

Ordinance No. _____

AN ORDINANCE relating to business taxes, licenses and regulations; and amending Chapters 5.02, 5.04, 5.05, 5.20, and 5.76 of the Olympia Municipal Code to adopt updated Business and Occupation Tax Model Ordinance provisions as required by RCW 35.102.

WHEREAS, in 2003, the Washington State Legislature enacted RCW 35.102, which required cities with local Business and Occupation (B&O) taxes to adopt a city B&O tax model ordinance with certain mandatory provisions no later than December 31, 2004; and

WHEREAS, on November 16, 2004, the Olympia City Council adopted Ordinance No. 6328 to substantially adopt the model ordinance consistent with RCW 35.102, while tailoring it where permitted to reflect the unique local characteristics of Olympia; and

WHEREAS, revisions have been made to the model ordinance to include changes to RCW 35.102 and to reflect other changes made to state law since 2008; and

WHEREAS, all cities with local B&O taxes are required to adopt the mandatory portions of the changes by the end of 2012, to take effect by January 1, 2013;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:

Section 1. Amendment of OMC Chapter 5.02. Chapter 5.02 of the Olympia Municipal Code is hereby amended to read as follows:

**Chapter 5.02
BUSINESS LICENSES**

5.02.000 Chapter Contents

Sections:

- 5.02.005 License required.
- 5.02.010 License term designated.
- 5.02.015 License fee.
- 5.02.020 Application and renewal.
- 5.02.030 Home occupation business.
- 5.02.040 Exemptions.
- 5.02.050 License Denial, Suspension or Revocation.
- 5.02.060 Appeal of License Denial, Suspension or Revocation.
- 5.02.070 Penalty.

5.02.005 License required

A. No person may conduct business within the City without first obtaining an approved City business license. The license required by this chapter is in addition to any regulatory license that may be required by another chapter within Title 5 OMC.

B. The business license is not transferable. A business owner acquiring an existing business in the City must obtain a new, approved license for that business. Each separate physical location operated by a business inside the City must be licensed separately and be approved by the City before business may commence at that location. No fee will be charged for additional locations. A change of physical location of a business inside the City will require approval by the City before business may commence at the new location, and may require the filing of a new Master State of Washington Business License Application and/or a new City of Olympia Business License Application. If two or more businesses operate at the same physical location, each business must obtain a license.

C. The issuance and renewal of business licenses shall be done by the State of Washington Department of Revenue Business License Service (BLS) in coordination with the City.

D. The business license document issued by the Business License Service must be posted in a conspicuous place on the premises identified on the license.

5.02.010 License term designated

The license required by this chapter shall have a term as established by the State of Washington BLS Department of Revenue Business License Service, in cooperation with the City.

5.02.015 License fee

The initial fee for the City business license required by this chapter is \$80.00. The fee is comprised of an annual renewal business license fee of \$30.00, a onetime new business registration fee of \$25.00 and a onetime B&O tax registration fee of \$25.00. The renewal fee may be prorated to accommodate the license term established under OMC 5.02.010. The license fees listed in this section are in addition to any other license or handling fee collected by the BLS.

5.02.020 Application and renewal

A. Application for the business license shall be made by submitting a completed Master Business Application, and any appropriate addenda forms to the BLS, in cooperation with the City. Said application shall be accompanied by payment of all respective license fees due for that application and the BLS application handling fee authorized by RCW 19.02.075.

B. Renewals shall be handled by the Business License Service in coordination with the City Treasurer. Renewal shall require payment of all license fees due for that renewal, and the BLS renewal handling fee authorized by RCW 19.02.075.

C. Failure to renew the license on or before the expiration date established by the Business License Service may result in the charge of a delinquent renewal penalty as authorized in RCW 19.02.085.

D. Failure to renew the license on or before 120 days after the expiration date established by the Master License Service may result in the cancellation of the license, and may require the filing of a new Master Business Application, payment of all appropriate fees, and reapproval by the City in order to continue conducting business in the City.

5.02.030 Home occupation business

A business owner intending to conduct business from a residence located within the City must provide proof of residency within the City and sign an acknowledgement of compliance with the Home Occupation Standards listed in OMC 18.04.060. The proof of residency and acknowledgement must be filed directly with the City separate from the ~~Master State of Washington Business License Application~~ submitted to the Business License Service, and must be received by the City before the business license application can be approved.

5.02.040 Exemptions

Non-profit organizations recognized by the State of Washington and Federal Government (e.g. 501(c)(3)) are exempted from any fees this Chapter. However, they are not exempted from registering with the City of Olympia.

5.02.050 License Denial, Suspension or Revocation

A. A business license may be denied, suspended or revoked by the City's Director of Administrative Services. The Director, or designee, shall notify the license applicant or licensee in writing of the denial, suspension, or revocation of his or her registration and the grounds therefor. A business license may be denied, suspended or revoked for any one or more of the following reasons:

1. the license was procured by fraud or false representation of fact or contains misleading statements or suppression of material facts about the business;
2. the license applicant has applied for a business license for activities that are prohibited by law;

3. the licensee, owner, or operator of the business is currently operating a business in a manner that is prohibited by law;
4. the licensee is in violation of the terms and conditions under which the license was issued;
5. the licensee, owner, operator, or an employee has been convicted of a crime involving the business;
6. it is necessary to deny, suspend, or revoke the license for the protection of the public health, safety, peace, or welfare;
7. the business has become an instrument of or a cover for public disorder, crime, or other danger to public safety, morals, or health.

B. Upon revocation of any license as provided in this Chapter, no portion of the registration fee shall be returned to the applicant or licensee.

