

Municipal Business and Occupation Tax Baseline Study

Report of the Department of Revenue

*Prepared Pursuant to
Chapter 79, Laws of 2003 (EHB 2030)*

**Washington State Department of Revenue
William N. Rice, Director**

December 2004

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EXECUTIVE SUMMARY

In 2003 the Legislature enacted Engrossed House Bill 2030 (EHB 2030) which provided for a more uniform system of municipal business and occupation (B&O) taxes. It required the cities, working through the Association of Washington Cities (AWC), to form a committee to adopt a model ordinance for municipal B&O taxes.

EHB 2030 also directed the Department of Revenue to compare the definitions used in the model ordinance with definitions in the state B&O tax in chapter 82.04 of the Revised Code of Washington (RCW), explain the reason for such deviations, and estimate the fiscal impact of such deviations on taxpayers. The study is due to the Governor and fiscal committees of the Legislature by December 31, 2004.

The Department finds that the model ordinance and model ordinance administrative provisions differ from the definitions found in chapter 82.04 RCW in the following ways:

- The model ordinance contains five deviations that impose fiscal impacts on taxpayers when compared with state statute. The deviations include the definitions for “manufacturer,” “to manufacture,” “retail sale,” “successor,” and “statutory merger successor.” There are two deviations with no fiscal impact. Those revenue neutral deviations include the definitions for “eligible gross receipts tax” and “engaging in business.”
- Other definitions are either identical or substantially similar to state law; contain different wording from state law, but are consistent with the intent or interpretation of state law; or are not defined in state law.

The Department estimates that taxpayers would pay \$4.6 million more in municipal B&O taxes under the model ordinance and administrative provisions compared with what they would pay under the state definitions. Based on what the cities report as their actual practice, the impact would be \$748,000. Taxpayers in 23 of the 39 cities that adopt the model ordinance would be impacted.

Introduction

In 2003 the Legislature enacted Engrossed House Bill 2030 (EHB 2030) which provided for a more uniform system of municipal business and occupation (B&O) taxes. It required the cities, working through the Association of Washington Cities (AWC), to form a committee to adopt a model ordinance for municipal B&O taxes. The legislation also directed the committee to solicit substantial input from the business community in developing the model ordinance.

In July 2004 the AWC and committee members finalized the model ordinance and its administrative provisions. All 39 cities imposing a B&O tax plan to adopt the model ordinance by the statutory deadline of December 31, 2004. Cities that impose a municipal B&O tax after December 31, 2004, must also adopt the model ordinance.

EHB 2030 also directed the Department of Revenue (DOR) to compare the definitions used in the model ordinance with definitions in the state B&O tax in chapter 82.04 RCW, explain the reason for any deviations, and estimate the fiscal impact of such deviations on taxpayers. Specifically, those definitions include the terms:

- Business
- City
- Business and occupation tax
- Gross receipts tax
- Value of products
- Gross income of the business
- Gross proceeds of sales
- Eligible gross receipts tax
- Extracting
- Manufacturing
- Retailing
- Retail sale
- Services
- Wholesale sale
- Wholesaling
- To manufacture
- Commercial and industrial use
- Engaging in business
- Person

This study is due to the Governor and fiscal committees of the Legislature by December 31, 2004. In the course of conducting the study, the Department met three times with a municipal B&O tax advisory group comprised of business and city representatives to discuss the study design, methodology, and results.

Study Findings

The Department finds that the model ordinance and model ordinance administrative provisions differ from the definitions found in chapter 82.04 RCW in the following ways:

- The model ordinance contains five deviations that impose fiscal impacts on taxpayers when compared with state statute. The deviations include the definitions for “manufacturer,” “to manufacture,” “retail sale,” “successor,” and “statutory merger successor.” There are two deviations with no fiscal impact. Those revenue neutral deviations include the definitions for “eligible gross receipts tax” and “engaging in business.”
- Other definitions are either identical or substantially similar to state law, contain different wording from state law but are consistent with the intent or interpretation of state law, or are not defined in state law.

The Department estimates that taxpayers would pay \$4.6 million more in municipal B&O taxes under the model ordinance and administrative provisions compared with what they would pay under the state definitions. Taxpayers in 23 of the 39 cities that adopt the model ordinance would be impacted.

Definition Deviations With Fiscal Impacts

Table 1 below lists the deviations in definitions that result in higher taxes than would be due under the RCW definitions, and explains the differences between state law and the model ordinance.

TABLE 1

Comparison of Definitions Which Have Fiscal Impacts

Definition	Chapter 82.04 RCW	Model Ordinance and Administrative Provisions
Manufacturer	Out-of-state persons owning materials processed in Washington are not manufacturers .	Out-of-city persons owning materials processed in the city are manufacturers .
To Manufacture	State law excludes : <ul style="list-style-type: none"> • Conditioning of seed • Cubing hay • Seafood processing • Agricultural activities 	The model ordinance includes : <ul style="list-style-type: none"> • Conditioning of seed • Cubing hay • Seafood processing • Agricultural activities

Definition	Chapter 82.04 RCW	Model Ordinance and Administrative Provisions
Retail Sale	State law includes retail services in the definition of retail sale.	The model ordinance excludes retail services from the definition of retail sale and defines “retail services” separately.
Successor (person)	Persons buying more than 50% of the fair market value of the tangible or intangible assets of a person going out of business are successors.	Persons buying any tangible personal property from a person going out of business are defined as successors.
Successor (merged corporations)	Surviving corporations of a statutory merger are successors.	Surviving corporations of a statutory merger are not specifically defined as successors.

Fiscal Impacts on Taxpayers From Definition Deviations

If taxpayers currently reported tax under the model ordinance and its administrative provisions, taxpayers would be liable for an estimated \$4,584,000 in additional tax than under the definitions contained in the RCW. Based on what the cities report as their actual practice, the impact would be \$748,000. The following are additional findings when the model ordinance is compared with state law:

- Taxpayers in 24 of the cities would pay more municipal B&O tax under the model ordinance than under the RCW.
- Seattle taxpayers incur the largest fiscal impact of \$3,373,000. Tacoma taxpayers incur the second largest fiscal impact of \$607,000. These two cities account for 87 percent of the total impact.
- For taxpayers in 15 cities, there is no fiscal impact.
- The fiscal impact is less when the model ordinance is compared to actual city practices.

Table 2 is a summary of the increase in municipal B&O taxes due to differences in the model ordinance and state tax law, and model ordinance compared to city practices. The Department estimated fiscal impacts for differences in definitions for this report because not all cities have collected taxes under the model ordinance. Estimates are based on data from the Employment Security Department (ESD) and Department of Revenue tax records.

TABLE 2

**Summary of Fiscal Impacts on Taxpayers of the Deviations
Calendar Year 2005**

Deviation	Model Ordinance Compared to State Law	Actual City Practice Compared to State Law
Manufacturer	\$1,146,000	\$149,000
To Manufacture	1,277,000	165,000
Retail Sale	1,838,000	393,000
Successor (person)	264,000	33,000
Successor (merged corporations)	59,000	8,000
Total Fiscal Impact on Taxpayers	\$4,584, 000	\$748,000

Appendix A includes a more detailed analysis of the fiscal impacts by jurisdiction. Appendix B contains a discussion of the impacts city practices have on the fiscal impacts of the model ordinance.

Discussion of Definition Deviations With Fiscal Impacts

Manufacturing

There is no definition of “manufacturing” or “to manufacture” in EHB 2030, Section 12. However, RCW 82.04.110 and 82.04.120 define “manufacturer” and “to manufacture,” respectively. The model ordinance defines manufacturing as “the activity conducted by a manufacturer and is reported under the manufacturing classification.” The model ordinance then defines “manufacturer” and “to manufacture.”

Manufacturer

In RCW 82.04.110, out-of-state persons owning materials processed in Washington are not “manufacturers.” In the mandatory provision of the model ordinance definition for manufacturer, out-of-city persons owning materials processed in the city are manufacturers unless the owner 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 model ordinance definition also differs from RCW 82.04.110 in that the manufacturing versus processing for hire language is included in the model ordinance definition rather than covered by rule as specified in RCW 82.04.110.

In the optional provision of the model ordinance definition for manufacturer, a business not located in a city that is the owner of materials or ingredients processed for it in the city by a processor for hire is considered in business as a manufacturer. The model ordinance comment explains the difference:

The optional portion of this definition is different from RCW 82.04.110 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.¹

To Manufacture

RCW 82.04.120 excludes activities from the definition of “to manufacture” that relate to conditioning of seed, cubing hay, seafood processing, and agriculture.

The model ordinance definition does not exclude these activities and includes the following 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.²

The Department finds that activities related to agricultural products or seafood processing, which are not taxed under state law, are not excluded from the model ordinance definition. The model ordinance comment does not explain the reason for the deviation.

EHB 2030, Section 12 requires that software development not be defined as a manufacturing activity in the model ordinance. The Department finds that the model ordinance does not specifically exclude software development from the definition of manufacturing as required in EHB 2030, Section 12. However, the model ordinance does exclude the production of computer software if it is delivered by means other than tangible storage media.

Retail Sale

RCW 82.04.050 defines retail sale. The model ordinance definition of retail sale is different from the state definition in the following ways:

¹Final version of the City CORE Model Ordinance for Business License Tax. July 2004. Section .030 Definitions “manufacturer,” page 5.

