

Model Ordinance

Final revised version of the City model ordinance for business & occupation tax. Dated September 2019.

The legislative intent information contained in the boxes indicates the intent of the ordinance and provide guidance for courts and administrators in the uniform interpretation of the ordinance. They should not be adopted as part of the ordinance, but as a supporting document to the ordinance.

While the tax provisions of this chapter are intended to provide a uniform methodology for levying a gross receipts tax on business entities, nothing in this chapter should be construed as limiting a city's ability to levy and collect a business privilege tax on any other basis; such as a tax on square footage, a tax on annualized full-time equivalents [head tax], graduated annual license tax, or any other tax calculated on a basis other than a gross receipts tax [gross income of the business, gross proceeds of sales, or value of products multiplied by rates.]

MODEL ORDINANCE CHAPTER ____.

.010 Purpose. [CITY MAY ENACT A "PURPOSE PROVISION" IN THIS SECTION.]

.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.

Legislative intent information

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) (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. See *Enterprise Leasing v. City of Tacoma*, 139 Wn.2d 546 (1999). It is intended that this model ordinance be uniform among the various municipalities adopting it.

.028 Administrative Provisions. The administrative provisions contained in chapter _____ shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

.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.

"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. **(Mandatory)**

"Business and occupation tax." "Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business. **(Mandatory)**

"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; and
- (2) The manufacturing of articles, substances or commodities;

"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. **(Mandatory)**

“Digital automated service,” “digital code,” and “digital goods” have the same meaning as in RCW 82.04.192. **(Mandatory)**

“Digital products” means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b). **(Mandatory)**

“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; 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. **(Mandatory)**

[Comment: This definition is worded slightly different from the state's definition (RCW 82.04.440) in that it goes into more detail in describing what constitutes an eligible gross receipts tax. In addition, it makes it very clear that an eligible gross receipts tax for which a credit can be calculated must be imposed at the local level.]

“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 ~~minimum~~ minimus minimis 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. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.
 - (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) Conducting advertising through the mail.
 - (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. Such activities do not include those in subsection (4).

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. **(Mandatory)**

[Comment: Section (2) has been added to the State's definition of engaging in business to give guidelines and parameters to businesses in order for them to better ascertain whether or not they need to license and pay tax to the cities.]

“Extracting.” “Extracting” is the activity engaged in by an extractor and is reportable under the extracting classification. [Comment: This definition is not contained in state law; however, RCW 35.102.120 requires that the model ordinance include this definition.]

“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, 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; or persons meeting the definition of farmer.

“Extractor for Hire” “Extractor for hire” means a person who performs under contract necessary labor or mechanical services for an extractor.

“Gross income of the business.” “Gross income of the business” means the value proceeding or accruing by reason of the transaction of the business 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. **(Mandatory)**

“Gross proceeds of sales.” “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. **(Mandatory)**

“Manufacturing.” “Manufacturing” means the activity conducted by a manufacturer and is reported under the manufacturing classification. **(Mandatory unless you don't tax manufacturing activities)**
[Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

“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. **(Mandatory)** (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.) **(Optional)**

[Comment: This definition differs from that found in RCW 82.04.110. The manufacturing vs. processing for hire language has been included within this definition rather than covered by rule as provided in RCW 82.04.110. The optional portion of this definition is different from the RCW in that the RCW allows for the owner of materials that are processed in Washington to be excluded as a manufacturer. It is presumed that the RCW was written in this way to encourage material owners to bring their materials into Washington to be processed by Washington processors for hire. The State chooses to forego the tax that the owner would pay on the value of the materials under the manufacturing classification. The aluminum and nuclear fuel assembly provisions were excluded since no B & O city contains these types of activities.]

- (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. **(Mandatory)**

[Comment: This definition is different from RCW 82.04.120. The cutting, delimiting, and measuring of felled, cut, or taken trees does not usually take place within cities so that was deleted. The RCW also states that some activities which are covered in other special taxing classifications at the State level are not manufacturing. Although some of these activities normally do not take place in cities we included them into manufacturing since they fall within the definition. Manufacturing activities covered in other tax classifications at the State level such as slaughtering, curing, preserving, or canning were included in this definition since the Cities do not have the other classifications.]

“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. **(Mandatory)**

“Retailing.” “Retailing” means the activity of engaging in making sales at retail and is reported under the retailing classification. **(Mandatory)**

[Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

“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. **(Mandatory)**

[Comment: This definition has been removed and separated from the definition of “sale at retail” since many cities have kept these activities taxable at a rate different from their “retailing” rate. The State changed these activities to retail from service a few decades ago. This separation of definitions enables those cities that have historically taxed retail sales and retail services at a different rate to continue to do so. The definition includes more examples under the amusement and recreation subsection than States definition and these examples originated from the State’s rule on amusement and recreation.]