5.02.060 Appeal of License Denial, Suspension or Revocation

If a business license is denied, suspended, or revoked pursuant to any provision of OMC 5.02.050(1-7), a business owner or license applicant may appeal such decision to the City Manager within thirty (30) days of such denial, suspension, or revocation. In order for an appeal to be considered, the business owner or applicant must state with particularity the reasons why the City's decision was in error and the reasons the City Manager should reverse the denial, suspension, or revocation. The City Manager (or designee) will review the appeal and issue a written decision to uphold, modify, or reverse the denial, suspension, or revocation within thirty (30) days of receipt of the appeal. The City Manager's decision is the final decision of the City and may be appealed to the Thurston County Superior Court within thirty (30) days of the date the City Manager issues his/her decision.

5.02.070 Penalty

A. Any person, firm, or corporation who knowingly violates or fails to comply with any term or provision of this chapter shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed One Thousand Dollars (\$1,000), and/or to imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-five (365) days or both such time and imprisonment. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

B. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

1. First offense: Class 3 (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
3. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Code Enforcement.

Section 2. Amendment of OMC Chapter 5.04. Chapter 5.04 of the Olympia Municipal Code is hereby amended to read as follows:

Chapter 5.04 BUSINESS AND OCCUPATIONS TAX

5.024.000 Chapter Contents

Sections:

- 5.04.010 Purpose
- 5.04.020 Exercise of Revenue
- 5.04.030 Administrative Provisions
- 5.04.040 Definitions
- 5.04.050 Agency – Sales and Services by Agent, Consignee, Bailee, Factor, or Auctioneer
- 5.04.060 Imposition of the Tax – Tax or Fee Levied
- ~~5.04.070 Doing Business With the City~~
- 5.04.080 Multiple Activities Credit When Activities Take Place In One or More Cities With Eligible Gross Receipt Taxes
- 5.04.085 Deductions to Prevent Multiple Taxation of Transactions Involving More Than One City With an Eligible Gross Receipts Tax
- 5.04.090 Reserved for Any Future Additions
- 5.04.100 Assignment of Gross Income Derived From Intangibles.
- 5.04.105a Allocation and Apportionment of Income When Activities Take Place In More Than One Jurisdiction.

- 5.04.105b Allocation and Apportionment of Printing and Publishing Income When Activities Take Place In More Than One Jurisdiction.
- 5.04.110 Exemptions
- 5.04.120 Deductions
- 5.04.130 Tax Part of Overhead
- 5.04.140 Severability
- 5.04.150 Miscellaneous

5.04.010 Purpose

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].

5.04.020 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.

5.04.030 Administrative Provisions

The administrative provisions contained in OMC Chapter 5.05 shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

5.04.040 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.

"Advance" "reimbursement":

1. "Advance" means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees on behalf of the customer or client.
2. "Reimbursement" means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

"Agricultural product" "farmer":

1. "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets.
2. "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packinghouse. "Farmer" does not include any person in respect to the business of taking, cultivating, or raising timber.

"Artistic or cultural organization":

1. "Artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (10) of this section, for viewing or attendance by the general public.
2. The organization must be a not-for-profit corporation under Chapter 24.03 RCW
3. The organization must be managed by a governing board of not less than eight (8) individuals, none of whom is a paid employee of the organization or by a corporation sole under Chapter 24.12 RCW.
4. No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees, except in the form of services rendered by the corporation in accordance with its purposes and bylaws.
5. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.
6. Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may

not inure directly or indirectly to the benefit of any member or individual except a non-profit organization, association, or corporation which also would be entitled to the exemption.

7. The corporation must be duly licensed or certified when licensing or certification is required by law or regulation.

8. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.

9. Services must be available regardless of race, color, national origin, ancestry, religion, age, sex, marital status, sexual orientation, Vietnam or disable veteran status, or the present of any mental or physical disability.

10. The term "artistic or cultural exhibitions, presentation, or performances or cultural or art education programs" is limited to:

- a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;
- b. A musical or dramatic performance or series of performances; or
- c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.

"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.

"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.

"By Product": See Product.

"Casual Sale": See Sale.

"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;
2. The manufacturing of products including articles, substances or commodities;

"Company": See Person.

"Competitive Telephone Service": "Competitive telephone service" means the providing by any person or telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

"Consumer": "Consumer" means the following:

1. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's 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 a consumer other than for the purpose of:
 - a. resale as tangible or intangible personal property in the regular course of business;
 - b. incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;
 - c. incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or
 - d. consuming the property 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;
2. Any person engaged in any business activity taxable under section .060(G);
3. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;
4. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in section .040(MM), other than for resale in the regular course of business;
5. Any person who is an end user of software;

6. Any person engaged in the business of "public road construction" in respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly-owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of a publicly-owned street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of a publicly-owned mass public transportation terminal or parking facility;

7. Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;

8. Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

9. Any person engaged in "government contracting." Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

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

"Digital Automated Service", "digital code", and "digital goods": "Digital Automated Service", "digital code", and "digital goods" have the same meaning as in RCW 82.04.192

"Digital products": "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(b).

"Director": "Director" means the Clerk-Treasurer of the City or any officer, agent or employee of the City designated to act on the Director's behalf.

"Eligible gross receipts tax": "Eligible gross receipts tax" means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within section .060; 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.

"Engaging in business":

1. "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 architects, security system services, surveying, and real estate services including the listing of homes and managing real property.
- k. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.

- l. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
 - m. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.
 - n. Investigating, resolving, or otherwise assisting in resolving customer complaints.
 - o. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
 - p. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.
 - q. Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.
4. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.
- a. Meeting with suppliers of goods and services as a customer.
 - b. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
 - c. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.
 - d. Renting tangible or intangible property as a customer when the property is not used in the City.
 - e. Attending, but not participating in a "trade show" or "multiple vendor events".
 - f. Mere delivery of goods via common carrier.

5. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the Constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact or subsequent contacts.

"Extracting": "Extracting" in the activity engaged in by an extractor and is reportable under the extracting classification.

"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, or takes, cultivates, or raises 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.

"Government contracting": See Sale at Retail.

"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.

"Gross proceeds of sales": "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"In this City" or "within this City": "In this City" or "within this City" includes all federal areas lying within the corporate city limits of the City of Olympia.

"Isolated Sale": See Sale.

"Magazine": See Newspaper.

"Manufacturing": "Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

"Manufacturer" "to manufacture" "processing for hire":

1. "Manufacturer" means every person whom, 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. A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.
2. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:
 - a. the production of special made or custom made articles;
 - b. the production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; and
 - c. crushing and/or blending of rock, sand, stone, gravel, or ore; and
 - d. the producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

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

3. "Processing for hire" means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different or useful product is produced for sale, or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person's own materials or ingredients. If a person furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to twenty percent (20%) or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

"Newspaper" "magazine" "periodical": "Newspaper" means a publication offered for sale regularly at stated intervals at least once a week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind. "Magazine" or "periodical" means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

"Non-profit corporation or non-profit organization": "Non-profit corporation or non-profit organization" means a corporation or organization in which no part of the income can be distributed to its members, directors, or officers and that holds a current tax exempt status as provided under Sec. 501(c)(3) of the Internal Revenue Code, as may hereafter be amended, or is specifically exempted from the requirement to apply for its tax exempt status under Sec. 501(c)(3) of the Internal Revenue Code, or as may hereafter be amended. Where the term "non-profit organization" is used, it is meant to include non-profit corporations.

"Office" "place of business": "Office" or "place of business" means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:

1. Whose address the person uses as its business mailing address;
2. Where the place of primary use is shown on a telephone billing or a location contains a telephone line listed in a public telephone directory or other similar publication under the business name; and

3. Where the person holds itself out to the general public as conducting its regular business through signage or other means; and
4. Where the person is required to obtain any appropriate state and local business license or registration unless they are exempted by law from such requirement.
5. A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business. If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the City will be deemed the place of business.

"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.

"Precious metal bullion or monetized bullion": "Precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

"Processing for hire": See Manufacturer.

"Product" "Byproduct": "Product" means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort.

"Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

"Public road construction": See Sale at Retail.

"Retailing": "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification.

"Retail Sale": See Sale at Retail.

"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~~-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.

"Royalties": "royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade_names, and similar items.

"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.

"Sale at retail" or "Retail sale":

1. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:
 - a. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
 - b. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or
 - c. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or
 - d. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or
 - e. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance

of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

f. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

2. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity that is taxable under OMC 5.04.060 (G).

3. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

a. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

b. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

c. The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

d. The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial

services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

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

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

gh. The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), ~~and (f), and (g)~~ of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

4. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

5. a. "Sale at retail" or "retail sale" shall also include the sale of canned-prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software. For purposes of this subsection 5(a), the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or

activation code, where the key or code is required to activated prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser. The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

i. custom software

ii. the customization of prewritten software

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

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

For purposes of this subsection 5(b)(ii) "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

6. "Sale at retail" or "retail sale" shall also include Public Road Construction, which is 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.

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

8. "Sale at retail" or "retail sale" shall also include Government Contracting, which is 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.

9. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. (This is reported under the service or other classification).

10. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action. (This is reported under the service and other classification.)

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

a. Sales in which the seller has granted the purchaser the right of permanent use;

b. Sales in which the seller has granted the purchaser a right of use that is less than permanent;

c. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

d. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

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

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

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

"Sale at wholesale" "wholesale sale": "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in Subsection 5.b.1, which is not a retail sale, and any charge made for labor and services rendered for persons who are not customers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company for the purpose of resale, as contemplated by RCW 35.21.715.

"Service": shall include the sale of or charge for personal, business or professional activities, including amounts designated as internet, rent, fees, admission, and other service emoluments however designated, received by persons engaging in business activities not included in the designation of "retail service," "sale at retail," or "sale at wholesale." By way of example only, "service" includes but is not limited to legal and engineering services, consulting, and appraisal services.

"Software" "prewritten or canned software" "custom software" "customization of canned software" "master copies" "retained rights":

1. "Prewritten or canned software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such persons is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.
2. "Custom software" means software created for a single person.
3. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a

single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

4. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

5. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

6. "Software" means any information, program, or routine, or any set of one (1) or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients regardless of the media upon which that documentation is provided, that describes the code and its use, operation, and maintenance and that typically is delivered with the code to the consumer. All software is classified as either canned or custom.

"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.

"Tuition fee": "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a non-profit corporation or a non-profit organization, as defined by the Internal Revenue Code Section 501(c)(3), as may hereafter be amended, if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for

profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

“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.

“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 (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

“Wholesale sale”: See Sale at Wholesale.

"Wholesaling": "Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

5.04.050 Agency - sales and services by agent, consignee, bailee, factor or auctioneer

A. Sales in own name - sales or purchases as agent.

1. Every person, including agents, consignees, bailees, factors or auctioneers having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in the person's own name and actually so selling shall be deemed the seller of such tangible personal property within the meaning of this chapter.
2. The burden shall be upon the taxpayer in every case to establish the fact that such taxpayer is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales or making purchases for a principal. Such claim will be recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:
 - a. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.
 - b. The books and records show the amount of the principal's gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal's gross sales must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.
 - c. No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement. Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.
 - d. Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

B. If the above requirements are not met the consignor, bailor, principal or other shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer.

