

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5780

AN ORDINANCE amending the Bellevue City Code to adopt certain mandatory provisions of the Business and Occupation tax and to update square footage tax; amending Sections 4.09.010, 4.09.030, 4.09.050, 4.09.060, 4.09.075, 4.09.090, and 4.09.100 of the Bellevue City Code; adding new Sections 4.09.025, 4.09.077 and 4.09.078 to the Bellevue City Code; and establishing an effective date.

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

Section 1. Section 4.09.010 of the Bellevue City Code is hereby amended as follows:

4.09.010 Purpose.

This section implements Washington Constitution Article XI, Section 12 and RCW 35A.82.020 and 35A.11.020 (code cities); RCW 35.22.280(32) (first class cities); RCW 35.23.440(8) (second class cities); RCW 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 chapter be as uniform as possible among the various municipalities and consistent with the mandatory requirements of chapter 35.102 RCW for 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.

Section 2. A new Section 4.09.025 is hereby added to the Bellevue City Code as follows:

4.09.025 Adoption by Reference.

Where provisions of the Revised Code of Washington (RCW) are adopted or incorporated by reference in this Chapter 4.09, the adoption or incorporation shall be deemed to refer to the provision as it now exists or as it may be hereafter amended.

Section 3. Section 4.09.030.L.5 of the Bellevue City Code is hereby amended as follows:

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. Such activities do not include those in subsection 4 above.

Section 4. Section 4.09.030.FF.1 is hereby amended by the addition of a new subsection f as follows:

f. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection 10 of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

Section 5. Section 4.09.030.FF.3.f is hereby amended as follows:

f. The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

Section 6. Section 4.09.030.FF.9 of the Bellevue City Code is hereby amended as follows:

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

Section 7. Section 4.09.030.FF of the Bellevue City Code is hereby amended by the addition of the following new subsection 10:

10. "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this section, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no addition charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

Section 8. Section 4.09.030.GG of the Bellevue City Code is hereby amended as follows:

GG. "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

Section 9. Section 4.09.030.KK of the Bellevue City Code is hereby amended as follows:

KK. "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.

Section 10. Section 4.09.030 of the Bellevue City Code is hereby amended by the addition of the following new definition:

NN. "Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

Section 11. Section 4.09.050.A.1 of the Bellevue City Code is hereby amended as follows:

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 (A)(2) of this section), used to perform or support the activity subject to gross receipts business and occupation tax (subsection B of this section).

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

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

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

Section 12. Section 4.09.060 of the Bellevue City Code is hereby amended as follows:

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.

Except as provided in BCC 4.09.077, as to such persons the amount of tax shall be equal to the gross contract price multiplied by the rate under BCC 4.09.050(B) that would otherwise apply if the sale or service were taxable pursuant to that section.

Section 13. Section 4.09.075 of the Bellevue City Code is hereby amended as follows:

4.09.075 Deductions to prevent multiple taxation of manufacturing activities and, for tax periods prior to January 1, 2008, 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. For tax periods prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the city.

2. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters are located).

3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the city.

B. Person Manufacturing Products Within and Without. A person manufacturing products within the city using products manufactured by the same person outside the city may deduct from the measure of the manufacturing tax the value of products manufactured outside the city and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Section 14. A new section 4.09.077 is hereby added to the Bellevue City Code as follows:

4.09.077 Allocation and apportionment of income when activities take place in more than one jurisdiction.

For tax periods beginning on or after January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

A. Gross income derived from all activities other than those taxed as service or royalties under 4.09.050.B.7 shall be allocated to the location where the activity takes place.

B. In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

C. Gross income derived from activities taxed as service and other activities taxed under 4.09.050.B.7 shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two.

1. The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:

a. The individual is primarily assigned within the city;

b. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service for the tax period in the city; or

c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city and the employee resides in the city.

2. The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:

a. The customer location is in the city; or

b. The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

c. The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

3. If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

a. Separate accounting;

b. The use of a single factor;

c. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or

d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

D. The definitions in this subsection apply throughout this section.

1. "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

2. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

3. "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

4. "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

5. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

6. "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

7. "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

8. "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

E. Assignment or apportionment of revenue under this section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

Section 15. A new Section 4.09.078 is hereby added to the Bellevue City Code as follows:

4.09.078 Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction.

Notwithstanding RCW 35.102.130 and Section 4.09.077, for tax periods beginning on or after January 1, 2008, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the department of revenue.

Section 16. Section 4.09.090.O of the Bellevue City Code is hereby amended as follows:

O. Employees.

1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the

definition of employee shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.

2. A booth renter is an independent contractor for purposes of this chapter.

Section 17. Section 4.09.100.F of the Bellevue City Code is hereby amended as follows:

F. Receipts from Tangible Personal Property and Retail Services 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 or retail services that are delivered by the seller to the buyer or the buyer's representative at a location outside the state of Washington. The square footage tax pursuant to BCC 4.09.050(A) shall apply to deductions for receipts from tangible personal property delivered outside the state.

Section 18. Section 4.09.100 of the Bellevue City Code is hereby amended by the addition of the following new subsections:

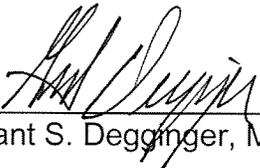
N. Receipts from the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington. For tax periods beginning on or after January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the city but within the state of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

O. Professional Employer Services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and other salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement. For purposes of this section, a "professional employer organization" and "professional employer services" shall have the same meanings as in RCW 82.04.540, as is now exists or as it may be amended.

Section 19. This ordinance shall have an effective date of January 1, 2008.

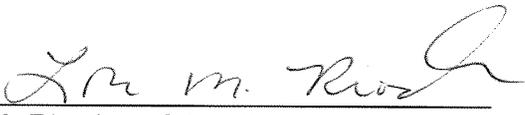
PASSED by the City Council this 19th day of November, 2007,
and signed in authentication of its passage this 19th day of November,
2007.

(SEAL)



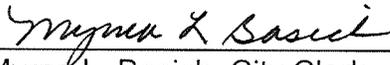
Grant S. Degginger, Mayor

Approved as to form:



Lori M. Riordan, City Attorney

Attest:



Myrna L. Basich, City Clerk

Published November 28, 2007