² Final version of the City CORE Model Ordinance for Business License Tax. July 2004. Section .030 Definitions “to manufacture,” page 6.

In RCW 82.04.050, the definition of retail sale includes retail services. The model ordinance excludes retail services from the definition of retail sale and defines retail services separately. The model ordinance comment explains:

*This definition (retail services) 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 the state’s definition and these examples originated from the state’s rule on amusement and recreation.*³

RCW 82.04.050 excludes public road construction and government contracting from the definition of retail sale. The model ordinance includes these activities in the definition of retail sale because cities do not have special tax classifications for road construction and government contracting. With this exclusion from the definition of a retail sale, these activities would be taxed under the wholesaling rate under the model ordinance. The impact of this deviation is minimal. In almost all of the B&O cities, the tax rates for wholesaling and retail are identical.

RCW 82.04.050 excludes sales to farmers and other designated persons and environmental or nuclear waste clean-up from the definition of retail sale. The model ordinance leaves the sales to farmers under the retailing classification and assigns environmental or nuclear waste clean-up to the service and other classification.

The Department finds that the comments made in the model ordinance correctly reflect the differences between the model ordinance definition and the definition in RCW 82.04.050.

Successor (persons)

The definition for “successor” in RCW 82.04.180 includes persons buying more than 50 percent of the fair market value of the tangible assets or intangible assets of a person going out of business.

The model ordinance administrative provisions define “successor” as persons buying any tangible personal property from a person going out of business.

Successor (merged corporations)

RCW 82.04.180 includes as “successors” surviving corporations of a statutory merger.

The model ordinance administrative provisions do not define surviving corporations of a statutory merger as successors.

³ Final version of the City CORE Model Ordinance for Business License Tax. July 2004. Section .030 Definitions “retail service,” page 7

Definition Deviations Without Fiscal Impacts

Several definitions contained in the model ordinance and its administrative provisions are either identical or substantially similar to state law, contain different wording from state law but are consistent with the intent or interpretation of state law, or are not defined in state law.

Table 3 summarizes the comparison of the model ordinance definitions with state law that do not have fiscal impacts.

TABLE 3
Comparison of Definitions Without Fiscal Impacts

Model Ordinance and Administrative Definitions	Compared to Chapter 82.04 RCW
Eligible gross receipts tax Engaging in business	Deviation, but no fiscal impact
Business Gross income of business Person Commercial and industrial use	Identical to state law
Business and occupation tax Value of products Gross proceeds of sales Value proceeding or accruing Wholesale sale Casual or isolated sale Extractor Extractor for hire Sale Reporting period, return, tax year, taxable year	Similar language as state law. Consistent with the DOR interpretation of state law.
City Extracting Retailing Retail Services Wholesaling Manufacturing Services	Not defined in state law

Discussion of Definition Deviations Without Fiscal Impacts

Eligible Gross Receipts Tax

Chapter 82.04 RCW does not define eligible gross receipts tax. However, RCW 82.04.440 does define gross receipts tax within the same context--the prevention of multiple taxation with respect to the same item--that eligible gross receipts tax is used in the model ordinance.

The model ordinance contains the following comment as to the difference between the state definition of gross receipts tax and the model ordinance's definition of eligible gross receipts tax:

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.⁴

The Department of Revenue agrees that the comment in the core model ordinance correctly describes the difference between the definitions. The failure to consider taxes imposed above the local level as eligible gross receipts taxes could potentially lead to impermissible taxation of interstate commerce. However, this problem is corrected by a mandatory deduction in Section 100 of the model ordinance that allows a deduction for amounts derived from business that the city is prohibited from taxing under the United States Constitution or the Washington State Constitution. Also, EHB 2030, Section 6 provides for a deduction or credit if imposition of tax is unconstitutional.

Engaging in Business

The model ordinance definition of engaging in business contains five subsections. The Department finds that subsection (1) is identical to the state definition found in RCW 82.04.150. Subsections (2), (3), (4), and (5) of the model ordinance definition provide examples of activities considered engaging in business and activities which would not require obtaining a business license and payment of tax. The language in subsections (2) through (5) is not in state statute. However, the additional language is consistent with the administration of tax under Chapter 82.04 RCW.

The model ordinance comment pertaining to engaging in business explains that the additional language gives guidelines and parameters to businesses to help them ascertain whether they need to license and pay taxes to the city.

⁴ Final version of the City CORE Model Ordinance for Business License Tax. July 2004. Section .030 Definitions "Eligible gross receipts tax," page 2.

Services

EHB 2030, Section 13 directs the cities to define “services” and specifies that services exclude retail or wholesale services. There is no definition of services in chapter 82.04 RCW. The cities did not define services in the model ordinance but included a comment explaining the cities will define services when there is a definition in state statute. Currently cities use the term “services” to classify activities that do not fall within specific tax classifications used by the city. The state B&O tax also operates in this manner.

APPENDIX A

Fiscal Impacts due to Deviations from State Definitions Comparing Model Ordinance to State Law Calendar Year 2005

City	Manufacturer	To Manufacture	Retail Sale	Successor	Statutory Merger Successor	Total
Aberdeen	\$0	\$1,000	\$7,000	\$1,000	\$0	\$9,000
Algona	0	0	0	0	0	0
Bainbridge Island	0	1,000	0	0	0	1,000
Bellevue	0	14,000	0	2,000	0	16,000
Bellingham	20,000	3,000	167,000	3,000	0	193,000
Black Diamond	0	0	0	0	0	0
Bremerton	0	2,000	16,000	0	0	18,000
Buckley	7,000	0	0	0	0	7,000
Burien	0	0	0	0	0	0
Cosmopolis	0	0	0	0	0	0
Darrington	0	0	0	0	0	0
DuPont	0	0	0	0	0	0
Everett	39,000	9,000	0	1,000	0	49,000
Everson	0	0	0	0	0	0
Granite Falls	0	0	0	1,000	0	1,000
Hoquiam	43,000	0	0	0	0	43,000
Issaquah	0	0	5,000	0	0	5,000
Kelso	0	0	6,000	0	0	6,000
Lacey	0	0	20,000	1,000	0	21,000
Lake Forest Park	1,000	0	0	0	0	1,000
Long Beach	0	1,000	0	0	0	1,000
Longview	0	1,000	25,000	1,000	0	27,000
Mercer Island	48,000	0	0	0	0	48,000
North Bend	0	0	0	0	0	0
Ocean Shores	13,000	1,000	0	0	0	14,000
Olympia	0	0	0	0	0	0
Pacific	0	0	0	0	0	0
Port Townsend	0	0	2,000	0	0	2,000
Rainier	0	0	0	0	0	0
Raymond	0	0	0	0	0	0
Roy	2,000	0	0	0	0	2,000
Ruston	0	0	0	0	0	0
Seattle	771,000	1,082,000	1,209,000	252,000	59,000	3,373,000
Shelton	0	0	0	0	0	0
Snoqualmie	0	0	0	1,000	0	1,000
Tacoma	201,000	40,000	365,000	1,000	0	607,000
Tumwater	0	0	16,000	0	0	16,000
Westport	1,000	122,000	0	0	0	123,000
Yelm	0	0	0	0	0	0
	\$1,146,000	\$1,277,000	\$1,838,000	\$264,000	\$59,000	\$4,584,000

APPENDIX B

City Tax Practices Compared to State Law

When actual tax administration practices of cities are compared to state law, the impact is reduced significantly. Taxpayers in 13 of the cities that adopt the model ordinance pay more municipal B&O tax than under the definitions contained in state law. The total fiscal impact on taxpayers is \$748,000. The impact is less when the model ordinance is compared to state law because the actual practices of the cities vary from the model ordinance. For example, many cities have decided to impose the retail tax rate against retail services or have decided to equalize the retail and service tax rates. Only Bellevue, Tacoma, and Seattle have audit staffs. This implies that there could be a high level of noncompliance by taxpayers when a city adopted the model ordinance. We have assumed that the compliance level would be zero in cities without an audit staff. A compliance level of 15 percent is assumed in cities with an audit staff. These assumptions apply to all the deviations except for the retail sales deviation. This deviation results not from a change in the tax base but from a difference in tax rates.

Additional findings are:

- Tacoma taxpayers incur the largest fiscal impact of \$396,000. Seattle taxpayers incur the second largest fiscal impact of \$282,000. These two cities account for 91 percent of the total impact.
- Taxpayers in two cities—Tumwater and Westport—incur fiscal impacts over \$16,000 and taxpayers in nine cities incur fiscal impacts less than \$10,000.
- Taxpayers in 26 cities are not fiscally impacted.

The following table is an estimate of the increase in municipal B&O taxes due to differences in actual city practices with state law.

