

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 5781

AN ORDINANCE amending the Bellevue City Code to adopt certain mandatory provisions of the Business and Occupation tax and to update administrative tax provisions; adding a new section 4.03.021 and amending Sections 4.03.010, 4.03.040, 4.03.090, 4.03.100, 4.03.110, 4.03.120, 4.03.170, 4.03.190, 4.03.200, 4.03.210, and 4.03.280 of 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 4.03.010 of the Bellevue City Code is hereby amended as follows:

4.03.010 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 4.03.021 of the Bellevue City Code is hereby added as follows:

4.03.021 Definitions – References to Chapter 82.32 RCW.

Where provisions of Chapter 82.32 RCW are incorporated by reference in this chapter or any chapter to which these administrative provisions apply pursuant to Section 4.03.015, "Department" as used in the RCW shall refer to the "Director" as defined in 4.03.020.D and "warrant" as used in the RCW shall mean "citation or criminal complaint."

Section 3. Section 4.03.040.A of the Bellevue City Code is hereby amended as follows:

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 Chapter 4.04 BCC, Admission Tax Code; Chapter 4.09 BCC, Business and Occupation Tax Code; Chapter 4.10 BCC, Utility Occupation Tax Code; and Chapter 4.14 BCC, 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; provided, however, that the director may only assign a monthly reporting period for purposes of Chapter 4.09 BCC where the taxpayer is remitting excise tax to the state on a monthly basis. Tax payments for monthly, quarterly and annual taxpayers are due as described for such reporting frequencies in RCW 82.32.045, as it now exists or as it may be amended.

Section 4. Section 4.03.090 of the Bellevue City Code is hereby amended as follows:

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

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.

A. For the purposes of this section, the rate of interest to be charged to the taxpayer for tax periods prior to January 1, 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, 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. For tax periods prior to January 1, 2005, 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.

B. For tax periods after December 31, 2004 the director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.

C. If subsection B above is held to be invalid, then the provisions of RCW 82.32.050 existing as of the effective date of this ordinance shall apply.

Section 5. Section 4.03.100.E of the Bellevue City Code is hereby amended as follows:

E. The rate of interest on overpayments of taxes for tax periods prior to January 1, 2005 shall be the same as for underpayments, as set forth in BCC 4.03.090(A).

Section 6. Section 4.03.100.F of the Bellevue City Code is hereby amended as follows:

F. 1. For tax periods after December 31, 2004 the director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.

2. If subsection F.1. above is held to be invalid, then the provisions of RCW 82.32.060 as existing at the effective date of this ordinance shall apply.

Section 7. Section 4.03.110 of the Bellevue City Code is hereby amended 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 in accordance with RCW 82.32.090(1) as it now exists or as it may be amended.

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

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 in accordance with RCW 82.32.090(3) as it now exists or as it may be amended.

D. If the director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the director a license as required by BCC 4.03.025, the director shall impose a penalty in accordance with RCW 82.32.090(4) as it now exists or as it may be amended. 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 in accordance with RCW 82.32.090(5) as it now exists or as it may be amended.

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 in accordance with RCW 82.32.090(6) as it now exists or as it may be amended.

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

H. The director 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.

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

Section 8. Section 4.03.120.A of the Bellevue City Code is hereby amended 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. Reasonable cause may include the following and other similar circumstances:

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.

Section 9. Section 4.03.170 of the Bellevue City Code is hereby amended as follows:

4.03.170 Ancillary allocation authority of director.

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

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

B. To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city; provided that for tax periods beginning on or after January 1, 2008 such agreement shall be consistent with the allocation or apportionment methods set forth in RCW 35.102.130 as it now exists or as it may be amended.

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

Section 10. Section 4.03.190 of the Bellevue City Code is hereby amended as follows:

4.03.190 Tax declared additional.

The license fee and tax levied in Chapters 4.04, 4.09, 4.10, and 4.14 BCC 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.

Section 11. Section 4.03.200 of the Bellevue City Code is hereby amended as follows:

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 42.56 RCW, as it now exists or as it may be amended, 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 subsections D, E and F of this section, 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.

Section 12. Section 4.03.210 of the Bellevue City Code is hereby amended as follows:

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 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.

Section 13. Section 4.03.280 is hereby deleted in its entirety.

Section 14. 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)



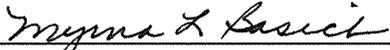
Grant S. Degginger, Mayor

Approved as to form:



Lori M. Riordan, City Attorney

Attest:



Myrria L. Basich, City Clerk

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