

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5605

AN ORDINANCE relating to the Business and Occupation Tax Code; amending Bellevue City Code Chapters 4.03.025, 4.03.090, 4.03.100, 4.03.110, 4.03.120 and 4.09.030 H and L, and establishing an effective date.

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

Section 1. Chapter 4.03.025 of the Bellevue City Code is hereby amended to read as follows:

4.03.025 Registration/license requirements.

Any person who engages in any business or performs any act which is subject to the provisions of Chapter 4.04 BCC, Admission Tax Code; Chapter 4.09 BCC Business and Occupation Tax Code; Chapter 4.10 BCC, Utility Occupation Tax Code; or Chapter 4.14. BCC, Gambling Tax Code, 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(J); or 4.03.020(E).
- B. Any "family as defined in BCC 4.03.020(E).
- C. Any person who performs activities subject to the provisions of Chapter 4.09 BCC and meets the requirements of BCC 4.09.030(L)(4). This exemption does not apply to any person engaged in activities that are subject to the provisions of other chapters of BCC Title 4.

Section 2. Chapter 4.03.090 of the Bellevue city code is hereby amended to read as follows:

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

- A. If, upon examination of any returns, or from other information obtained by the director, it appears that a tax or penalty less than that properly due has been

paid, the director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The director shall notify the person by mail of the additional amount, which shall become due and shall be paid ~~within~~ 30 days from the date of the notice, or within such time as the director may provide in writing. Interest shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.

1. For the purposes of this section, the rate of interest to be charged to the taxpayer between December, 1995 through December 31, 2004 shall be an average of the federal short-term rate as defined in 26 U.S.C. Section 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually, for the months of January, April, July, and October of the year immediately preceding the calendar year as published by the United States Secretary of the Treasury. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

2. For the purposes of this section, the rate of interest to be charged to the taxpayer for filing periods beginning in 2005 shall be an average of the federal short-term rate as defined in 26. U.S.C. Section 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. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

Section 3. Chapter 4.03.100 of the Bellevue City Code is hereby amended to read as follows:

4.03.100 Overpayment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.

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

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

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

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

E. Interest on overpayments of taxes for periods from December, 1995 through December 31, 2004 shall be the average federal short term interest rate as outlined for assessments under 4.03.090(A)(1) plus two (2) percentage points.

F. Interest on overpayments of taxes for periods beginning on or after January 1, 2005, shall be the average federal short term interest rate as outlined for assessments under 4.03.090(A)(2) plus two (2) percentage points.

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

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

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the director shall add a penalty equal to five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, the director shall add a total penalty equal to 15 percent of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, the director shall add

a total penalty equal to 25 percent of the amount of the tax. No penalty assessed herein shall be less than \$5.00.

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

C. If a citation or criminal complaint is issued by the City for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty of 10 percent of the amount due, but not less than \$10.

D. If the director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the director a license as required by BCC 4.03.025, the director shall impose a penalty of five percent of the amount of tax due from that person for the period that the person was not licensed. No penalty shall be imposed under this subsection D if the person who has engaged in business without a license obtains a license prior to being notified by the director of the need to be licensed.

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

1. A taxpayer fails to follow specific written tax reporting instructions when the director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the director has not issued final instructions because the matter is under appeal pursuant to this chapter. The director shall not assess the penalty under this subsection upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the director to that taxpayer.

2. Specific written instructions may be given as a part of a tax assessment, audit, determination or closing agreement; provided, that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents.

3. Any specific written instructions by the director shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

F. If the director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the director shall assess a penalty of 50 percent of the additional tax found to be due.

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

H. The penalties authorized by subsections E and F of this section shall be assessed in accordance with the provisions of this chapter governing assessment of tax deficiencies. The director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

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

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

4.03.120 Cancellation of penalties and interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Chapter 4.09.030 H of the Bellevue City Code is hereby amended to read as follows:

H. "Consumer." "Consumer" means the following:

1. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for a consumer other than for the purpose of:

a. Resale as tangible or intangible personal property in the regular course of business;

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

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

d. Consuming the property in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

2. Any person engaged in any business activity taxable under section 4.09 .050 (B)(7);

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 this section other than for resale in the regular course of business;

5. Any person who is an end user of software;

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

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

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

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

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

Section 7. Chapter 4.09.030 L of the Bellevue City Code is hereby amended to read as follows:

L. "Engaging in Business."

1. The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

2. This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

3. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

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

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

- c. Soliciting sales.
- d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- e. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
- f. Installing, constructing, or supervising installation or construction of, real or tangible personal property.
- g. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- h. Collecting current or delinquent accounts.
- i. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
- j. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
- m. Training or recruiting 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.

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

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

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

Section 8. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

Passed by the City Council this 20th day of June, 2005,
and signed in authentication of its passage this 20th day of June,
2005.

(SEAL)

Connie Marshall
Connie B. Marshall, Mayor

Approved as to form:

Lori M. Riordan, City Attorney

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

Attest:

Myrna L. Basich
Myrna L. Basich, City Clerk

Published June 24, 2005