Fiscal Impacts due to Deviations from State Definitions
Comparing Cities Actual Practice to State Law
Calendar Year 2005

City	Manufacturer	To Manufacture	Retail Sale	Successor	Statutory Merger Successor	Total
Aberdeen	\$0	\$0	\$7,000	\$0	\$0	\$7,000
Algona	0	0	0	0	0	0
Bainbridge Island	0	0	0	0	0	0
Bellevue	0	2,000	0	0	0	2,000
Bellingham	3,000	0	0	0	0	3,000
Black Diamond	0	0	0	0	0	0
Bremerton	0	0	0	0	0	0
Buckley	1,000	0	0	0	0	1,000
Burien	0	0	0	0	0	0
Cosmopolis	0	0	0	0	0	0
Darrington	0	0	0	0	0	0
DuPont	0	0	0	0	0	0
Everett	5,000	1,000	0	0	0	6,000
Everson	0	0	0	0	0	0
Granite Falls	0	0	0	0	0	0
Hoquiam	6,000	0	0	0	0	6,000
Issaquah	0	0	5,000	0	0	5,000
Kelso	0	0	0	0	0	0
Lacey	0	0	0	0	0	0
Lake Forest Park	0	0	0	0	0	0
Long Beach	0	0	0	0	0	0
Longview	0	0	0	0	0	0
Mercer Island	6,000	0	0	0	0	6,000
North Bend	0	0	0	0	0	0
Ocean Shores	2,000	0	0	0	0	2,000
Olympia	0	0	0	0	0	0
Pacific	0	0	0	0	0	0
Port Townsend	0	0	0	0	0	0
Rainier	0	0	0	0	0	0
Raymond	0	0	0	0	0	0
Roy	0	0	0	0	0	0
Ruston	0	0	0	0	0	0
Seattle	100,000	141,000	0	33,000	8,000	282,000
Shelton	0	0	0	0	0	0
Snoqualmie	0	0	0	0	0	0
Tacoma	26,000	5,000	365,000	0	0	396,000
Tumwater	0	0	16,000	0	0	16,000
Westport	0	16,000	0	0	0	16,000
Yelm	0	0	0	0	0	0
	<u>\$149,000</u>	<u>\$165,000</u>	<u>\$393,000</u>	<u>\$33,000</u>	<u>\$8,000</u>	<u>\$748,000</u>

Discussion of Fiscal Impacts Considering City Practices

Manufacturer

For the deviation in the definition of manufacturer, the fiscal impact on taxpayers when the model ordinance is compared to state law is \$1,146,000. When actual city practice is compared to state law, the fiscal impact on taxpayers is \$149,000.

To Manufacture

For the deviation in the definition of to manufacture, the fiscal impact on taxpayers when the model ordinance is compared to state law is \$1,277,000. When actual city practice is compared to state law, the fiscal impact on taxpayers is \$165,000.

Retail Sale

For the deviation in the definition of retail sale, the fiscal impact on taxpayers when the model ordinance is compared to state law is \$1,838,000. When actual city practice is compared to state law, the fiscal impact on taxpayers is \$393,000.

The fiscal impact on taxpayers results from the exclusion of retail services from the definition of retail sale and separately defining the term retail services. If the rate for the retail services classification is greater than the rate for the retail classification, then this deviation results in a greater tax burden for the taxpayer.

The fiscal impact of the deviations in the definitions for public road construction, government contracting, and environmental or nuclear waste clean-up is minimal because the rates are generally identical between the wholesale and retail classifications.

Successor

For the deviation in the definition of successor (person), the fiscal impact on taxpayers when the model ordinance is compared to state law is \$264,000. When actual city practice is compared to state law, the fiscal impact on taxpayers is \$33,000.

Statutory Merger Successor

For the deviation in the definition of successor (merged corporations), the fiscal impact on taxpayers when the model ordinance is compared to state law is \$59,000. When actual city practice is compared to state law, the fiscal impact on taxpayers is \$8,000.

Appendix C

Engrossed House Bill 2030

Secretary of State
State of Washington

ENGROSSED HOUSE BILL 2030

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Representatives Kessler, Cairnes, Talcott, McDonald, Schindler,
Shabro, Pearson and Holmquist; by request of Governor Locke

Read first time 02/19/2003. Referred to Committee on Finance.

AN ACT Relating to changing requirements regarding state and local tax to provide for municipal business and occupation tax uniformity and fairness; adding new sections to chapter 35.21 RCW; creating new sections; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

{+ NEW SECTION. +} Sec. 1. LEGISLATIVE FINDINGS AND INTENT. The legislature finds that businesses in Washington are concerned about the potential for multiple taxation that arises due to the various city business and occupation taxes and are concerned about the lack of uniformity among city jurisdictions. The current system has a negative impact on Washington's business climate. The legislature further finds that local business and occupation tax revenue provides a sizable portion of city revenue that is used for essential services. The legislature recognizes that local government services contribute to a healthy business climate.

The legislature intends to provide for a more uniform system of city business and occupation taxes that eliminates multiple taxation, while allowing for some continued local control and flexibility to cities.

{+ NEW SECTION. +} Sec. 2. MUNICIPAL BUSINESS AND OCCUPATION TAX-- LIMITED SCOPE. This act does not apply to taxes on any service that historically or traditionally has been taxed as a utility business for municipal tax purposes, such as:

- (1) A light and power business or a natural gas distribution business, as defined in RCW 82.16.010;
- (2) A telephone business, as defined in RCW 82.04.065;
- (3) Cable television services;
- (4) Sewer or water services;
- (5) Drainage services;
- (6) Solid waste services; or
- (7) Steam services.

{+ NEW SECTION. +} Sec. 3. MUNICIPAL GROSS RECEIPTS TAX--DEFINITIONS. The definitions in this section apply throughout this act, unless the context clearly requires otherwise.

(1) "Business" has the same meaning as given in chapter 82.04 RCW.

(2) "City" means a city, town, or code city.

(3) "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.

(4) "Value of products" has the same meaning as given in chapter 82.04 RCW.

(5) "Gross income of the business" has the same meaning as given in chapter 82.04 RCW.

(6) "Gross proceeds of sales" has the same meaning as given in chapter 82.04 RCW.

{+ NEW SECTION. +} Sec. 4. MUNICIPAL BUSINESS AND OCCUPATION TAX--MODEL ORDINANCE. (1)(a) The cities, working through the association of Washington cities, shall form a model ordinance development committee made up of a representative sampling of cities that as of the effective date of this section impose a business and occupation tax. This committee shall work through the association of Washington cities to adopt a model ordinance on municipal gross receipts business and occupation tax. The model ordinance and subsequent amendments shall be adopted using a process that includes opportunity for substantial input from business stakeholders and other members of the public. Input shall be solicited from statewide business associations and from local chambers of commerce and downtown business associations in cities that levy a business and occupation tax.

(b) The municipal research council shall contract to post the model ordinance on an internet web site and to make paper copies available for inspection upon request. The department of revenue and the department of licensing shall post copies of or links to the model ordinance on their internet web sites. Additionally, a city that imposes a business and occupation tax must make copies of its ordinance available for inspection and copying as provided in chapter 42.17 RCW.

(c) The definitions and tax classifications in the model ordinance may not be amended more frequently than once every four years, however the model ordinance may be amended at any time to comply with changes in state law. Any amendment to a mandatory provision of the model ordinance must be adopted with the same effective date by all cities.

(2) A city that imposes a business and occupation tax must adopt the mandatory provisions of the model ordinance. The following provisions are mandatory:

(a) A system of credits that meets the requirements of section 6 of this act and a form for such use;

(b) A uniform, minimum small business tax threshold of at least the equivalent of twenty thousand dollars in gross income annually. A city may elect to deviate from this requirement by creating a higher threshold or exemption but it shall not deviate lower than the level required in this subsection. If a city has a small business threshold or exemption in excess of that provided in this subsection as of January 1, 2003, and chooses to deviate below the threshold or exemption level that was in place as of January 1, 2003, the city must notify all businesses licensed to do business within the city at least one hundred twenty days prior to the potential implementation of a lower threshold or exemption amount;

(c) Tax reporting frequencies that meet the requirements of section 7 of this act;

(d) Penalty and interest provisions that meet the requirements of sections 8 and 9 of this act;

(e) Claim periods that meet the requirements of section 10 of this act;

(f) Refund provisions that meet the requirements of section 11 of this act; and

(g) Definitions, which at a minimum, must include the definitions enumerated in sections 3 and 12 of this act. The definitions in chapter 82.04 RCW shall be used as the baseline for all definitions in the model ordinance, and any deviation in the model ordinance from these definitions must be described by a comment in the model ordinance.

(3) Except for the system of credits developed to address multiple taxation under subsection (2)(a) of this section, a city may adopt its own provisions for tax exemptions, tax credits, and tax deductions.

(4) Any city that adopts an ordinance that deviates from the nonmandatory provisions of the model ordinance shall make a description of such differences available to the public, in written and electronic form.

{+ NEW SECTION. +} Sec. 5. MUNICIPAL GROSS RECEIPTS TAX--NEXUS. A city may not impose a business and occupation tax on a person unless that person has nexus with the city. For the purposes of this section, the term "nexus" means business activities conducted by a person sufficient to subject that person to the taxing jurisdiction of a city under the standards established for interstate commerce under the commerce clause of the United States Constitution.

{+ NEW SECTION. +} Sec. 6. MUNICIPAL BUSINESS AND OCCUPATION TAX--MULTIPLE TAXATION--CREDIT SYSTEM. (1) A city that imposes a business and occupation tax shall provide for a system of credits to avoid multiple taxation as follows:

(a) Persons who engage in business activities that are within the purview of more than one classification of the tax shall be taxable under each applicable classification.

(b) Notwithstanding anything to the contrary in this section, if imposition of the tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit only to the extent necessary to preserve the validity of the tax.

(c) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person (i) with respect to the manufacturing of the products sold in the city, and (ii) 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 with respect to the sale of those products.

