forms and shall have the power, from time to time, to adopt, publish and enforce rules and regulations necessary for the administration of this Chapter and for the administration of BCC Chapters 4.04, 4.09, 4.10, and 4.14, not inconsistent with these chapters or with law. It shall be unlawful to violate or fail to comply with, any such rule or regulation.

**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 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 in a manner that fairly reflects gross receipts earned from activities conducted within the respective cities.
- 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.

**4.03.180 Mailing of notices.**

Any notice required by this Chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this Chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

**4.03.190 Tax declared additional.**

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City of Bellevue except as herein otherwise expressly provided.

**4.03.200 Public disclosure – Confidentiality – Information sharing.**

Except as hereinafter provided, it shall be unlawful for the City or any official, employee, agent, or representative thereof to make known or reveal any facts or information contained in any return filed by any taxpayer or disclosed in any investigation or examination of the taxpayer's books and records made in connection with the administration thereof; except where such disclosure or inspection is authorized or required by the Public Disclosure Act, Chapter 42.17 RCW or other State or Federal law. The foregoing, however, shall not be construed to prohibit the City or any official, employee, agent or representative thereof from:

- A. Giving such facts or information in evidence in any appeal before the Hearing Examiner or in any court action involving any tax, interest or penalty imposed pursuant to BCC Title 4 or involving a violation of the provisions thereof.
- B. Giving such facts and information to the taxpayer or his duly authorized agent.
- C. Publishing statistics so classified as to prevent the identification of particular taxpayers or their returns or reports or items thereof.
- D. Giving such facts or information, for official purposes only, to any employee of the City, the mayor and City Council, or to any subcommittee of the City Council dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions.
- E. Permitting the taxpayer's records to be audited and examined by the proper city officer, agent or employee.

- F.** Giving such facts or information, for official purposes only, to the Federal Internal Revenue Service, State Department of Revenue, and tax or law enforcement officials of any federal or state agency or municipal subdivision of this state for official purposes only, but only if substantially similar privileges are granted to the proper offices of the City.

Any person acquiring knowledge of such facts or information in the course of his/her office, employment, or agency with the City and including any person acquiring knowledge of such facts and information as provided under subsection (D), (E) and (F), who reveals or makes known any such facts or information to any person or entity not entitled to knowledge of such facts or information under the provisions of this section, may be punished by a civil penalty not exceeding \$1,000 and, if the person violating this requirement is an officer or employee of the City, he/she may be required to forfeit such office or employment.

**4.03.210 Tax constitutes debt.**

Any license fee or tax due and unpaid under this Chapter, and all interest and penalties thereon, shall constitute a debt to the City of Bellevue and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

**4.03.220 Unlawful actions - Violation - Penalties.**

- A.** It shall be unlawful for any person liable for fees or taxes under this Chapter or BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code) or 4.14 (Gambling Tax Code):
1. To violate or fail to comply with any of the provisions of this Chapter or BCC Chapters 4.04, 4.09, 4.10 or 4.14 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 \$1,000, 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.

**4.03.230 Suspension or revocation of business registration [license].**

- A. The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this Chapter or BCC Chapters 4.04 (Admission Tax Code), 4.09 (Business and Occupation Tax Code), 4.10 (Utility Occupation Tax Code) and 4.14 (Gambling Tax Code) and to such other chapters and sections of the Bellevue City Code in such manner and to such extent as expressly indicated in each such chapter or section. The Director, or designee, shall notify such licensee in writing by certified mail of the intended suspension or revocation of his or her license and the grounds therefor. Any license issued under this Chapter may be suspended or revoked based on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.
2. The licensee has failed to comply with any provisions of Title 4.
3. The licensee has failed to comply with any provisions of the Bellevue City Code.
4. The licensee is in default in any payment of any license fee or tax under Title 4.
5. The licensee or employee has been convicted of a crime involving the business.

- B. Any licensee may, within 30 days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the Hearing Examiner. A copy of the petition must be provided by the licensee to the Director and the City Attorney on or before the date the petition is filed with the Hearing Examiner. The Hearing Examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the Hearing Examiner shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

- C. No suspension or revocation of a license issued pursuant to the provisions of this subchapter shall take effect until 30 days after the mailing of the notice thereof by the Director, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the Hearing Examiner. All licenses which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.
- D. The decision of the Hearing Examiner shall be final. The licensee and/or the Director may seek review of the decision by the Superior Court of Washington in and for King County within 30 days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.
- E. Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

**4.03.240 Closing agreement provisions.**

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this Chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

- A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and
- B. In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

**4.03.250 Charge-off of uncollectible taxes.**

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer.

