

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6092

AN ORDINANCE amending provisions of the Bellevue City Business and Occupation Tax code and related provisions of the Tax Administrative code to include updates to the model municipal Business and Occupation tax code; amending Sections 4.03.200, 4.09.030, 4.09.077, 4.09.090, and 4.09.100 of the Bellevue City Code; eliminating Section 4.09.060; and establishing an effective date.

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

Section 1. Section 4.03.200 of the Bellevue City Code is hereby amended as follows:

4.03.200 Public disclosure – Confidentiality – Information sharing.

A. For purposes of this section defined terms shall be as set forth in Section 4.03.020 except as otherwise stated:

1. "Disclose" means to make known to any person in any manner whatever a return or tax information;

2. "Return" shall have the meaning provided in Section 4.03.020;

3. "Tax information" means (a) a taxpayer's identity, (b) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (c) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, and (d) other data received by, recorded by, prepared by, furnished to, or collected by the city with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the city's tax codes for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

4. "City agency" means every city office, department, division, bureau, board, commission, or other city agency;

5. "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

B. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the director nor any other person may disclose any return or tax information.

C. This section does not prohibit the director from:

1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

a. In respect of any tax imposed under the city's tax codes if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or

b. In which the taxpayer about whom such return or tax information is sought and another city agency are adverse parties in the proceeding;

2. Disclosing, subject to such requirements and conditions as the director prescribes such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the director that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

4. Disclosing such return or tax information, for official purposes only, to the city manager or city attorney, or to any city agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

5. Permitting the city's records to be audited and examined by the proper city, state or federal officer, his or her agents and employees;

6. Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county or city prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county or city prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this Section;

7. Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the city;

8. Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

9. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the status of such permits, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection may not be construed as giving authority to any person receiving such information to use such information for any commercial purpose;

10. Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

11. Disclosing such return or tax information to the United States department of agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

12. Disclosing to a financial institution, escrow company or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the city for a filed judgment, or lien against the real property;

13. Disclosing to a person against whom the director has asserted liability as a successor under the city tax codes any return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

14. Disclosing real estate excise tax affidavit forms in the possession of the city, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax; or

15. Disclosing such return or tax information to the court or hearing examiner in respect to the director's application for a subpoena if there is probable cause to believe that records in the possession of a third party will aid the director in connection with its official duties under this title or a civil or criminal investigation.

D.1. The director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection D. The disclosure must be in connection with the director's official duties under this Title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed.

2. Before disclosure of any tax return or tax information under this subsection D, the Director must, through written correspondence, inform the taxpayer of the requested disclosure. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection D until the time period allowed in (3) of this subsection has expired or until the court has ruled on any challenge brought under (3) of this subsection.

3. The taxpayer has twenty days from the receipt of the written request required under this subsection to petition the superior court of the county in which the petitioner resides (or with any court with jurisdiction over the matter that allows disclosure of information under this subsection D) for injunctive relief consistent with the provisions of applicable state law governing disclosure of taxpayer information.

4. Requesting information under this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

E. Service of and compliance with a subpoena issued by the court or any administrative body with authority to issue subpoenas does not constitute a disclosure of return or tax information under this Section. Notwithstanding anything else to the contrary in this Section, a person served with a subpoena issued by the

court or administrative body may disclose the existence or content of the subpoena and the records therein identified to that person's legal counsel.

F. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the city and any person acquiring knowledge of any return or tax information as provided under subsection (C)(3), (4), (5), (6), (7), or (9) of this section, who reveals or makes known any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section or other applicable law, 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, such person may be required to forfeit such office or employment.

Section 2. Section 4.09.030 of the Bellevue City Code is hereby amended to include an additional definitions as follows:

“Digital automated service” shall have the same meaning as in RCW 82.04.192, now or as hereafter amended.

“Digital code” shall have the same meaning as in RCW 82.04.192, now or as hereafter amended.

“Digital goods” shall have the same meaning as in RCW 82.04.192, now or as hereafter amended.

“Digital products” means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b), now or as hereafter amended.

Section 3. Section 4.09.030.L.4 of the Bellevue City Code is hereby amended as follows:

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. This exception does not apply to any board of director, member or other person engaging in business through participation as a director or member in an official meeting of a governing board.