C. Services in own name - procuring services as agent.

1. For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured.

2. Any person who claims to be acting merely as agent in obtaining services for a principal will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

a. The books and records of the agent show that the services were obtained in the name and for the account of the principal, and show the actual principal for whom the purchase was made.

b. The books and records show the amount of the service that was obtained for the principal, the amount of commissions and any other income derived by the agent for acting as such. Amounts received from the principal as advances and reimbursements must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

5.04.060 Imposition of the tax - tax or fee levied

Except as provided in OMC 5.04.060(H), 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 one-tenth of one percent (0.1%). 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 one-tenth of one percent (0.1%). The measure of the tax is the value of the products, including by-products, so manufactured or processed, 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, 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 one-tenth of one percent (0.1%).

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 one-tenth of one percent (0.1%).

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 one-tenth of one percent (0.1%).

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 one tenth of one percent (0.1%).

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 two-tenths of one percent (0.2%). 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 rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service.

H. 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 less than \$20,000, or is equal to or less than \$5,000 during any quarter if on a quarterly reporting basis.

5.04.070 ~~Doing business with the City~~

~~A. 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.~~

~~B. Except as provided in 5.04.105a, as to such persons the amount of tax shall be equal to the gross contract price multiplied by the rate under section .060 that would otherwise apply if the sale or service were taxable pursuant to that section.~~

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

A. Persons who engage in business activities that are within the purview of two (2) or more subsections of 5.04.060 shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if the Director finds that the 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.

C. 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 and that the taxpayer paid the amount of tax sought to be credited.

D. 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.

E. 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.

F. 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.

5.04.085 Deductions to prevent multiple taxation of transactions involving more than one city with an eligible gross receipts tax.

A. Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. A taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

1. A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.
2. Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).
3. A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City.

B. Person manufacturing products within and without the City. 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.

5.04.090 Reserved for any future additions

Reserved for any future additions.

5.04.100 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).

5.04.105a Allocation and apportionment of income when activities take place in more than one jurisdiction

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

A. Gross income derived from all activities other than those taxed as service or royalties under 5.04.060.G shall be allocated to the location where the activity takes place.

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

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

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

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

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

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

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

D. If none of the methods in Subsection 5.04.105a (C) for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections 5.04.105a (C) (1) through (5), then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection 5.04.105a (C) (4). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in Subsections 5.04.105a (C) (1) through (5) are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

For purposes of subsections 5.04.105a (C) (1) through (5), "Receive" has the same meaning as in RCW 82.32.730.

EE. Gross income derived from activities taxed as services and other activities taxed under 5.04.060.G shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

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

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

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

- a. The customer location is in the city; or
- b. The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other

location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

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

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

a. Separate accounting;

b. The use of a single factor;

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

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

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

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

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

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

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

5. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.
6. "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.
7. "Tax period" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.
8. "Taxable in the customer location" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.
9. Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

5.04.105b Allocation and apportionment of printing and publishing income when activities take place in more than one jurisdiction

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

5.04.110 Exemptions

The provisions of this chapter shall not apply to the following:

- A. This chapter shall not apply to non-profit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons.
- B. Certain fraternal and beneficiary organizations. This chapter shall not apply to fraternal benefit societies or fraternal fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary

corporations or societies provide in their bylaws for the payment of death benefits. This exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations.

C. Certain corporations furnishing aid and relief. This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of Congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

D. Operation of sheltered workshops. This chapter shall not apply to income received from the Department of Social and Health Services for the cost of care, maintenance, support, and training of persons with developmental disabilities at non-profit group training homes as defined by Chapter 71A.22 RCW or to the business activities of non-profit organizations from the operation of sheltered workshops. For the purposes of this subsection, "the operation of sheltered workshops" means performance of business activities of any kind on or off the premises of such non-profit organizations which are performed for the primary purpose of:

1. Providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market do not exist; or
2. Providing evaluation and work adjustment services for handicapped individuals.

E. Credit unions. This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States.

F. Health maintenance organization, health care service contractor, certified health plan.

1. This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201. However, per RCW 48.14.0201 (7), this exemption is not intended to, and shall not, impair the City's ability to impose a tax hereunder upon the health care services directly delivered by the employees of a health maintenance organization under RCW chapter 48.46.
2. The gross income received by any religious society, religious association or religious corporation, through the operation of any hospital, clinic, resort or other institution devoted exclusively to the care of healing of human beings; provided, that no exemption is granted where

the income therefore inures to the benefit of any physician, surgeon, stockholder, or individual by the virtue of ownership or control of such hospital, clinic, resort, or other institution.

G. 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 Olympia Municipal Code Chapter 5.84.

H. Investments - dividends from subsidiary corporations. This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

I. International banking facilities. This chapter shall not apply to the gross receipts of an international banking facility. As used in this subsection, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, and Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).

~~J. Insurance business. This chapter shall not apply to amounts received by any person or agent who is an insurer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020; provided that the provisions of this subsection shall not exempt any person engaging in the business of insurance as a broker as defined in RCW 48.17.020 or as a solicitor as defined in RCW 48.17.030; and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.~~ This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the State pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

K. Farmers - agriculture. This chapter shall not apply to any farmer in respect to amounts received from selling fruits, vegetables, berries, butter, eggs, fish, milk poultry, meats or any other agricultural product that is raised, caught, produced, or manufactured by such persons.

L. Boxing/Wrestling exhibitions. This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Boxing Commission.

M. Racing. This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Washington State Horse Racing Commission.

N. Ride sharing. This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.

O. Employees.

1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the Internal Revenue Code, as may be amended hereafter.