**4.03.260 Severability.**

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

**4.03.270 Collection of tax.**

The City may pursue collection of any fee, tax, interest or penalty due and unpaid to the fullest extent and in any manner authorized by law, including but not limited to the filing of a civil action against the taxpayer for the payment of such debt or the use by the City of a collection agency for such purposes.

**4.03.280 City subject to tax.**

Whenever the city through any department or division engages in any business activity taxable under BCC Chapter 4.10 (Utility Occupation Tax Code), which if engaged in by any person would require a certificate of registration, the filing of returns and the payment of a registration fee or tax by such person, the city department or division engaging in such business activity shall, at the same time and in the same manner as persons are required hereunder, prepare returns and pay the registration fees or taxes imposed in BCC Chapter 4.10, unless specifically exempted in the applicable tax code.

**4.03.290 Tax amnesty.**

The Director, with City Council approval, may from time to time declare periods of tax amnesty to the extent that the Director determines that such periods of tax amnesty are likely to have the effect of increasing revenues to the City. The Director may promulgate rules and procedures to implement the provisions of this section.

Section 2. A new Chapter 4.09 of the Bellevue City Code is hereby adopted, to read as follows:

BUSINESS AND OCCUPATION TAX CODE

CHAPTER 4.09

Sections:

- 4.09.010 Purpose.
- 4.09.020 Exercise of revenue license power.
- 4.09.028 Administrative provisions.
- 4.09.030 Definitions.
- 4.09.040 Agency - Sales and services by agent, consignee, bailee, factor or auctioneer.
- 4.09.050 Imposition of the tax - Tax or fee levied.
- 4.09.060 Doing business with the City.
- 4.09.070 Multiple activities credit when activities take place in one or more cities with eligible gross receipt taxes.
- 4.09.075 Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax.
- 4.09.080 Reserved for any future additions.
- 4.09.090 Exemptions.
- 4.09.100 Deductions.

- 4.09.120 Tax part of overhead.
- 4.09.130 Severability clause.

**4.09.010 Purpose.**

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

**4.09.020 Exercise of revenue license power.**

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

**4.09.028 Administrative provisions.**

The administrative provisions contained in Chapter 4.03 shall be fully applicable to the provisions of this Chapter except as expressly stated to the contrary herein.

**4.09.030 Definitions.**

In construing the provisions of this Chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

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

**E. "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;
2. Any use in the manufacturing of products including articles, substances or commodities; or
3. Consigning, shipping or transferring extracted or manufactured products to another either without consideration or in the performance of contracts.

**F. "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.

**G. "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 (Y) and (BB) 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;
10. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

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

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

**J. "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.

**K. "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. Mere delivery of goods via common carrier.

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

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

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

**N. "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.

**O. "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.

**P. "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.

**Q. "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 processor for hire shall be deemed to be engaged in business as a manufacturer in this City.
2. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:
  - a. the production of special made or custom made articles;
  - b. the production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; and
  - c. crushing and/or blending of rock, sand, stone, gravel, or ore.

**R. "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.

**S. "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.

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

1. Whose address the person uses as its business mailing address,
2. 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.

**U. "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.

**V. "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.

**W. "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.

**X. "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.

**Y. "Retail service. "** "Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.
2. Abstract, title insurance, and escrow services;
3. Credit bureau services;
4. Automobile parking and storage garage services;

5. Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
  6. Service charges associated with tickets to professional sporting events; and
  7. The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.
  8. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.
- Z. "Royalties."** "Royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, tradenames, and similar items.

**AA. "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.

**BB. "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;
- 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 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 is 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 is reported under the service and other classification).
- CC. "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, if such charge is expressly

defined as a retail sale when rendered to or for consumers. Sale at wholesale also includes the sale of network telephone service to a telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

**DD. "Software", "Canned software," "Custom software," "Customization of canned software," "Master copies," "Retained rights."**

1. "Canned software" means software that is created for sale to more than one (1) person. For purposes of this Chapter, canned software is deemed to be tangible personal property regardless of the method of delivery-tangible media (e.g., disk or installed on hardware) or intangible (e.g., electronically over telecommunications paths).
2. "Custom software" means software created for a single person.
3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to 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.