(d) Persons taxable under the manufacturing classification with respect to manufacturing products in a city shall be allowed a credit against that tax for any eligible gross receipts tax paid by the person with respect to extracting the ingredients of the products manufactured in the city and with respect to manufacturing the products other than in the city. The amount of the credit shall not exceed the tax liability arising with respect to the manufacturing of those products.

(e) Persons taxable under the retailing or wholesaling classification with respect to selling products in a city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid by the person 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 with respect to the sale of those products.

(2) The model ordinance shall be drafted to address the issue of multiple taxation for those tax classifications that are in addition to those enumerated in subsection (1)(c) through (e) of this section. The objective of any such provisions shall be to eliminate multiple taxation of the same income by two or more cities.

{+ NEW SECTION. +} Sec. 7. MUNICIPAL BUSINESS AND OCCUPATION TAX--REPORTING FREQUENCY. A city that imposes a business and occupation tax shall allow reporting and payment of tax on a monthly, quarterly, or annual basis. The frequency for any particular person may be assigned at the discretion of the city, except that monthly reporting may be assigned only if it can be demonstrated that the taxpayer is remitting excise tax to the state on a monthly basis. For persons assigned a monthly frequency, payment is due within the same time period provided for monthly taxpayers under RCW 82.32.045. For persons assigned a quarterly or annual frequency, payment is due within the same time period as provided for quarterly or annual frequency under RCW 82.32.045.

{+ NEW SECTION. +} Sec. 8. MUNICIPAL BUSINESS AND OCCUPATION TAX--PENALTIES AND INTEREST. (1) A city that imposes a business and occupation tax shall compute interest charged a taxpayer on an underpaid tax or penalty in accordance with RCW 82.32.050.

(2) A city that imposes a business and occupation tax shall compute interest paid on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060.

{+ NEW SECTION. +} Sec. 9. MUNICIPAL BUSINESS AND OCCUPATION TAX--PENALTIES. A city that imposes a business and occupation tax shall provide for the imposition of penalties in accordance with chapter 82.32 RCW.

{+ NEW SECTION. +} Sec. 10. MUNICIPAL BUSINESS AND OCCUPATION TAX--CLAIM PERIOD. The provisions relating to the time period allowed for an assessment or correction of an assessment for additional taxes, penalties, or interest shall be in accordance with chapter 82.32 RCW.

{+ NEW SECTION. +} Sec. 11. MUNICIPAL BUSINESS AND OCCUPATION TAX--REFUND PERIOD. The provisions relating to the time period allowed for a refund of taxes paid shall be in accordance with chapter 82.32 RCW.

{+ NEW SECTION. +} Sec. 12. MUNICIPAL BUSINESS AND OCCUPATION TAX--DEFINITIONS--TAX CLASSIFICATIONS. (1) In addition to the definitions in section 3 of this act, the following terms and phrases must be defined in the model ordinance under section 4 of this act, and such definitions shall include any specific requirements as noted in this subsection:

- (a) Eligible gross receipts tax.
- (b) Extracting.
- (c) Manufacturing. Software development may not be defined as a manufacturing activity.
- (d) Retailing.
- (e) Retail sale.
- (f) Services. The term "services" excludes retail or wholesale services.
- (g) Wholesale sale.
- (h) Wholesaling.
- (i) To manufacture.
- (j) Commercial and industrial use.
- (k) Engaging in business.

(1) Person.

(2) Any tax classifications in addition to those enumerated in subsection (1) of this section that are included in the model ordinance must be uniform among all cities.

{+ NEW SECTION. +} Sec. 13. MUNICIPAL BUSINESS AND OCCUPATION TAX-- ALLOCATION AND APPORTIONMENT OF INCOME. A city that imposes a business and occupation tax shall provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter 82.14A RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties shall be allocated to the location where the activity takes place.

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

(b) If a business activity allocated under this subsection (1) takes place in more than one city and all cities impose a gross receipts tax, a credit shall be allowed as provided in section 6 of this act; if not all of the cities impose a gross receipts tax, the affected cities shall allow another credit or allocation system as they and the taxpayer agree.

(2) Gross income derived as royalties from the granting of intangible rights shall be allocated to the commercial domicile of the taxpayer.

(3) Gross income derived from activities taxed as services shall be apportioned to a 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:

(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) 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:

(i) Separate accounting;

(ii) The use of a single factor;

(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.

(4) 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) "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.

(c) "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.

(d) "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.

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

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

(g) "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.

(h) "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.

{+ NEW SECTION. +} Sec. 14. MUNICIPAL BUSINESS AND OCCUPATION TAX--IMPLEMENTATION BY CITIES--CONTINGENT AUTHORITY. Cities imposing business and occupation taxes must comply with all requirements of sections 2 through 13 of this act by December 31, 2004. A city that has not complied with the requirements of sections 2 through 13 of this act by December 31, 2004, may not impose a tax that is imposed by a city on the privilege of engaging in business activities. Cities imposing business and occupation taxes after December 31, 2004, must comply with sections 2 through 13 of this act.

{+ NEW SECTION. +} Sec. 15. STUDY OF POTENTIAL NET FISCAL IMPACTS.
(1) The department of revenue shall conduct a study of the net fiscal impacts of this act, with particular emphasis on the revenue impacts of the apportionment and allocation method contained in section 13 of this act and any revenue impact resulting from the increased uniformity and consistency provided through the model ordinance. In conducting the study, the department shall use, and regularly consult with, a committee composed of an equal representation from interested business representatives and from a representative sampling of cities imposing business and occupation taxes. The department shall report the final results of the study to the governor and the fiscal committees of the legislature by November 30, 2005. In

addition, the department shall provide progress reports to the governor and the fiscal committees of the legislature on November 30, 2003, and November 30, 2004. As part of its report, the department shall examine and recommend options to address any adverse revenue impacts to local jurisdictions.

(2) For the purposes of this section, "net fiscal impacts" means accounting for the potential of both positive and negative fiscal impacts on local jurisdictions that may result from this act.

(3) It is the intent of the legislature through this study to provide accurate fiscal impact analysis and recommended options to alleviate revenue impacts from this act so as to allow local jurisdictions to anticipate and appropriately address any potential adverse revenue impacts from this act.

{+ NEW SECTION. +} Sec. 16. BASELINE STUDY. The department of revenue shall report by December 31, 2004, to the governor and the fiscal committees of the legislature on the definitions used in the proposed model ordinance. The report shall detail the status of the definitions using the baseline standards under section 4(2)(g) of this act, noting any deviations from the definitions in chapter 82.04 RCW and the reason for such deviation. The report shall also estimate the fiscal impact on taxpayers of any deviations from the definitions under chapter 82.04 RCW.

{+ NEW SECTION. +} Sec. 17. CAPTIONS. Captions used in this act are not any part of the law.

{+ NEW SECTION. +} Sec. 18. Sections 2 through 14 of this act are each added to chapter 35.21 RCW.

{+ NEW SECTION. +} Sec. 19. EFFECTIVE DATE. Section 13 of this act takes effect January 1, 2008.

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Appendix D

Comparison of the State Definitions and Model Ordinance Definitions

Background

Section 16 of EHB 2030 requires the Department of Revenue, by December 31, 2004, to report to the Governor and the fiscal committees of the Legislature on the definitions used in the model ordinance on municipal business and occupation tax. Section 4 of EHB 2030 requires that cities imposing a business and occupation tax, working through the Association of Washington Cities, adopt a model ordinance.

Section 16 of EHB 2030 provides that, "The report shall detail the status of the definitions using the baseline standards under section 4(2)(g) of this act, noting any deviations from the definitions in chapter 82.04 RCW and the reason for such deviation. The report shall also estimate the fiscal impact on taxpayers of any deviations from the definitions under chapter 82.04 RCW."

In turn, section 4(2)(g) of EHB 2030 requires that the model ordinance include definitions, "which at a minimum, must include the definitions enumerated in sections 3 and 12 of this act. The definitions in chapter 82.04 RCW shall be used as the baseline for all definitions in the model ordinance, and any deviation in the model ordinance from these definitions must be described by a comment in the model ordinance."

The definitions enumerated in section 3 are:

- Business
- City
- Business and occupation tax
- Value of products
- Gross income of the business
- Gross proceeds of sales

The definitions enumerated in section 12 are:

- Eligible gross receipts tax
- Extracting
- Manufacturing
- Retailing
- Retail sale
- Services
- Wholesale sale
- Wholesaling
- To manufacture

- Commercial and industrial use
- Engaging in business
- Person

Model Ordinance Definition Sources

The definitions examined in this report are taken from two documents distributed by the Association of Washington Cities.

One document is headed "Final version of the City CORE model ordinance for business license tax. Dated July 2004." This will be referred to in this report as the core model ordinance.

The other document is headed "Final clean version of the City model ordinance (Administrative Provisions) for business license tax. Dated April 2004." This will be referred to in this report as the administrative provisions.

Definitions Enumerated in Section 3 of EHB 2030

• Business

Section 3(1) of EHB 2030 says that business has the same meaning as given in chapter 82.04 RCW.

RCW 82.04.140 defines business to include:

all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

The core model ordinance, in section .030, defines business to include:

all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

DEPARTMENT OF REVENUE COMMENT: The definition of business in the core model ordinance is the same as in chapter 82.04 RCW.

• City

Section 3(2) of EHB 2030 defines city to mean, "a city, town, or code city."