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

P. Amounts derived from sale, lease or rental of real estate. This chapter shall not apply to gross proceeds derived from the sale, lease or rental 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.

Q. 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.

R. 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 82.35.0440, 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.

S. Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 65.04.010 and exempt in RCW 66.08.120.

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

U. Community Events and Farmers Markets. This chapter shall not apply to community events licensed under OMC 5.17, and farmers markets licensed under OMC 5.18, as specified in OMC 5.17 and OMC 5.18.

V. 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 (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

W. 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.

X. United States gross income. The gross income received by the United States or any instrumentality thereof and by the state or any municipal subdivision thereof.

5.04.120 Deductions

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

A. Membership fees and certain service fees by non-profit youth organization. For purposes of this subsection, "non-profit youth organization" means a non-profit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a non-profit youth organization:

1. As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization's facilities; or

2. From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

B. Fees, dues, charges. In computing tax, there may be deducted from the measure of tax amounts derived from bona fide:

1. initiation fees;

2. dues;

3. contributions;

4. donations;

5. tuition fees;

6. charges made by a non-profit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the non-profit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public; charges made for operation of privately operated kindergartens;

7. and endowment funds.

This subsection shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section.

C. Artistic and cultural organizations -- income from business activities. In computing tax, there may be deducted from the measure of tax those amounts received by artistic or cultural organizations, as defined in this chapter, which represent:

1. Income derived from business activities conducted by the organization, provided that this deduction does not apply to retail sales made by artistic and cultural organizations;

2. Amounts received from the United States or any instrumentality thereof or from the State of Washington, or any municipal corporation or subdivision thereof as compensation for; or to support

artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public; or

3. Amounts received as tuition charges collected for the privilege of attending artistic or cultural education programs.

D. Artistic or cultural organization -- Deduction for tax under the manufacturing classification -- Value of articles for use in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs. In computing tax, there may be deducted from the measure of tax by persons subject to payment of the tax under the manufacturing classification, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization, as defined in this chapter, solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

E. Day care activities. In computing tax, there may be deducted from the measure of tax amounts derived from day care activities by any organization organized and operated for charitable, educational, or other purposes which is exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1954, as amended; provided, however, that amounts derived from selling, altering or repairing tangible personal property shall not be deductible.

F. Compensation from public entities for health or social welfare services -- exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, "employee benefit plan" includes the military benefits program authorized in 10 USC Sec. 1071 et seq., as amended, or amounts payable pursuant thereto.

~~G. Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.~~
G. Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on non-transient residential properties.

H. Interest on loans to farmers and ranchers, producers, or harvesters of aquatic products, or their cooperatives. In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers, or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers, or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.

I. Interest on obligations of the state, its political subdivisions, and municipal corporations. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the State of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.

J. Receipts from tangible personal property delivered outside the State. In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer's representative at a location outside the State of Washington.

K. 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.

L. 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.

M. Repair, maintenance, replacement, etc., of residential structures and commonly held property - eligible organizations.

1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

- a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership; or
- b. An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or
- c. An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area that all hold the same property in common within the area.

2. For the purposes of this subsection "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

3. To qualify for the deductions under this subsection:

- a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;
- b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association; and,
- c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

N. Sales at wholesale or retail of precious metal bullion and monetized bullion. In computing tax, there may be deducted from the measure of tax amounts representing the sale at wholesale or retail of precious metal bullion and monetized bullion. However, no deduction is allowed on amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, and no deduction or offset is allowed against such commissions on account of salaries or commissions paid to salesmen or other employees.

O. Amounts representing rental of real estate for boarding homes. In computing tax, there may be deducted from the measure of the tax amounts derived from the value of the rental of real estate for "boarding homes." To qualify for the deduction, the boarding home must meet the definition of "boarding home," and licensed by the State of Washington under RCW 18.20. The deduction shall be in the amount

of twenty-five percent (25%) of the gross monthly billing when the boarder has resided within the boarding home for longer than thirty (30) days.

P. Radio and television broadcasting - advertising agency fees - national, regional, and network advertising - interstate allocations. In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:

1. advertising agencies' fees when such fees or allowances are shown as a discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;
2. actual gross receipts from national network, and regional advertising or a "standard deduction" as provided by RCW 82.04.280; and
3. local advertising revenue that represent advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director may issue a rule that provides detailed guidance as to how these deductions are to be calculated.

Q. 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.

R. Receipts from the sale of tangible personal property delivered outside the City but within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing or wholesaling classification. (Note: The cities which tax retail services under the retailing classification, and not the service and other classification, should also include retail services in this deduction (both in the title and in the deduction itself)).

S. Professional employer services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

5.04.130 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.

5.04.140 Severability

If any provision of this chapter or its application to any person or circumstance is held invalid for any reason, the remainder of the chapter or the application of the provision or chapter to other persons or circumstances shall not be affected.

5.04.150 Miscellaneous

A. Short title. This provisions of this Chapter 5.04 shall be known as the Olympia Business and Occupations Tax Code.

B. Headings. The headings contained in this ordinance are for convenience only and shall not be deemed to govern, limit, modify or otherwise affect the scope, meaning or intent of the provisions contained herein in any manner.

C. The former provisions of Olympia Municipal Code Chapter 5.04, which are being repealed and replaced with the provisions of this new Code Chapter 5.04 (Ordinance No. 6328), shall remain in full force and effect until the effective date of this new Code Chapter 5.04, which is January 1, 2005.