**EE. "Taxpayer." "Taxpayer" means any "person", as herein defined, required to have a business license under this Chapter or liable for the collection of any tax**

or fee under this Chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this Chapter.

**FF. "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), 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.

**GG. "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.

**HH. "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.

**4.09.040 Agency - Sales and services by agent, consignee, bailee, factor or auctioneer.**

- A. Sales in own name - sales or purchases as agent.** Every person, including agents, consignees, bailees, factors or auctioneers having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in the person's own name and actually so selling shall be deemed the seller of such tangible personal property within the meaning of this Chapter.

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

1. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.
2. The books and records show the amount of the principal's gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal's gross sales must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.
3. No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement. Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.
4. Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been

co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

- B.** If the above requirements are not met the consignor, bailor, principal or other shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer.
- C.** Services in own name - procuring services as agent. For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured.

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

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

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

There is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be 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 section 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) (extracting tax) or (C) (manufacturing tax) or (F) (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 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, 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, except persons taxable under subsection (6) of this section; 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 buying wheat, oats, corn, barley and rye, but not including any manufactured or processed products thereof, and selling the same at wholesale, the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of .1496 of one percent (.001496).
7. 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).
8. 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 or a sale at wholesale.

#### **4.09.060 Doing business with the City.**

Except where such a tax is otherwise levied and collected by the City from such person, there is hereby levied a tax on the privilege of accepting or executing a contract with the City. Such tax shall be levied and collected whether goods or services are delivered within or without the City and whether or not such person has an office or place of business within or without the City.

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

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

- A. Persons who engage in business activities that are within the purview of two (2) or more subsections of .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 and that the taxpayer paid the amount of tax sought to be credited.
- D. Credit for persons that sell in the City products that they extract or manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a) with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this Chapter with respect to the sale of those products.
- E. Credit for persons that manufacture products in the City using ingredients they extract. Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this Chapter with respect to the manufacturing of those products.
- 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.

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

- A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity.** A taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:
1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.
  2. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill may deduct from the measure of the tax on those amounts the gross income used in measuring the eligible gross receipts tax paid to the other jurisdiction where the 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.

**4.09.080 Reserved for any future additions.**

**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 \$120,000 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 \$120,000 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, 2004, 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 and 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 4.10 and 4.14.
- F. 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.
- G. 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).

- H. 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.
- I. 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.
- J. 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.
- K. 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.
- L. 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.
- M. 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.
- N. 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.

- O. 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.
- P. 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.
- Q. 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.
- R. Casual and isolated sales.** This Chapter shall not apply to the gross proceeds derived from casual or isolated sales.
- S. 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.
- T. 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.
- U. Day Care Homes in Residences.** This Chapter shall not apply to any "day care homes in residences" as defined in BCC 4.09.030(H).
- V. City Exempt from Tax.** The City of Bellevue is exempt from the tax levied by this Chapter.

**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.

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

**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. 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.

#### **4.09.120 Tax part of overhead.**

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

#### **4.09.130 Severability Clause.**

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

Section 3. Bellevue City Code section 4.04.015, Admission Tax Code, is hereby amended to read as follows:

**4.04.015 General administrative provisions apply.**

The provisions of BCC Chapter 4.03, the tax administration code, shall be fully applicable to the provisions of this BCC Chapter 4.04 except as may be expressly stated to the contrary herein.

Section 4. Bellevue City Code Section 4.04.020, Admission Tax Code, is hereby amended to read as follows:

**4.04.020 Definitions.**

The definitions set forth in BCC Chapter 4.03 shall apply throughout this BCC Chapter 4.04 unless expressly provided otherwise herein. The following additional definitions shall apply throughout this Chapter:

- A. "Admission charge," in addition to its usual and ordinary meaning, is a monetary charge for an event open to the public including, but not limited in meaning to:
1. Charges for entrance and observation, including, but not limited to:
    - a. A charge made for season tickets or subscriptions;
    - b. A cover charge or a charge made for use of seats or tables, reserved or otherwise, and similar accommodations;
    - c. A charge made for food and refreshments in any place where any free entertainment, recreation or amusement is provided;
    - d. A charge made for admission to any theater, dance hall, cabaret, adult cabaret, amphitheater, club, haunted house, auditorium, stadium, athletic pavilion, park or field, baseball or athletic park, circus, amusement ride, or similar place;
    - e. A charge made for admission to or rental or use of equipment or facilities to any public golf course, facility, or driving range; if the rental of the equipment or facilities is necessary to the enjoyment of the golf course, facility, or driving range, at which a general admission is charged, the combined charges shall be considered as the admission charge.
  2. Other activities, including the following:
    - a. A charge made for automobile parking where the amount of the charge is determined according to the number of passengers in an automobile;
    - b. A sum of money referred to as "a donation" or similar payment which must be paid before entrance is allowed.