DEPARTMENT OF REVENUE COMMENT: City is not defined in chapter 82.04 RCW, the core model ordinance, or the administrative provisions.

- **Business and occupation tax**

Section 3(3) of EHB 2030 defines business and occupation tax to mean, "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."

Chapter 82.04 RCW does not specifically define business and occupation tax. However, RCW 82.04.220, the statute imposing the state business and occupation tax, describes the tax as follows:

There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

The core model ordinance, in section .030, defines business and occupation tax in exactly the same words as section 3(3) of EHB 2030 as, "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."

DEPARTMENT OF REVENUE COMMENT: The imposition language of RCW 82.04.220 and the definitions of business and occupation tax in EHB 2030 and the core model ordinance are not substantially different.

- **Value of products**

Section 3(4) of EHB 2030 provides that value of products shall have the same meaning as in chapter 82.04 RCW.

RCW 82.04.450 describes value of products as follows:

(1) The value of products, including byproducts, 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 byproducts by the seller, except:

(a) Where such products, including byproducts, are extracted or manufactured for commercial or industrial use;

(b) Where such products, including byproducts, are shipped, transported or transferred out of the state, 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.

(2) In the above cases 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: PROVIDED, That 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: (a) To the retail selling price of such new or improved product when first offered for sale; or (b) to the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such values.

The core model ordinance, in section .030, contains this definition of 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.

The core model ordinance contains the following comment just after the above definition of value of products:

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.

DEPARTMENT OF REVENUE COMMENT: The Department of Revenue agrees with the comment in the core model ordinance with one exception. The core model ordinance replaces "state" with "City" in the provision allowing an alternative method of valuation if the goods are sent out of the jurisdiction before sale. This variance is appropriate because it allows for valuation at the time a product leaves the city for any destination outside of the city, not just destinations outside of the state.

- **Gross income of the business**

Section 3(5) of EHB 2030 provides that gross income of the business shall have the same meaning as in chapter 82.04 RCW.

RCW 82.04.080 defines gross income of the business as:

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.

Section .030 of the core model ordinance defines gross income of the business as follows:

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.

DEPARTMENT OF REVENUE COMMENT: The definitions of gross income of the business in chapter 82.04 RCW and the core model ordinance are identical.

- **Gross proceeds of sales**

Section 3(6) of EHB 2030 provides that gross proceeds of sales shall have the same meaning as in chapter 82.04 RCW.

RCW 82.04.070 defines gross proceeds of sales as:

the value proceeding or accruing from the sale of tangible personal property and/or for 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.

The core model ordinance, in section .030, defines gross proceeds of sales as:

the value proceeding or accruing from the sale of tangible personal property or for 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.

DEPARTMENT OF REVENUE COMMENT: The definitions of gross proceeds of sales in chapter 82.04 RCW and the core model ordinance are almost identical. The core model ordinance deletes "and/" from "and/or" in RCW 82.04.070. In this context, the deletion probably does not change the practical meaning of the definition. City tax administrators and taxpayers will each likely consider value proceeding or accruing from the sale of tangible personal property and value proceeding or accruing for services rendered to be gross proceeds of sales in transactions in which both property is sold and services are rendered.

Definitions Enumerated in Section 12 of EHB 2030

- **Eligible gross receipts tax**

Section 12 of EHB 2030 does not define eligible gross receipts tax.

Chapter 82.04 RCW does not define eligible gross receipts tax. However, RCW 82.04.440 does define gross receipts tax within the same context, the prevention of multiple taxation with respect to the same item, that eligible gross receipts tax is used in the core model ordinance. Gross receipts tax is defined in RCW 82.04.440 as follows:

- (5) For the purpose of this section:
 - (a) "Gross receipts tax" means a tax:
 - (i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and
 - (ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

Section .030 of the core model ordinance defines eligible gross receipts tax as:

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.

The core model ordinance contains this comment as to the difference between the chapter 82.04 RCW definition of gross receipts tax and the model ordinance's definition of eligible gross receipts tax:

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.

DEPARTMENT OF REVENUE COMMENT: The Department of Revenue agrees that the comment in the core model ordinance correctly describes the difference between the definitions. The failure to consider taxes imposed above the local level as eligible gross receipts taxes could potentially lead to impermissible taxation of interstate commerce. However, this problem is corrected by section .100 of the core model ordinance, which is described as mandatory, and by section 6 of EHB 2030, which provides for a deduction or credit if imposition of tax is unconstitutional.

- **Extracting**

Section 12 of EHB 2030 does not define extracting.

Chapter 82.04 RCW does not define extracting.

The core model ordinance, in section .030, defines extracting as the activity engaged in by an extractor. The core model ordinance goes on to define extractor and uses the same definition as in RCW 82.04.100.

DEPARTMENT OF REVENUE COMMENT: The effect of the core model ordinance is to use chapter 82.04 RCW as a baseline for the definition of extracting.

- **Manufacturing**

Section 12 of EHB 2030 does not define manufacturing but does prohibit the definition of software development as a manufacturing activity.

Chapter 82.04 RCW does not define manufacturing. However, RCW 82.04.110 and 82.04.120 define manufacturer and to manufacture, respectively. Those definitions are:

RCW 82.04.110 "Manufacturer." "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 his or her own materials or ingredients any articles, substances or commodities. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability: PROVIDED, That a person who produces aluminum master alloys is a processor for hire rather than a manufacturer, regardless of the portion of the aluminum provided by that person's customer: PROVIDED FURTHER, That a nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state: PROVIDED FURTHER, That the owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly.

For the purposes of this section, "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3.

RCW 82.04.120 "To manufacture." "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimiting, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; or packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage.

The core model ordinance, in section .030, defines manufacturing as the activity engaged in by a manufacturer. The core model ordinance goes on to define manufacturer and to manufacture. The core model definitions of manufacture and to manufacture, including comments, which are bolded, follow.

(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) **[Model Ordinance 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 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) **[Model Ordinance 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 we re included in this definition since the Cities do not have the other classifications.]**

DEPARTMENT OF REVENUE COMMENTS: The core model ordinance does not specifically exclude software development from the definition of manufacturing. It does exclude the production of computer software if it is delivered by means other than tangible storage media. The items which have been excluded from the definition of to manufacture in RCW 82.04.120 have not been excluded from the core model ordinance definition. These are activities related to agricultural products or activities related to seafood processing which are not taxed under chapter 82.04 RCW. The core model ordinance does not explain the reason for the deviation.

- **Retailing**

Section 12 of EHB 2030 does not define retailing.

Chapter 82.04 RCW does not define retailing.

The core model ordinance, in section .030, defines retailing as the activity of engaging in making sales at retail.

DEPARTMENT OF REVENUE COMMENTS: Since there is no definition in chapter 82.04 RCW, there is no baseline deviation.

- **Retail sale**

Section 12 of EHB 2030 does not define retail sale.

RCW 82.04.050 defines retail sale as follows:

(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, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; 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. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "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 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 sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) 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.

(3) The term "sale at retail" or "retail sale" 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:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) 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;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of canned 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, but shall not include custom software or the customization of canned software.

(7) The term shall not 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 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.

(8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(9) The term shall not 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. Nor shall the term 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.

Section .030 of the core model ordinance defines retail sale as follows (comments are bolded):

"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.

(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 network telephone service 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 sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) 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. **[Model Ordinance Comment: Cities can only include "competitive telephone service" since network telephone service is taxed under the utility tax.]**

(5) "Sale at retail" or "retail sale" shall also include the sale of canned 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, but shall not include custom software or the customization of canned software.

(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 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).

(8) "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.)

(9) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW 82.04.2635(2). (This should be reported under the service and other classification.)

(Mandatory) [Model Ordinance 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 are assigned to the service and other classification. And the sales to farmers will remain under the retailing classification. The reference to "network telephone service and cable service" in subsection (3)(f) has been included to clarify to hotels and motels that such telephone services are taxable under the utility tax.]

DEPARTMENT OF REVENUE COMMENT: The comments made in the core model ordinance correctly reflect the differences between the core model ordinance definition and the definition in RCW 82.04.050.

- **Services**

Section 12 of EHB 2030 does not define services other than to say that it excludes retail or wholesale services. Those terms are not defined in EHB 2030.

Chapter 82.04 RCW does not define services.

Section .030 of the core model ordinance does not explicitly define services and comments that no definition will be included in the model ordinance until there is a definition in the RCW. The comment goes on to say that cities use the term to include activities that do not fall under any of the other tax classifications used by a city.

DEPARTMENT OF REVENUE COMMENT: There is no statutory definition of services to use as a baseline.

- **Wholesale sale**

Section 12 of EHB 2030 does not define wholesale sale.

RCW 82.04.060 defines wholesale sale as follows:

"Sale at wholesale" or "wholesale sale" means: (1) Any sale of tangible personal property, any sale of services defined as a retail sale in RCW 82.04.050(2)(a), any sale of amusement or recreation services as defined in RCW 82.04.050(3)(a), any sale of canned software, or any sale of telephone service as defined in RCW 82.04.065, which is not a sale at retail; and (2) any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly

defined as a retail sale by RCW 82.04.050 when rendered to or for consumers:
PROVIDED, That the term "real or personal property" as used in this subsection shall not include any natural products named in RCW 82.04.100.