Section 3. Amendment of OMC Chapter 5.05. Chapter 5.05 of the Olympia Municipal Code is hereby amended to read as follows:

Chapter 5.05 ADMINISTRATIVE PROVISIONS FOR CERTAIN TAXES

5.05.000 Chapter Contents

Sections:

I. General

- 5.05.010 Purpose.
- 5.05.015 Application of Chapter.
- 5.05.020 Definitions.
- 5.05.021 Definitions -- References to Chapter 82.32 RCW.
- 5.05.025 Business license required.
- 5.05.030 Suspension or revocation of business license for failure to pay taxes.

II. Payment of Tax, Interest and Penalty

- 5.05.040 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.
- 5.05.050 Payment methods -- Mailing returns or remittances -- Time extension -- Deposits -- Recording payments -- Payment must accompany return -- NSF checks.
- 5.05.060 Records to be preserved -- Examination -- Estoppel to question assessment.
- 5.05.070 Accounting methods.
- 5.05.080 Public work contracts -- Payment of fee and tax before final payment for work.
- 5.05.090 Underpayment of tax, interest, or penalty -- Interest -- Limitations.
- 5.05.100 Over payment of tax, penalty, or interest -- Credit or refund -- Interest rate -- Statute of limitations.
- 5.05.110 Late Payment -- Disregard of Written Instructions -- Evasion -- Penalties.
- 5.05.120 Cancellation of penalties.
- 5.05.130 Taxpayer quitting business -- Liability of successor.
- 5.05.140 Tax declared additional.
- 5.05.150 Public disclosure -- Confidentiality -- Information sharing.
- 5.05.160 Tax constitutes debt.
- 5.05.170 Unlawful actions -- Violation -- Penalties.
- 5.05.180 Closing agreement provisions.
- 5.05.190 Charge-off of uncollectible taxes.

III. Appeals

- 5.05.200 Administrative Appeal.
- 5.05.210 Administrative Appeal Hearing.
- 5.05.220 Decision on Administrative Appeal.
- 5.05.230 Judicial Review of Administrative Appeal Decision.
- 5.05.240 Tax Hearing Examiner Selection.
- 5.05.250 Qualification and removal of Tax Hearing Examiner.
- 5.05.260 Improper influence, conflict of interest and appearance of fairness.
- 5.05.270 Organization, Rules.

IV. Director's Authority

- 5.05.280 Director to make rules.
- 5.05.290 Ancillary allocation authority of Director.

V. Miscellaneous

5.05.300 Severability.

5.05.310 Mailing of Notices.

I. General

5.05.010 Purpose

This Chapter is enacted based upon model administrative provisions developed by a coalition of Washington cities that have enacted a business and occupation tax. By enacting these administrative tax provisions, the City hopes to create greater uniformity and consistency among Washington municipal taxing jurisdictions and, to the extent feasible, make it easier for taxpayers working in multiple Washington taxing jurisdictions. However, the provisions of this Chapter are not intended to be exactly the same as other Washington taxing jurisdictions.

5.05.015 Application of Chapter

The provisions of this chapter shall apply with respect to those taxes imposed under Olympia Municipal Code Chapter 5.04 and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section.

5.05.020 Definitions

For purposes of this chapter, the definitions contained in Olympia Municipal Code Chapter 5.04.040 shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions shall apply:

"Code": "Code" shall mean the Olympia Municipal Code.

"Records": "Records" shall include any writing containing information relating to the conduct of business by a person, and prepared, owned, and/or retained by or for a person or business subject to OMC 5.04 or 5.05, regardless of physical form or characteristics. The term includes, but shall not be limited to, books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data in paper, electronic, magnetic or other form including federal income tax and state tax returns and reports.

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

5.05.021 Definitions -- References to Chapter 82.32 RCW

Where provisions of Chapter 82.32 RCW are incorporated in 5.05.090 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in 5.05.040 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

5.05.025 Business license required

A. On and after the effective date of this chapter, no person, whether subject to the payment of a tax or not, shall engage in any business or activity in the City for which a license fee or tax is imposed by this Title without having first obtained and being the holder of a valid and subsisting license to do so, to be known as a business license, issued under the provisions of this title, as hereinafter provided, and without paying the license fee or tax imposed by this title. The fee or tax for the business license shall be the license fee or tax imposed by this Title, and in addition, a registration fee shall accompany the application for the license as defined in OMC 5.02.015. Such license heretofore issued pursuant to the provisions of any city ordinance, or any such license hereafter issued pursuant to the provisions of this chapter shall be valid, unless suspended or revoked under OMC 5.02.050, as long as the person to whom the same is issued continues in business and pays the license fees and/or occupation tax due pursuant to the provisions of this Title. Applications for the license shall be made to and issued by the State of Washington ~~Master~~Department of Revenue Business License Service on forms provided by him/her.

B. The license and registration shall be personal and nontransferable. In case business is transacted at two or more separate places by one taxpayer, a separate registration and license for each place at which business is transacted with the public shall be required, but for such additional registration no additional fee shall be required. Each license shall be numbered, shall show the name, place and character of

business of the taxpayer, such other information as the Director shall deem necessary, and shall at all times be conspicuously posted in the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer shall return to the Director the license, and a new license shall be issued for the new place of business free of charge.

C. No person to whom a license has been issued pursuant to any city ordinance or pursuant to this Title shall suffer or allow any other person for whom a separate license is required to operate under or display his license; nor shall such other person operate under or display such license.

D. The registration fee and tax levied in this chapter are additional to any license fee or tax imposed or levied under any law or any other ordinance of the City except as otherwise expressly provided in this chapter.