“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. [Comment: the term “routine or continuous” comes from WAC 458-20-106.]

“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.
 - (f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) 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.
- (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 .050(1)(g).
- (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 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;
 - (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 (a), (b), (c), (d), (e), (f), and (g) 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. [Comment: Cities can only include "competitive telephone service" since telephone business is taxed under the utility tax.]
- (5) "Sale at retail" or "retail sale"
- (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)
 - (iii) 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.
 - (iv)
 - (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.
- (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, the State of Washington, 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 an extended warranty to a consumer. For purposes of this subsection, “extended warranty” means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional 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.
- (8) “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).
- (9) “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 should be reported under the service and other classification.]
- (10) “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.]
- (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 [insert reference to section 5(11)] 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. **(Mandatory)**

[Comment: This definition is different than RCW 82.04.050. Retail services have been given their own definition. Public road construction and government contracting has been included into this definition since the Cities do not have special tax classifications for those two activities. Environmental or nuclear waste ~~clean-up~~ cleanup are assigned to the service and other classification. And the sales to farmers will remain under the retailing classification. The reference to “telephone business and cable service” in subsection (3)(f) has been included to clarify to hotels and motels that such telephone services and cable services are taxable under the utility tax.] **“Sale at wholesale,” “wholesale sale.”** “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 [insert reference to “sale at retail” section 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. **(Mandatory)**

[The last sentence must be included since telephone business would normally be taxed under the utility tax. The wholesale treatment of telephone business to another telecommunications company is dictated by State law.]

“Services.” [Comment: RCW 35.102.120 requires that the model ordinance include this definition. However, no explicit definition will be included in this Model Ordinance until the RCW contains a definition of “service”. In the absence of a definition of “service” in state law, the Cities generally use this term and classification to include those activities that do not fall within one of the other tax classifications used by a city.]

“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.

“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.

(Mandatory if you have a manufacturing tax)

“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. (3) Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of

serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. [Comment: This definition is slightly different than that contained in RCW 82.04.450. The meaning is intended to be the same, and the only difference is in grammatical construction. The model also adds a sentence, taken from WAC 458-20-112, at the end of subsection (2) explaining the use of costs to ascertain the value of the products.]

(Mandatory if you have manufacturing or extracting tax)

“Wholesaling.” “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification. **(Mandatory)**

[Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

.050 Imposition of the tax - tax or fee levied.

- (1) Except as provided in subsection (2) of this section, 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 in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:
- (a) 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 within the city for sale or for commercial or industrial use, multiplied by the rate of _____ of one percent (_____). 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.
 - (b) 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 within the city, multiplied by the rate of _____ of one percent (_____). 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.
 - (c) Upon every person engaging within the City in the business of making sales at wholesale, except persons taxable under subsection ___ 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 _____ of one percent (_____).
 - (d) 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 _____ of one percent (_____).
 - (e) Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) 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 _____ of one percent (_____).
 - (f) 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 _____ of one percent (_____).
 - (g) 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 _____ of one percent (_____). 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, a sale at wholesale, or a retail service. [Comment: Most cities do not use all of the classifications listed above, so they need only adopt those that are imposed within their jurisdictions.] **(Mandatory** wording for those classifications that are adopted).

- (2) The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is equal to or less than \$20,000, or is equal to or less than \$5,000 during any quarter if on a quarterly reporting basis.

(Subsection (2) is Mandatory)

~~**.060 Doing business with the City.** - Repealed effective January 1, 2008. 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 _____ [insert city code reference to section .077], as to such persons the amount of tax shall be equal to the gross contract price multiplied by the rate under section .050 that would otherwise apply if the sale or service were taxable pursuant to that section.~~

Legislative intent information

This "super nexus" section is repealed to reflect changes effective January 1, 2008, when allocation and apportionment provisions in section .077 took effect for city B&O taxes. The intent is that this change would not affect any rights under contracts executed for periods under the old language prior to the change.

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

- (1) Persons who engage in business activities that are within the purview of two (2) or more subsections of .050 shall be taxable under each applicable subsection.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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. **(Mandatory)**

[Comment: The wording in this section .070 is not quite the same as RCW 35.102.060 (1). Subsection (1) is the same as (a) in RCW 35.102.060. Subsection (2) has the same meaning although the cities add the last phrase that the tax will be subjected to the greatest extent possible. Subsection (3) is not included in RCW 35.102.060—it merely states that the taxpayer must have records or proof that it paid another eligible gross receipts tax to another local jurisdiction.

In the case of manufacturing products that have been partially manufactured in another location with an eligible gross receipt tax, the cities have chosen to give a deduction and only tax the incremental increase in the value of the product. This should provide an equal or better treatment to the manufacturer than the credit provision contained in RCW 35.102.060 (1)(d). (Refer to subsection .075(2) below.)]