Section .030 of the core model ordinance defines a wholesale sale (and a sale at wholesale) as follows (comments are bolded):

any sale of tangible personal property which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of network telephone service to a telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715. **(Mandatory)**
[Model Ordinance Comment: The last sentence must be included since network telephone service would normally be taxed under the utility tax. The wholesale treatment of network telephone service to another telecommunications company is dictated by State law.]

DEPARTMENT OF REVENUE COMMENT: The core model ordinance definition of wholesale sale tracks the chapter 82.04 RCW definition to a large extent. The core model ordinance comment captures the major difference.

- **Wholesaling**

Section 12 of EHB 2030 does not define wholesaling.

Chapter 82.04 RCW does not define wholesaling.

Section .030 of the core model ordinance defines wholesaling to mean engaging in the activity of making sales at wholesale.

DEPARTMENT OF REVENUE COMMENT: There is no statutory definition of wholesaling to use as a baseline.

- **To manufacture**

See the discussion above of manufacturing.

- **Commercial and industrial use**

Section 12 of EHB 2030 does not define commercial and industrial use.

RCW 82.04.130 defines commercial or industrial use as follows:

"Commercial or industrial use" means the following uses of products, including byproducts, by the extractor or manufacturer thereof:

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities.

Section .030 of the core model ordinance uses the same definition as RCW 82.04.130.

DEPARTMENT OF REVENUE COMMENT: EHB 2030 uses "and" between the words "commercial" and "industrial". Both RCW 82.04.130 and the core model ordinance use "or" instead of "and" in between those words.

- **Engaging in business**

Section 12 of EHB 2030 does not define engaging in business.

RCW 82.04.150 defines engaging in business to mean:

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.

Section .030 of the core model ordinance defines engaging in business as follows (comments are bolded):

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

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

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

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

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

- (c) Soliciting sales.
 - (d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
 - (e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
 - (f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.
 - (g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.
 - (h) Collecting current or delinquent accounts.
 - (i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
 - (j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
 - (k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
 - (l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
 - (m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.
 - (n) Investigating, resolving, or otherwise assisting in resolving customer complaints.
 - (o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
 - (p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.
 - (q) Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.
- (4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.
- (a) Meeting with suppliers of goods and services as a customer.
 - (b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
 - (c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.
 - (d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) 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.

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) [Model Ordinance 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.**

DEPARTMENT OF REVENUE COMMENT: Subsection (1) of the core model ordinance definition is identical to the chapter 82.04 RCW definition. Subsections (2), (3), and (4) of the core model definition provide examples of activities considered engaging in business and activities which would not require obtaining a business license and payment of tax. The additional language is not inconsistent with the administration of tax under chapter 82.04 RCW.

- **Person**

Section 12 of EHB 2030 does not define person.

RCW 82.04.030 defines person as:

any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, 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, nonprofit, or otherwise and the United States or any instrumentality thereof.

Section .030 of the core model ordinance defines person as:

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.

DEPARTMENT OF REVENUE COMMENT: The definitions of person in chapter 82.04 RCW and the core model ordinance are identical.

Other Definitions Used in the Core Model Ordinance and the Administrative Provisions

The core model ordinance and the administrative provisions contain other definitions. For the most part, these definitions are not inconsistent with chapter 82.04 RCW. However, the definition of successor is different.

- **Successor**

The administrative provisions, in section .020, define successor as:

any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

RCW 82.04.180(1) defines successor as:

(a) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer; or

(b) A surviving corporation of a statutory merger.

(2) Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

DEPARTMENT OF REVENUE COMMENT: The administrative provisions include as successors persons buying any tangible personal property from a person going out of business. Chapter 82.04 RCW, on the other hand, includes as successors persons buying more than fifty percent of the fair market value of the tangible assets or intangible assets of a person going out of business. Chapter 82.04 RCW also includes as successors surviving corporations of a statutory merger.

Appendix E

City Core Model Ordinance for Business License Tax

Final version of the City CORE model ordinance for business license tax. Dated July 2004.

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.]

CORE 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) (fourth class cities and towns), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. 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;

"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 minimus business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection (1). If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

(3) Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker

or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

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

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

(c) Soliciting sales.

(d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

(e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

(f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.

(g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.

(h) Collecting current or delinquent accounts.

(i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

(j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

(k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

(l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

(m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

(n) Investigating, resolving, or otherwise assisting in resolving customer complaints.

(o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

(p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

(q) Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.

(4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.

(a) Meeting with suppliers of goods and services as a customer.

(b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

(c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.

(d) Renting tangible or intangible property as a customer when the property is not used in the City.

(e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

(f) 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.

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 or for 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 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.

(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 network telephone service 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 sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) 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 network telephone service is taxed under the utility tax.]

(5) "Sale at retail" or "retail sale" shall also include the sale of canned 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, but shall not include custom software or the customization of canned software.

(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 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).

(8) "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.)

(9) "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in RCW

82.04.2635(2). (This should be reported under the service and other classification.)
(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 are assigned to the service and other classification. And the sales to farmers will remain under the retailing classification. The reference to “network telephone service and cable service” in subsection (3)(f) has been included to clarify to hotels and motels that such telephone 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 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 network telephone service to a 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 network telephone service would normally be taxed under the utility tax. The wholesale treatment of network telephone service 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. The value proceeding or accruing from sales on the installment plan under conditional contracts of sale shall be reported as of the dates when the payments become due.

(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. 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.

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.

.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 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. 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. 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.

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).

.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. (a) 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) 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, as defined by RCW 18.16.020, is an independent contractor for purposes of this chapter.

(4) 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.

(5) 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.

(6) 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 and exempt under RCW 82.36.440, 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)**

(7) 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)

(8) Casual and isolated sales. This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

(9) 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.

(10) 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 received by the purchaser or its agent 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)**

.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.

Appendix F

City Model Ordinance Administrative Provisions for Business License Tax

Final clean version of the City model ordinance (Administrative Provisions) for business license tax. Dated April 2004.

CHAPTER ____. Administrative Provisions For _____ Taxes

.010 Purpose.

CITIES WILL INSERT PURPOSE LANGUAGE

.015 Application of chapter stated. The provisions of this chapter shall apply with respect to the taxes imposed under chapters _____ and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section.

.020 Definitions. For purposes of this chapter:

The definitions contained in chapter _____ (tax portion of model ordinance) shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply.

"Reporting period." "Reporting period" means:

- (1) A one-month period beginning the first day of each calendar month (monthly); or
- (2) A three-month period beginning the first day of January, April, July or October of each year (quarterly); or
- (3) A twelve-month period beginning the first day of January of each year (annual).

"Return." "Return" means any document a person is required by the City to file to satisfy or establish a tax or fee obligation that is administered or collected by the City and that has a statutorily defined due date.

"Successor." "Successor" means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

"Tax year," "taxable year." "Tax year" or "taxable year" means the calendar year.

.025 Registration/license requirements.

CITIES WILL INSERT REGISTRATION/LICENSE REQUIREMENTS LANGUAGE

.030 Registration/license certificates.

CITIES WILL INSERT THEIR OWN REGISTRATION/LICENSES CERTIFICATE LANGUAGE.

.040 When due and payable - Reporting periods - Monthly, quarterly, and annual returns - Threshold provisions or Relief from filing requirements - Computing time periods - Failure to file returns.

(1) Other than any annual license fee or registration fee assessed under this chapter, the tax imposed by this chapter shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.

(2) Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

(3) Tax returns must be filed and returned by the due date whether or not any tax is owed.

(4) For purposes of the tax imposed by chapter _____ (tax portion of model ordinance), any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than (**1st OPTION:** Twenty Thousand Dollars (\$20,000) (or higher threshold as determined by city) in the current calendar year) **-or-** (**2nd OPTION:** Five Thousand Dollars (\$5,000) (or higher threshold as determined by the city) in the current quarter), shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due. **(Subsection (4) is mandatory)**

(5) A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.

(6) Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or City or Federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or City or Federal legal holiday.

(7) If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

.050 Payment methods - Mailing returns or remittances - Time extension - Deposits - Recording payments - Payment must accompany return - NSF checks.

(1) Taxes shall be paid to the Director in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the Director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the Director shall not discharge the tax or fee due unless the amount paid is the full amount due.

(2) A return or remittance that is transmitted to the City by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The Director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

(3) If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.

(4) The Director shall keep full and accurate records of all funds received or refunded. The Director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

(5) For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

(6) Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "no n-sufficient funds" (NSF) charge of twenty dollars (\$20.00) is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the twenty dollars (\$20.00) NSF fee) is received.

(7) The Director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

.060 Records to be preserved - Examination - Estoppel to question assessment.

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the Director or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

(1) If a person does not keep the necessary books and records within the City, it shall be sufficient if such person (a) produces within the City such books and records as may be required by the Director, or (b) bears the cost of examination by the Director's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the Director the estimated amount thereof including round-trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

(2) Any person who fails, or refuses a Department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the City for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the City by the taxpayer. The Director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

.070 Accounting methods.

(1) A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

(2) The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

.080 Public work contracts - Payment of fee and tax before final payment for work.

The Director may, before issuing any final payment to any person performing any public work contract for the City, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

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

(1) If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

(2) (a) **CITIES WILL INSERT LANGUAGE IN THIS SUBSECTION FOR INTEREST DUE FOR PERIODS PRIOR TO EFFECTIVE DATE OF THE ORDINANCE.**

(b) Interest imposed after the effective date of this ordinance, shall be computed from the last day of the month following the end of the reporting period and will continue to

accrue until payment is made. In case of an audit the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.