3. For purposes of illustration only, the following table provides examples of activities subject to the admission tax (this list is not all inclusive):

Taxable

1. For-profit theater
2. Movie theater
3. Cover charge in restaurant lounge
4. Charge for admittance to adult entertainment employees cabaret
5. Charge for entrance to a nonprofit organization's trade show which is open to the public
6. Charge for a golf course which is open to the public

Not Taxable

1. Annual dinner of a nonprofit organization which is open to members only
2. Tickets to a show performed for employees only of a for-profit company
3. Chamber of Commerce business fair which is open to members only

- B. "Chapter" shall mean BCC Chapter 4.04, as it may be amended or replaced from time to time.
- C. "Nonprofit tax-exempt organization" means an organization, corporation, or association organized and operated for the advancement, appreciation, public exhibition or performance, preservation, study and/or teaching of the performing arts, visual arts, history, science, or public charity providing human services, or public education which is currently recognized by the United States of America as exempt from federal income taxation pursuant to Section 501 (c)(1) or (3) of the Internal Revenue Code, as it may be amended or replaced from time to time.
- D. "Secondary or elementary school" means any public or private primary school, middle school, junior high school, high school, or any accredited college, junior college, university, or the recognized student body association thereof.

Section 5. Bellevue City Code section 4.04.025, Admission Tax Code, is hereby amended to read as follows:

**4.04.025 Tax imposed.**

There is levied and shall be collected a tax from every person, without regard to age, who pays an admission charge. Such tax shall be measured by applying the rates set forth in this Chapter to the admission charge. The tax herein levied shall be paid by the person paying the admission charge and shall be collected and remitted by the person to whom the admission charge is paid. The tax required to be collected under this Chapter shall be deemed held in trust by the person required to collect the same until remitted to the clerk as provided in BCC Chapter 4.03.

No tax shall be levied on any person who is admitted free and from who no compensating payment is obtained. The tax on reduced admission charges shall be charged on such reduced charge and not on the regular admission charge.

Section 6. Bellevue City Code section 4.04.035, Admission Tax Code, is hereby amended to read as follows:

**4.04.035 Exemptions.**

The following shall be exempt from any tax imposed under this Chapter:

- A. Admission charges for any activity of any elementary or secondary school.
- B. Admission charges which are \$4.00 or less. The \$4.00 exemption level set forth in this subsection shall be administratively adjusted by the Director on January 1<sup>st</sup> of each year, beginning on January 1, 2004, 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 \$1.00.
- C. Events sponsored by nonprofit tax-exempt organizations as defined in BCC 4.04.020(C).
  - 1. The admission tax levied and imposed pursuant to BCC 4.04.025 shall not apply to any person paying an admission charge to an event that is sponsored by a nonprofit tax-exempt organization, as defined in BCC 4.04.020(C), when the conditions of both of the following subsections (a) and (b) are met:
    - a. The nonprofit tax-exempt organization:
      - i. Publicly sponsors and through its members, representatives or personnel promotes and publicizes the event; or
      - ii. Publicly sponsors the event and:
        - (A) Performs a major portion of the performance; or
        - (B) Supplies a major portion of the materials on exhibit; or
        - (C) When the event is a part of a season or series of performances or exhibitions, performs the major portion of the performances or exhibitions in the season or series or supplies a major portion of the materials on exhibit;
    - b. The nonprofit tax-exempt organization receives the use and benefit of the admission charges collected.
  - 2. The exemption to the admission tax provided in this section shall not apply to:

- a. An event sponsored by a nonprofit tax-exempt organization in which the fee paid for any one for-profit contract is greater than 80 percent of anticipated gross proceeds where the anticipated gross proceeds of the event exceeds \$300,000.
  - b. An event in which a nonprofit tax-exempt organization lends its name as an endorsement to an ineligible person or organization for the purpose of invoking the tax exemption provided by this section.
3. In order to receive the benefit of the tax exemption provided by this section, the nonprofit tax-exempt organization must be registered with the City of Bellevue tax office pursuant to BCC 4.03.025 at least 30 days prior to the first event for which an exemption is sought.