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 Temporary Special Events ordinances.

f. Mere delivery of goods via common carrier.

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

Section 4. Section 4.09.030.Q is hereby amended as follows:

Q. “Gross proceeds of sales” means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services, or for other 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.

Section 5. Section 4.09.030.S is hereby amended as follows:

S. Manufacturer – To Manufacture.

1. “Manufacturer” means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person’s own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than 20 percent 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;

c. Crushing and/or blending of rock, sand, stone, gravel, or ore; and

d. The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

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

Section 6. Section 4.09.030.FF.3 is hereby amended by the addition of a new subsection (g) and related re-numbering, as follows:

g. The installing, repairing, altering, or improving of digital goods for consumers;

h. The sale of or charge made for tangible personal property, labor and services to persons taxable under subsections (FF)(3)(a), (b), (c), (d), (e), (f) and (g) of this section 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 (FF)(1) of this section and nothing contained in subsection (FF)(1) of this section shall be construed to modify this subsection.

Section 7. Section 4.09.030.FF.5 is hereby amended as follows:

5.a. “Sale at retail” or “retail sale” shall also include the sale of prewritten 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. For purposes of this subsection (5)(a) the sale of the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term “sale at retail” or “retail sale” does not include the sale of or charge made for:

- (i) Custom software; or
- (ii) The customization of prewritten software.

(b)(i) The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

(ii)(A) The service described in (b)(i) of this subsection 5 includes the right to access and use prewritten software to perform data processing.

(B) For purposes of this subsection (b)(ii) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

Section 8. Section 4.09.030.FF is hereby further amended to include a new subsections (11) and (12) as follows:

11. "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

- a. Sales in which the seller has granted the purchaser the right of permanent use;
- b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;
- c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and
- d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

12. "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

Section 9. Section 4.09.030.GG is hereby amended as follows:

GG. "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in subsection (FF)(5)(b)(i), 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 10. Section 4.09.060 of the Bellevue City Code is hereby eliminated in its entirety as follows:

4.09.060 Doing business with the city.
Intentionally Deleted

Section 11. Section 4.09.077.C of the Bellevue City Code is hereby amended to include new subsections (3) – (5) and subsequent renumbering as follows:

3. In the case of sales of digital products, the activity takes place where delivery to the buyer occurs. The delivery of digital products will be deemed to occur at:

a. The seller's place of business if the purchaser receives the digital product at the seller's place of business;

b. If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

c. If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

d. If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and

e. If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)(b) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

4. If none of the methods in subsection (3) above for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections (3)(a) through (3)(e), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection (4). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections (3)(a) through (3)(e) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

5. For purposes of subsections (3)(a) through (3)(e), "receive" has the same meaning as in RCW 82.32.730, now or as hereafter amended.

6. 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.

Section 12. Section 4.09.090.I of the Bellevue City Code is hereby amended as follows:

I. Insurance Business. This chapter shall not apply to insurance agents. In addition, this chapter shall not apply to amounts received by any person who is an insurer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020; provided, that the provisions of this subsection shall not exempt any 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.

Section 13. Section 4.09.100 of the Bellevue City Code is hereby amended as follows:

C. Interest on Investments or Loans Secured by Mortgages or Deeds of Trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, 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 nontransient residential properties.

Section 14. This ordinance shall take effect and be in force thirty (30) days after passage and legal publication.

Passed by the City Council this 3rd day of December, 2012, and signed in authentication of its passage this 3rd day of December, 2012.

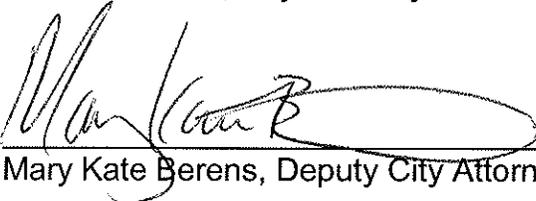
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Conrad Lee
Mayor

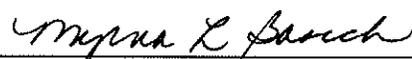
Approved as to form:

Lori M. Riordan, City Attorney



Mary Kate Berens, Deputy City Attorney

Attest:



Myrna L. Basich, City Clerk

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