(c) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year. **(Mandatory)**

.095 Time in which assessment may be made.

The Director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four years after the close of the calendar year in which they were incurred, except that the Director may issue an assessment:

- (1) Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person was contacted in writing by the Director;
- (2) Against a person that has committed fraud or who misrepresented a material fact; or
- (3) Against a person that has executed a written waiver of such limitations.

.100 Over payment of tax, penalty, or interest - Credit or refund - Interest rate - Statute of limitations.

(1) If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the Director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

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

(3) Refunds shall be made by means of vouchers approved by the Director and by the issuance of a City check or warrants drawn upon and payable from such funds as the City may provide.

(4) Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

(5) (a) **CITY WILL INSERT REFUND INTEREST LANGUAGE COVERING PERIODS PRIOR TO THE ORDINANCE EFFECTIVE DATE HERE.**

(b) Interest on overpayments of taxes for periods beginning on or after January 1, 2005, shall be the average federal short term interest rate as outlined for assessments under .090(2)(c) plus two (2) percentage points. **(Mandatory)**

.110 Late payment - Disregard of written instructions - Evasion - Penalties.

(1) If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty equal to five (5) percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, the Director shall add a total penalty equal to fifteen (15) percent of the amount of the tax; and if the tax is not received on or before the last day of the second month following the due date, the Director shall add a total penalty equal to twenty-five (25) percent of the amount of the tax. No penalty assessed herein shall be less than Five Dollars (\$5.00).

(2) If a tax deficiency is assessed by the Director, there shall be added a penalty equal to five (5) percent of the amount of the deficiency. If payment of any tax deficiency assessed by the Director is not received by the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to fifteen (15) percent of the amount of the additional tax found due. If payment of any tax deficiency assessed by the Director is not received on or before the thirtieth day following the due date specified in the notice, or any extension thereof, the Director shall assess a penalty equal to twenty-five (25) percent of the amount of additional tax found due. No penalty added shall be less than Five Dollars (\$5.00).

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

(4) If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by _____, the Director shall impose a penalty of five (5) percent of the amount of tax due from that person for the period that the person was not licensed. No penalty shall be imposed under this subsection (4) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

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

(a) A taxpayer fails to follow specific written tax reporting instructions when the Director has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the Director has not issued final instructions because the matter is under appeal pursuant to this chapter. The Director shall not assess the penalty under this subsection (5), upon any taxpayer that has made a good faith effort to comply with the specific written instructions provided by the Director to that taxpayer.

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

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

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

(7) The penalties imposed under subsections (1) through (5) above of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8) The penalties authorized by subsections (5) and (6) of this section shall be assessed in accordance with the provisions of this chapter governing assessment of tax deficiencies. The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

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

(Mandatory)

.120 Cancellation of penalties.

(1) The Director may cancel any penalties imposed under subsections .110 (1) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The Director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection (3).

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

(3) The Director may cancel the penalties in subsections .110 (1) one time if a person:

(a) Is not currently licensed and filing returns,

(b) Was unaware of its responsibility to file and pay tax, and

(c) Obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

(4) The Director shall not cancel any interest charged upon amounts due.

.130 Taxpayer quitting business - Liability of successor.

(1) Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

(2) Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay

any tax due to the city from the taxpayer until such time as: a) the taxpayer shall produce a receipt from the City showing payment in full of any tax due or a certificate that no tax is due, or b) more than six (6) months has passed since the successor notified the Director of the acquisition and the Director has not issued and notified the successor of an assessment.

(3) Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

(4) Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

THE FOLLOWING ARE SUGGESTED APPEAL PROCEDURES. INDIVIDUAL CITIES MAY ADOPT PROVISIONS SIMILAR TO THESE OR DEVELOP THEIR OWN PROCEDURES (WE ENCOURAGE CITIES TO CHECK WITH OTHER CITIES AND THE RCW):

.140 Administrative Appeal.

Any person, except one who has failed to comply with section .060, aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter may [Optional pay the amount due and] appeal from such determination by filing a written notice of appeal with the _____(City Clerk, Hearing Examiner, City Council, etc) within 30 days from the date written notice of such amount was mailed to the taxpayer. **[NOTE: The option language above allows the city to demand payment of the amount assessed before any appeal process. If the option is not used, then payment cannot be demanded before the administrative appeal process is completed]** [This following sentence is also Optional if you have a filing fee that must be paid before a person can make an administrative appeal-- A \$____ filing fee shall be submitted with the appeal, which filing fee is required to process the appeal.] The (***city official charged with hearing appeals***) shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be delivered or mailed to the parties. The hearing shall be conducted in accord with the provisions of (***applicable city ordinance***). The decision of the (***city official charged with hearing appeals***) shall indicate the correct amount of the fee or tax owing.

.150 Judicial Review of Administrative Appeal Decision. [NOTE: This option is used if the hearing examiner's (or other official charged with hearing appeals) review is used to establish the facts of the case and the court reviews the hearing examiner's (or other official charged with hearing the appeal), determination, rather than the Director's determination.]

The taxpayer or the City may obtain judicial review of the (***city official charged with hearing appeals***)'s administrative decision by applying for a Writ of Review in the _____ County Superior Court within ____ days from the date of the (***city official charged with hearing appeals***)'s decision in accordance with the procedure set forth

in Chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

.150 Judicial Review of Director's Determination. [NOTE: This option is used if the (*official charged with hearing appeals*)'s determination does not establish the record and either the city or the taxpayer wants to conduct a trial and establish the facts of the case at the Superior Court level. This option in turn is broken down into two more options based on whether or not the taxpayer must exhaust the right of an administrative appeal prior to going to court.]

[Option A-taxpayer has to exhaust]. Any person, except one who has failed to comply with section .060, having paid any tax as required and feeling aggrieved by the amount of the tax assessed, and after first exhausting the right of administrative appeal set forth in this chapter, may seek judicial review in the _____ County Superior Court within 21 days of the date of the decision of the (*city official charged with hearing appeals*).

The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The trial in the Superior Court shall be de novo in accordance with the laws of the State of Washington. The burden shall rest upon the taxpayer to prove that the tax paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax.

[Option B-does not have to exhaust]. Any person, except one who has failed to comply with section .060, having paid any tax as required and feeling aggrieved by the amount of the tax assessed, may seek judicial review in the _____ County Superior Court within 21 days of the date of the written notice of the Director's determination. The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The trial in the Superior Court shall be de novo in accordance with the laws of the State of Washington. The burden shall rest upon the taxpayer to prove that the tax paid by the taxpayer is incorrect, either in the whole or in part, and to establish the correct amount of the tax.

.160 Director to make rules.

The Director shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

.170 Ancillary allocation authority of Director.

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

- (1) To conduct an audit or joint audit of a taxpayer by using an auditor employed by the City of _____, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed;
- (2) To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross

receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.

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

.180 Mailing of Notices.

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the Director in writing about a change in the taxpayer's address.

.190 Tax declared additional.

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City of _____ except as herein otherwise expressly provided.

.200 Public disclosure - Confidentiality - Information sharing.

EACH CITY SHOULD DEVELOP ITS OWN PUBLIC DISCLOSURE REQUIREMENTS. THE FOLLOWING CONTAINS SUGGESTED LANGUAGE:

(1) For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

(a) "Disclose" means to make known to any person in any manner.

(b) "Tax information" means:

(i) A taxpayer's identity;

(ii) The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;

(iii) Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or

(iv) Other data received by, recorded by, prepared by, or provided to the Director with respect to a taxpayer.

PROVIDED, That tax information shall not include data, material, or documents that do not disclose information related to a specific or identifiable taxpayer.

(2) Tax returns and information may be "public records" as that term is defined in RCW 42.17.020. The Director shall not disclose tax information if disclosure would violate RCW Chapter 42.17 or any other law prohibiting disclosure.

(3) Tax information may be disclosed to the following:

(a) The Mayor, City Manager, members of the City Council, City Attorney, City Clerk, or their authorized designees, for official purposes;

(b) Any agency or officer of the United States of America, the State of Washington, or a tax department of any state, county, city or town, provided that the agency or officer grants substantially similar privileges to the City, and further provided that the agency or officer shall not further disclose the tax information except as authorized in this section.

(c) The taxpayer to whom it pertains or to such person or persons as the taxpayer may designate in writing as the taxpayer's designee; except that tax information not received from the taxpayer shall 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.

(4) Nothing in this section shall prevent the use of tax information by the Director or any other agency in any civil or criminal action involving any license, tax, interest, or penalty.

(5) A person disclosing tax information to a person not entitled to receive that information under this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an officer or employee of the City, such person may be required to forfeit their office or employment.

.210 Tax constitutes debt.

Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of _____ and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

.220 Unlawful actions - Violation - Penalties.

(1) It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

(a) To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the Director;

(b) To make any false statement on any license application or tax return;

(c) To aid or abet any person in any attempt to evade payment of a license fee or tax;

(d) To fail to appear or testify in response to a subpoena issued pursuant to _____;

(e) To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter.

(2) Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed \$1,000, imprisonment not to exceed one year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

(3) Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and may be

punished by a fine not to exceed \$5,000, or imprisonment not to exceed one year, or both fine and imprisonment.

.230 Suspension or Revocation of business registration [license].