Section 7. Bellevue City Code section 4.10.015, Utility Occupation Tax Code, is hereby amended to read as follows:

**4.10.015 General administrative provisions apply.**

The provisions of BCC Chapter 4.03, the tax administration code, shall be fully applicable to the provisions of this Chapter except as expressly stated to the contrary herein.

Section 8. Bellevue City Code 4.10.020, Utility Occupation Tax Code, is hereby amended to read as follows:

**4.10.020 Definitions.**

The definitions set forth in BCC Chapter 4.03 shall apply throughout this Chapter, unless expressly provided otherwise herein. The following additional definitions shall apply throughout this Chapter.

- A. "Cable television services" means the one-way transmission of video programming and associated nonvideo signals to subscribers together with subscriber interaction, if any, which is provided in connection with video programming.
- B. "Cellular telephone service" means two-way voice and data telephone/telecommunication system based in whole or substantially in part on wireless radio communications and which is not currently subject to regulation by the Washington Utilities and Transportation Commission (WUTC). Cellular telephone service includes cellular mobile service. The definition of cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS) and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service.

- C. "Chapter" shall mean BCC Chapter 4.10, as it may be amended or replaced from time to time.
- D. "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 RCW Title 80 and for which a separate charge is made.
- E. "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.
- F. "Gross proceeds of sale" or "gross income of business" means the value proceeding or accruing from the sale of tangible personal property and/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.
- G. "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.
- H. "Network telephone service" means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes interstate service, including toll service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, or the providing of broadcast services by radio or television stations.
- I. "Recyclable materials" means those solid waste that are separated for recycling or reuse, such as papers, metals, and glass, that are designated as recyclable materials pursuant to BCC 9.26.030.
- J. "Sewerage system business" means and includes:
1. Sanitary sewage disposal sewers and facilities, including without limitation on-site or off-site sanitary sewer facilities consisting of an approved septic tank or septic tank systems, or any other means of sewage treatment and disposal;

2. Combined sanitary sewage disposal and storm or surface water drains and facilities;
  3. Storm or surface water drains, channels and facilities;
  4. Outfalls for storm drainage or sanitary sewage and works, plants, and facilities for storm drainage or sanitary sewage treatment and disposal;
  5. Any combination of or part of any or all of such facilities.
- K. "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction waste, abandoned vehicles or parts thereof, and recyclable materials.
- L. "Solid waste collection business" means every person who receives solid waste or recyclable materials for transfer, storage, or disposal including but not limited to all collection services, public or private solid waste disposal sites, transfer stations, and similar operations.
- M. "Telecommunications company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public within this state.
- N. "Telegraph business" means the business of providing telegraphic communication for hire.
- O. "Telephone business" means the business of providing network telephone service, as defined in this section. It includes cooperative or farmer line telephone companies or associations operating an exchange.
- P. "Telephone service" means competitive telephone service or network telephone service, or both, as defined in this section.
- Q. "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

Section 9. Bellevue City Code section 4.10.070, Utility Occupation Tax Code, is hereby amended to read as follows:

**4.10.070 Consumer Price Index changes.**

The amount of minimum relief established under BCC 4.10.055(B) and the aggregate value of gifts, subsidies and benefits excludable from income under BCC

4.10.060 and the median income level figure utilized when the Seattle-King County Primary Metropolitan Statistical Area (PMSA) update is not available pursuant to BCC 4.10.060 shall be administratively adjusted on January 1<sup>st</sup> of each year by the director of the Bellevue utilities department to reflect any change in the cost of living, as defined and calculated pursuant to BCC 4.03.020(B).

Section 10. Bellevue City Code section 4.14.015, Gambling Tax Code, is hereby amended to read as follows:

**4.14.015 General administrative provisions apply.**

The provisions of BCC Chapter 4.03, the tax administration code, shall be fully applicable to the provisions of this BCC Chapter 4.14 except as expressly stated to the contrary herein.