5.05.030 Suspension or revocation of business license for failure to pay taxes

A. In addition to the authority set forth in OMC 5.02.050, the Director, or designee, shall have the power and authority to suspend or revoke any business license issued under the provisions of Title 5 of this Code, if the taxpayer is in default of any assessment of any tax under this Code. The Director, or designee, shall notify such taxpayer in writing of the suspension or revocation of his or her registration and the grounds therefor.

B. Any taxpayer may, within thirty (30) days from the date that the suspension or revocation notice was mailed to the taxpayer, appeal from such suspension or revocation by filing a written notice of appeal with the Tax Hearing Examiner in accordance with the procedures for administrative appeal set forth in this OMC 5.05.200.

C. No suspension or revocation of a license issued pursuant to the provisions of this chapter shall take effect until thirty (30) 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 Tax Hearing Examiner. All licenses that are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

D. Upon revocation of any license as provided in this chapter no portion of the registration fee shall be returned to the taxpayer.

II. Payment of Tax, Interest, and Penalty

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

A. Other than any annual license fee or registration fee assessed under this Title, the tax imposed by this Title or Chapter 5.04 of the Code shall be due and payable in quarterly installments. At the Director's discretion, businesses may be assigned to an annual or monthly 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.

B. 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 full and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed. Returns not received on or before the due date are subject to penalties and interest in accordance with this chapter.

D. Notwithstanding subsection (A) of this section, a person shall not owe any tax under this chapter and Chapter 5.04 of this Code if the following conditions are met:

1. The person's gross income of the business from all activities taxable under Chapter 5.04 of this Code is less than \$20,000 dollars per year or is equal to or less than \$5,000 during any quarter if reporting on a quarterly basis; and
2. The person is not required to collect or pay to the City any other tax or fee which the City is authorized to collect.

Regardless of reporting period assigned, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, does not exceed the threshold amount in the current calendar year or calendar 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.

E. A taxpayer who 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 subject to the conditions set forth in subsection D above.

F. 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.

G. 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.

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

A. 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 and administrative fees, 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.

B. A return or remittance which 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 that is transmitted to the City electronically shall be deemed filed or received according to procedures set forth by the Director.

C. If the taxpayer submits a written request detailing the reasons for the requested extension that 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.

D. 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.

E. 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.

F. 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 "non-sufficient funds" (NSF) charge in an amount as established and promulgated in writing by the Director is received by the Director. Any registration certificate issued upon payment with a NSF check will be considered void, and shall be returned to the Director.

G. 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.

5.05.060 Records to be preserved -- Examination -- Estoppel to question assessment

A. Every person liable for any fee or tax imposed by this Chapter or Chapter 5.04 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, but not be limited to, copies of all federal income tax and state tax returns and reports made by the person. All records shall be open for examination at any time during normal business hours by the City or its duly authorized agent.

B. If a person does not keep the necessary records within the City, it shall be sufficient if such person (a) produces within the City such 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 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.

C. Any person who fails, or refuses the Director's request, to provide or make available records shall be forever barred from questioning in any administrative or court proceeding or 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. 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.

D. Any person who fails to pay all taxes and fees due to the City may be barred from contracting with the City until such time as all taxes and fees are paid in full.

5.05.070 Accounting methods

A. 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.

B. The taxes imposed and the returns required, hereunder, shall be upon a calendar year basis.

5.05.080 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, as defined by RCW 39.04.010, 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.

5.05.090 Underpayment of tax, interest, or penalty -- Interest -- Limitations

A. If, upon examination of any returns, or from other information obtained by the Director, the Director determines that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount 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 in full within thirty (30) days from the date of the notice, or within such time as the Director may provide in writing.

B. Interest Rate.

1. For tax periods ending December 31, 2004 and before:

a. 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 shall 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.

b. 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, for the

months of January, April, July, and October of the year immediately preceding the calendar year as published by the United States Secretary of the Treasury. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

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

3. If 5.05.090.B.2 is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

C. 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.

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

A. 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 (B) 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.

B. 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.

C. 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.

D. 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 (C) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.

E. Interest Rate.

1. For tax periods December 31, 2004 and before, for refunds or credits of amounts paid or other recovery allowed to a taxpayer after the effective date of the ordinance, the rate of interest shall be the federal short term interest rate as outlined for assessments under 5.05.090(B)(2) plus two percentage points.
2. For tax periods after December 31, 2004 the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.
3. If 5.05.090.B.2 is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.

5.05.110 Late Payment -- Disregard of Written Instructions -- Evasion -- Penalties

- A. If the Director does not receive a return or payment of any tax due on a return to be filed by a taxpayer by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.
- B. If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.
- C. If a citation or criminal complaint is issued by the Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.
- D. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the Director a license as required by 5.05.025, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection (D) if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.

E. If the Director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.

F. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.

G. The penalties imposed under subsections (A) through (E) 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.

H. The Director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

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

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

5.05.120 Cancellation of penalties

A. The Director may cancel any penalties imposed under subsections 5.05.110(A) and (B) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect, or if no tax was due. 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 C of this section.

B. 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 demonstrating that the failure to timely file or pay the tax was due to reasonable cause and not to the taxpayer's willful neglect. In all cases the burden of proving the facts rest upon the taxpayer.

C. The Director may cancel the penalties in subsections 5.05.110(A) and (B) one time if a person:

1. is not currently licensed and filing returns; and,
2. had a good faith unawareness of its responsibility to file and pay tax; and,
3. obtained business licenses and filed past due tax returns within 30 days after being notified by the Department.

D. The Director shall not cancel any interest charged upon amounts due.

5.05.130 Taxpayer quitting business -- Liability of successor

A. 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.

B. 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: 1) 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 2) 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.