Legislative intent information

This section provides a tax credit for taxpayers engaged in multiple taxable activities. The section provides a credit against eligible selling or manufacturing taxes imposed by the City for extracting or manufacturing taxes paid to the City or to any other local jurisdiction with respect to the same products. The tax credit does not depend upon whether a person that sells in the City extracts or manufactures in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The tax credit does not depend on whether a person that manufactures in the City extracts in the City or in another jurisdiction to which it has paid an eligible gross receipts tax. The credit is available to any person that pays an eligible gross receipts tax on the applicable activities, regardless of where it conducts business. The result of this section is that a city in which selling takes place gives up the tax to the manufacturing jurisdiction and the manufacturing jurisdiction gives up the tax to the extracting jurisdiction, whether those jurisdictions are inside or outside the State of Washington.

.075 Deductions to prevent multiple taxation of manufacturing activities and prior to January 1, 2008, transactions involving more than one city with an eligible gross receipts tax.

- (1) Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due 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:
 - (a) 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.
 - (b) 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 is located).
 - (c) 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. **(Mandatory)**

Legislative intent information

This section establishes deductions to be applied when a single taxable activity is taxable by more than one jurisdiction that imposes an eligible gross receipts tax for taxes due prior to January 1, 2008. Prior to January 1, 2008, under Washington State Law, more than one city that has established nexus can include 100% of the gross receipts from that transaction in its tax base. However, to eliminate the possibility of the same sale or service being taxed more than once by cities that maintain nexus and an eligible gross receipts tax, the cities have provided this deduction to taxpayers. For taxes due after January 1, 2008, the apportionment provisions in section .077 will provide the mechanism for all activities except manufacturing.

Sales. A taxpayer that has paid an eligible gross receipts tax on the sale to the jurisdiction where the product is delivered may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on the sale. If a taxpayer has not paid tax to the jurisdiction where the product is delivered, then no deduction is allowed. The sale shall be taxed by the city where the office or place of business that generated the sale is located.

Service. A taxpayer that has paid an eligible gross receipts tax on services to the jurisdiction where the service is performed may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on that service. If a taxpayer has not paid tax to the jurisdiction where the service is performed, then the service income shall be taxed by the city where the office or place of

business that generated the sale is located. For both sales and services, the order of taxing rights is delivery city, first; and business office location, second.

General Business Activities Other Than Services. The eligible gross receipts tax on income derived from intangibles such as royalties, licenses, trademarks, patents and goodwill, and reportable under the general business classification .050 (7), shall be assigned to the domicile/headquarters office.

Conducting Business with Another City. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with a city may deduct the contract price used to measure the tax from the measure of the tax owed to another city on the same activity.

- (2) 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.

(Mandatory)

.076 Assignment of gross income derived from intangibles.

Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).

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

Effective January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

- (1) Gross income derived from all activities other than those taxed as service or royalties under _____ [insert city code reference to .050(1)(g)] shall be allocated to the location where the activity takes place.
- (2) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.
- (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 [insert city code reference to .077(3)] 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 [insert city code reference to .077(3)(a) through .077(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 [insert city code reference to .077(D)]. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections [insert city code reference to .077(3)(a) through .077(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 [insert city code reference to .077(3)(a) through .077(3)(e)], the following definitions apply:
- (a) “Digital automated services,” “digital codes,” and “digital goods” have the same meaning as in RCW 82.04.192;
 - (b) “Digital products” means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050 (2)(g) and (6)(c); and
 - (c) “Receive” has the same meaning as in RCW 82.32.730.
- (6) [Effective January 1, 2020] Gross income derived from activities taxed as services and other activities taxed under _____ [insert city code reference to .050(1)(g)] 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.
- (a) 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:
 - (i) The individual is primarily assigned within the city;
 - (ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or
 - (iii) 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.
 - (b) 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: the customer location is in the city.
 - ~~(i) The customer location is in the city; or~~
 - ~~(ii) 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~~
 - ~~(iii) The service income producing activity is performed within the city, and the taxpayer is not taxable in the customer location.~~
 - (c) Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (b) of this subsection (6) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (6)(c), “not taxable” means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.
 - (d) If the allocation and apportionment provisions of this subsection (6) 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:
 - (i) Separate accounting;
 - (ii) ~~The use of a single factor~~ The exclusion of any one or more of the factors;
 - (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
 - (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
 - (e) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (d) of this subsection (6) must prove by a preponderance of the evidence:

- (i) That the allocation and apportionment provisions of this subsection (6) do not fairly represent the extent of the taxpayer's business activity in the city; and
 - (ii) That the alternative to such provisions is reasonable.
The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.
- (f) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (6).
- (g) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.
- (7) The definitions in this subsection apply throughout this section.
- (a) **"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.
 - (b) **"Business activities tax"** means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.
 - (c) **"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.
 - (d) **"Customer"** means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.
 - (e) **"Customer location"** means the following:~~means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.~~
 - (i) For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.
 - (ii) For a customer not engaged in business, if the service does not require the customer to be physically present:
 - (A) The customer's residence; or
 - (B) If the customer's residence is not known, the customer's billing/mailling address.
 - (iii) For a customer engaged in business:
 - (A) Where the services are ordered from;
 - (B) At the customer's billing/mailling address if the location from which the services are ordered is not known; or
 - (C) At the customer's commercial domicile if none of the above are known.
 - (f) **"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.
 - (g) **"Primarily assigned"** means the business location of the taxpayer where the individual performs his or her duties.
 - (h) **"Service-taxable income"** or **"service income"** means gross income of the business subject to tax under either the service or royalty classification.
 - (i) **"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.

- (j) ~~“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.~~
- (8) 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.

(Mandatory – Effective January 1, 2008~~2020~~)

Legislative intent information

~~For tax periods after January 1, 2020, Substitute House Bill 1403 further simplifies the administration of municipal business and occupation tax apportionment by (1) adopting a consistent sourcing hierarchy; (2) adopting market-based sourcing in the income factor; (3) establishing a rule that excludes service receipts from the income factor denominator attributable to jurisdictions where the taxpayer would not be subject to tax; and (4) establishing a consistent burden of proof for application of an alternative apportionment method. There are no changes to the payroll factor. This section is required by RCW 35.102.130 and provides allocation and apportionment formulas to be applied when a single taxable activity takes place in more than one jurisdiction, whether or not that jurisdiction imposes a gross receipts tax. A definition of delivery has been added in section .030. Retail services will be allocated to where the activity takes place. Digital goods will be allocated according to the new factors set out in RCW 35.102.130, as amended.~~

For periods prior to January 1, 2020, the following language is still in effect:

Sec. 0.077(6)(b) provides “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:

(i) The customer location is in the city; or

(ii) 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

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

Sec. 0.077(7)(d) provides “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.

Sec. 0.077(7)(h) provides “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.

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

Notwithstanding RCW 35.102.130, effective 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.

Legislative intent information

This section is required by RCW 35.102.150 and provides that printing and publishing income shall be allocated to the city in which taxpayer's business is directed or managed. This section is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.150.

.090 Exemptions.

- (1) **Public utilities.** 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 [local utility tax cite].
- (2) **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.
- (3) **Insurance business.** This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, 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.
- (4) **Employees.**
 - (a) 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.
 - (b) A booth renter is an independent contractor for purposes of this chapter.
- (5) **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. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.
- (6) **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.
- (7) **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~~82.38.020 and exempt under RCW ~~82.36.440~~82.38.280, 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.

(Mandatory)

- (8) **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. **(Mandatory)**
- (9) **Casual and isolated sales.** This chapter shall not apply to the gross proceeds derived from casual or isolated sales.
- (10) **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.
- (11) **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.

.100 Deductions. In computing the license fee or tax, there may be deducted from the measure of tax the following items:

- (1) **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 delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington. **(Mandatory)**
- (2) **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.

- (3) **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.
- (4) **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. **(Mandatory)**
- (5) **Receipts fFrom the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington.** Effective 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.
- (6) **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 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.
- (7) **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 non-transient residential properties.

Legislative intent information

Subsection (6) is required by RCW 35.102.160 and provides that professional employer organizations may deduct the portion of fees for actual costs of employee wages and other benefits and taxes from gross income. This deduction is not mandatory for the model ordinance, but the tax treatment is required by RCW 35.102.160 and is taken from RCW 82.04.540(2).

.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.

.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.

Note: The following Items contained in the model ordinance guidelines are omitted from this Core model ordinance.

Definitions omitted:

- (1) Advancement, Reimbursement
- (2) Agricultural Product
- (3) Artistic or cultural organization
- (4) Consumer
- (5) In this City, within the City
- (6) Newspaper
- (7) Non-profit organization or non-profit corporation
- (8) Office, or Place of business
- (9) Precious metal bullion or monetized bullion
- (10) Product, byproduct
- (11) Royalties

- (12) Software, canned software, custom software, customization of canned software, master copies, retained rights
- (13) Tuition fee

Sections omitted:

(.040) Agency—sales and services by agent, consignee, bailee, factor or auctioneer

(.110) Application to City's business activities.

Exemptions and Deductions omitted:

Numerous exemptions and deductions—compare with model guidelines to see if you need additional exemptions or deductions.

NOTE: Because of the wording contained in Section .050(2), cities should insure that their licensing or registration section contains the authority to impose the license or registration. Section .050(2) is intended to relieve persons engaging in business activities that total equal to or less than \$20,000 from tax obligations – but not from license or registration fee requirements.