Section 11. Bellevue City Code section 4.14.020, Gambling Tax Code, is hereby amended to read as follows:

**4.14.020 Definitions.**

The definitions set forth in Chapter BCC 4.03 shall apply throughout this BCC Chapter 4.14, unless expressly provided otherwise herein. The following additional definitions shall apply throughout this Chapter:

- A. "Amusement game" means a game played for entertainment in which the contestant actively participates, the outcome depends in a material degree upon the skill of the contestant and meets the requirements of RCW 9.46.0201, as it may be amended or replaced from time to time.
- B. "Chapter" means BCC Chapter 4.14, as it may be amended or replaced from time to time.
- C. "Punchboard" means a board with many holes filled with rolled-up printed slips to be punched out on payment of a nominal sum in an effort to obtain a slip that entitles the player to a designated prize or meets the requirements of RCW 9.46.0273, as it may be amended or replace from time to time.
- D. "Pull-tabs" means a game in which the participant, on payment of a nominal sum, receives a paper tab from a dispenser which is pulled apart to reveal a designated prize or meets the requirements of RCW 9.46.0273, as it may be amended or replaced from time to time.
- E. "Bingo" means a game in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random and which meets the requirements of RCW 9.46.0205, as it may be amended or replaced from time to time.

- F. "Raffle" means a game in which tickets bearing an individual number are sold for not more than \$5.00 each and in which a prize or prizes are awarded on the basis of a drawing from the tickets and which meets the requirements of RCW 9.46.0277, as it may be amended or replaced from time to time.
- G. "Bona fide charitable or nonprofit organization" shall have the meaning set forth in RCW 9.46.0209, as it may be amended or replaced from time to time.

Section 12. Bellevue City Code section 5.04.050, Ambulances, is hereby amended to read as follows:

**5.04.050 Denial, revocation or suspension of business license.**

The issuance of a business license to operate an ambulance company may be denied, or such license may be suspended or revoked by the City Clerk, upon the recommendation of the fire official, when the public interest will be served thereby, upon any of the following grounds:

- A. The making of a false statement of material fact in the application of the business license or any data or information required to be contained in such application attached thereto; or
- B. Failure to comply with any provision of this Chapter or any rules or regulations referenced herein or issued pursuant to this Chapter; or
- C. Failure to pay city business or occupation tax pursuant to BCC Chapter 4.09; or
- D. Overcharging of customer rates set forth in the company's schedule of rates filed pursuant to BCC 5.05.120; or
- E. Failure to maintain ambulances and equipment to the standards set forth in Chapter 246-976 WAC.

Section 13. Bellevue City Code section 5.12.040, Temporary Special Events, is hereby amended to read as follows:

**5.12.040 Exemption under BCC Chapter 4.09.**

Vendors included under a promoter's temporary special event license are exempt from the provisions of BCC Chapter 4.09 for the term and activity for which the license was issued.

Section 14. Bellevue City Code section 5.12.110, Temporary Special Events, is hereby amended to read as follows:

**5.12.110 Penalties and interest.**

A promoter of a special temporary event who fails to file a complete license application or who fails to remit the required license fee to the city at least three days prior to such special temporary event shall have added to the license fee required by BCC 5.12.080 an amount equal to 10 percent of such license fee. An extension of time to file the application and/or remit the license fee may be granted by the tax administration manager for good cause shown. Interest may be assessed in the amount of 12 percent per year for any unpaid license fee from the date due and owing to the City. Failure to obtain a special temporary event license for a special temporary event shall render all vendors participating in the event subject to the provisions of BCC Chapter 4.09.

Section 15. Any reference in Bellevue City Code to Bellevue City Code Chapter 4.02 or any section thereof shall, beginning January 1, 2004, be deemed to refer to Bellevue City Code Chapter 4.03 or the appropriate section thereof.

Section 16. Any reference in the Bellevue City Code to Bellevue City Code Chapter 4.08 or any section thereof shall, beginning January 1, 2004, be deemed to refer to Bellevue City Code Chapter 4.09 or the appropriate section thereof.

Section 17. The provisions of this Ordinance shall take effect and be in force on January 1, 2004, and shall apply to and govern all taxes due for tax reporting periods beginning on and after that date. Bellevue City Code Chapters 4.02 and 4.08 are repealed effective January 1, 2004, except that they shall apply to and govern all taxes due for tax reporting periods ending before January 1, 2004.

Section 18. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

0597-ORD  
03/04/03

Passed by the City Council this 18th day of February, 2003, and signed in authentication of its passage this 18<sup>th</sup> day of February, 2003.

(SEAL)

Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Patrice C. Cole, Assistant City Attorney

Attest:

Myrna L. Basich, City Clerk

Published February 21, 2003