EACH CITY SHOULD DEVISE ITS OWN REVOCATION PROCEDURES THAT MATCH YOUR REGISTRATION AND LICENSE PROCEDURES. The following contains suggested language.

(1) The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this _____. The Director, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under this _____ may be suspended or revoked based on one or more of the following grounds:

- (a) The license was procured by fraud or false representation of fact.
- (b) The licensee has failed to comply with any provisions of this (title)_____.
- (c) The licensee has failed to comply with any provisions of the (city code)_____.
- (d) The licensee is in default in any payment of any license fee or tax under _____.
- (e) The licensee or employee has been convicted of a crime involving the business.

(2) Any licensee may, within ____ days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the _____. A copy of the petition must be provided by the licensee to the Director and the City Attorney on or before the date the petition is filed with the (**city official charged with hearing appeals**). The hearing shall be conducted in accordance with the procedures for hearing contested cases set out in (**appropriate code provision**). The (**city official charged with hearing appeals**) shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the (**city official charged with hearing appeals**) shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

No suspension or revocation of a license issued pursuant to the provisions of this subchapter shall take effect until _____ days after the mailing of the notice thereof by the Department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the (**city official charged with hearing appeals**). All licenses which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

The decision of the (**city official charged with hearing appeals**) shall be final. The licensee and/or the Department may seek review of the decision by the Superior Court of Washington in and for _____ County within _____ days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.

(3) Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

.240 Closing agreement provisions. (Optional)

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the Director or the taxpayer, and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

.250 Charge-off of uncollectible taxes. (Optional)

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer. [Charge-offs in excess of \$_____ require [City Council] approval.]

Severability. 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.

Appendix G

Detailed Methodology

General Information

Each of the deviation impacts were allocated to business and occupation (B&O) tax cities using employment data by location of facility obtained from Employment Security Department (ESD). Each deviation had different sources of data for estimating the amount to be allocated. The most recent B&O tax rates for cities were used to estimate the local tax impact. Activities were defined using North American Industrial Classification (NAIC) coding for ESD or DOR data or by specific tax reporting line information.

Manufacturer

This deviation derives from the concept that processing for hire within a city causes a nexus on a manufacturer located outside of the city and therefore subjects that manufacturer to a B&O tax within the city.

The estimation of the deviation starts with data for firms that report processing for hire and manufacturing to DOR. This data is combined with the location of employment reported to ESD in combination with industry input-output estimates that help to connect likely outputs by industry. While individual manufacturer/processor connections are not known, this approach provides a means of estimation at an industry level by city. Data was used to estimate what the expected level of processing for hire might be in a city given the level of manufacturing that is known to exist in the city. The actual processing for hire was then compared with the expected level to determine if an excess level is occurring which in turn implies that possible manufacturing activity is occurring outside of the city that could be subject to tax. The result of this analysis was an impact of \$68,000 in B&O tax cities.

This deviation has an interaction with deviation #2 that classifies some agricultural activities as subject to local manufacturing tax. If processing for hire is performed within a city on an agricultural commodity, then the agricultural activity outside of the city could become subject to manufacturing tax.

Using the above technique for activities that were likely related to agricultural activities (food processing) resulted in an impact of \$1,077,000 for B&O tax cities.

“To Manufacture”

Agricultural activities and commodities are assumed taxable as manufacturing under this deviation.

The following assumptions were made for the individual categories:

Seed conditioning

Using data obtained from industry and the Washington State Department of Agriculture, the statewide value for seed conditioning was estimated at \$104 million.

Hay Cubing

It was assumed that the fiscal impact of this deviation is zero. Most hay cubing occurs in the unincorporated areas of eastern and western Washington; therefore, no impact occurs in cities that impose a B&O tax.

Ice Glazing Seafood

Only a few cities have seafood processing activity. These include Bellevue, Bellingham, Everett, Port Townsend, Raymond, Seattle, Tacoma, and Westport. Using data obtained from the city of Westport and DOR excise tax returns, the statewide value was estimated at \$550 million. This was allocated to each of the 39 cities with a city B&O tax using employment data.

Agriculture Exemption

At the state level a B&O tax exemption is provided for farmers who grow, raise, or produce agricultural products for sale at wholesale. Agricultural products are defined in RCW 82.04.213 to include any product of plant cultivation or animal husbandry, plantation Christmas trees, animals, birds, insects and fish, as well as the products obtained from animals, such as eggs, milk, and honey.

The following cities have agricultural activity and impose the municipal B&O tax: Aberdeen, Bainbridge Island, Bellevue, Bellingham, Black Diamond, Bremerton, Everett, Everson, Longview, Mercer Island, Pacific, Seattle, Shelton, and Tacoma.

While statewide agricultural activity is over \$5 billion, an employment allocation was used to estimate \$34.6 million of taxable activity in B&O cities.

The combined impact of these four categories was estimated at \$1,277,000.

Retail Sale vs. Retail Services

In RCW 82.04.050 the definition for “retail sale” includes retail services. Retail services would include the renting and leasing of tangible personal property, amusement and recreation services, title insurance, escrow services, landscape maintenance, ticket services charges for professional sporting events, physical fitness services, and escort and dating services. While the state would tax these activities under the B&O retailing classification, the model ordinance would tax these activities under the retail services classification.

Firms whose predominant business activity fell into an equivalent NAIC code under the definition of a retail service were selected. Department of Revenue location data were used to determine the cities where these sales take place.

This deviation would only have a fiscal impact on a taxpayer if a city had a higher B&O tax rate for the service classification than for the retail classification. There are only ten such cities. They include Aberdeen, Bellingham, Bremerton, Issaquah, Kelso, Lacey, Longview, Port Townsend, Tacoma, and Tumwater.

Successors

Successors with less than 50 percent asset acquisition

This deviation has to do with whether the share of a successor's purchase of assets changes the likely tax collection outcome of a closed account balance of a predecessor.

ESD data for CY 2002 was reviewed for closed accounts where the transaction appeared to be a generally one to one transaction and the predecessor account was closed and successor account opened in the same year. Transactions were not analyzed where there appeared to be administrative changes, were for other years, or where the successor previously existed, or where there were multiple locations changing hands between multiple location successors. The resultant list of transactions selected for analysis was 2,056 records.

While no information exists as to the share of assets acquired by a successor firm, it was believed that the relative payroll levels of successors and predecessors could be used as a proxy. This would presume that employment and asset ownership or use would be related. For firms where the successor payroll level was equal to or greater than the predecessor level, it was assumed that 100 percent of the firm's assets were acquired. For lesser levels of the ratio, that ratio was assumed the level of asset acquisition.

To estimate the impact of the deviation, each firm/location with an estimated share of 50 percent or more (the state standard) was compared with all shares of acquisition (the model ordinance) as well as the state taxable B&O activity for the predecessor firm. The deviation was then calculated by location in terms of predecessor taxable B&O activity by multiplying the difference in methods by the taxable activity.

To convert this information into an impact for local governments, the state's level of taxable activity was multiplied by an average local B&O tax rate for each city. For purposes of this study the predecessor taxable activity subject to these impact computations was deemed to be the greater of taxable activity reported in 2002 or three months of taxable activity. The result for B&O tax cities was about \$264,000 for CY 2005.

The result was that the model ordinance standard provided 24 percent more potential B&O tax statewide than the state standard of 50 percent. This would mean that in an account closure where B&O tax was due, more revenue per dollar of liability could theoretically be collected under the model ordinance.

Statutory Merger Successors

This deviation essentially hinges on the financial capability of a successor versus a predecessor in making collections of outstanding B&O tax liability after an account has closed.

A simple definition of a statutory merger is one where one of two previously existing corporations becomes a successor. Using this definition, ESD records for CY 2002 were searched for corporate predecessor closed accounts where the successor's corporation existed before 2002. A list of 235 firms fitting this profile was used to do the analysis of this deviation.

It was assumed that the financial capability of the predecessor and successor are related to the level of business activity they each have. A comparison of the reported B&O taxable activity for each of the 235 firm/locations was made. On average, the statewide level of taxable activity for successors during this period was 3.2 times that of predecessors. This implies that more revenue would likely be received when relying on successor financial capability than if relying on predecessor's capability to collect existing tax liability.

To convert this data into an estimate for local government impact, the relative size of predecessors to successors for each transaction was applied to the level of location specific B&O taxable activity for predecessors. For example, if a successor were three times the size of a predecessor it was assumed that a potential 66 percent decline (1-1/3) in collections could occur when reliance was on the predecessor (the model ordinance). The successor received a benefit in this case. Likewise, if the predecessor were larger than a successor, then the predecessor would be deemed to pay more than they might otherwise pay given the state standard.

It should be noted that this approach only measures the potential relative outcome of a choice between predecessors and successors when a predecessor is not completely able to pay its tax liability. If the predecessor is able to pay the liability, it is irrelevant if the successor has more financial capability. Also, if a tax write-off occurs for administrative reasons, it is also irrelevant if one party might have had more financial capability than the other.

For purposes of this study the predecessor taxable activity subject to these impact computations was deemed to be the greater of taxable activity reported in 2002 or three months of taxable activity. These calculations result in a total impact for B&O cities of about \$59,000 in CY 2005 using the CY 2002 data. The 235 firm/locations used for analysis are believed to be representative of the level of statutory merger activity in 2002. However, it is not known exactly how many of these types of transactions actually occurred during that year or whether these specific transactions were actually "statutory mergers."