C. 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.

D. 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.

5.05.140 Tax declared additional

The fee and tax levied under OMC 5.04 shall be additional to any other fee or tax imposed or levied under any law or any other ordinance of the City of Olympia except as otherwise expressly provided.

5.05.150 Public disclosure -- Confidentiality -- Information sharing

A. The City shall not disclose any tax information that is exempt from disclosure under the Washington state Public Disclosure Act (Chapter 42.17 of the Revised Code of Washington) or where disclosure would violate any other law prohibiting disclosure of tax information, as that term may be defined by law.

B. For purposes of this section, ~~unless a different meaning is clearly established by context, the following definitions apply:~~ defined terms shall be set forth below and in OMC Section 5.04.040.

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

2. "Tax information" means:

a. A taxpayer's identity;

b. 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 records or any other source;

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

d. Other records and/or data received by, recorded by, prepared by, or provided to the ~~Director~~ City with respect to a taxpayer; ~~PROVIDED, that tax information shall not include records the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under OMC Title 5 for a tax penalty, interest, fine, forfeiture, or other imposition or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this Section. Nothing in this Chapter requires any person possessing data, material, or documents made confidential and privileged by this Section to delete information from such data, material, or documents so as to permit its disclosure.~~

e. ~~Tax returns and tax information may be "public records" as that term is defined in RCW 42.17.020.~~

C. ~~Tax information may be disclosed to the following:~~

1. ~~The Mayor, City Manager, members of the City Council, City Attorney, City Clerk-Treasurer, or their authorized designees, for official purposes;~~

2. ~~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, if required by law or, if not required, on the condition 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.~~

3. "City agency" means every City office, department, division, bureau, board, commission, or other City agency.

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

5. "Department" means the City of Olympia Department of Administrative Services (Clerk/Treasurer).

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

D. This section does not prohibit the Director from:

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

a. In respect of any tax imposed under OMC Title 5 if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or

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

2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to OMC Title 5, Chapters 5.04 and 5.05, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

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

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

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

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

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

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

9. Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent;

10. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American industry classification system or

standard industrial classification code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

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

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

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

14. Disclosing to a person against whom the department has asserted liability as a successor under OMC 5.05.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

15. Disclosing real estate excise tax affidavit forms filed under OMC 3.52 in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

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

E. 1. The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection E. The disclosure must be in connection with the department's official duties under this Title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial

statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

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

3. The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (2) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

c. The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

4. The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

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

F. Service of a subpoena issued by the court or under OMC 5.05.270 does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under OMC 5.05.270 may disclose the existence or content of the subpoena to that person's legal counsel.

G. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection (D) (4), (5), (6), (7), (8), (9), or (11) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this City for a period of two years thereafter.

DH. RCW 82.32.330(3)(i), as currently enacted, allows disclosure of taxpayer information to other certain designated governmental entities for official purposes but only if those governmental entities grant substantially similar disclosure privileges to the City of Olympia. Accordingly, this subsection grants reciprocity to those governmental entities identified in RCW 82.32.330(3)(i), as that section is currently enacted or as it may hereafter be modified, that grant reciprocity to the City of Olympia, provided that those governmental entities shall not further disclose the tax information except as authorized by law.

~~E.—Nothing in this section shall prevent the use of tax information by the City or any other agency in any civil or criminal action involving any license, tax, interest, or penalty or as otherwise may be authorized by law.~~

5.05.160 Tax constitutes debt

Any fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the City of Olympia 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.

5.05.170 Unlawful actions -- Violation -- Penalties

A. It shall be unlawful for any person under this Code:

1. To violate or fail to comply with any of the provisions of this chapter or any other lawful rule or regulation adopted by the Director; or,
 2. To make any false statement on any license application or tax return; or,
 3. To aid or abet any person in any attempt to evade payment of a fee or tax; or,
 4. To fail to appear or testify in response to a subpoena issued pursuant to OMC 5.05.270; or,
 5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter;
- or

6. To continue to engage in business after the revocation of a business license.

B. 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 fines, penalties or remedies provided by law.

C. 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.

5.05.180 Closing agreement provisions

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:

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

B. 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.

5.05.190 Charge-off of uncollectible taxes

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director 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. Any charge off greater than \$15,000 must receive prior City Council approval.

III. Appeals

5.05.200 Administrative Appeal

A. Filing of Appeal. Any taxpayer, except one who has failed to comply with section 5.05.060 of this Code, who feels aggrieved by the amount of the fee, tax or penalty determined by the Director to be required under the provisions of this chapter, or who was aggrieved by the Director's determination to suspend or revoke a business license under section 5.05.030, may appeal from such determination by filing a written notice of appeal with the City Clerk/Treasurer within thirty (30) days from the time such taxpayer was given notice of such determination. A filing fee determined by the Director shall be submitted with the appeal, which filing fee is required to process the appeal. The taxpayer must pay the amount assessed, or cause the same to be paid, before the appeal may be heard. The Clerk/Treasurer shall forward a copy of the appeal to the Tax Hearing Examiner.

B. Basis of Appeal and Relief Sought. Every appeal shall state in writing:

1. How the appellant is or is likely to be harmed or prejudiced by the decision appealed from;
2. How or in what particular factual and/or legal respect the Director erred in determining the amount of fee, tax or penalty, or in suspending or revoking the business license; and
3. What relief or ruling is sought, including the amount of fee, tax or penalty the appellant contends is correctly due, and how such ruling would eliminate or reduce harm to the appellant.

C. Dismissal. Failure to comply with the requirements of subsection (B)(1) - (3) above shall subject the appeal to dismissal without a hearing. The city staff or any party may request dismissal of an appeal at any time with notice to all parties, or the Tax Hearing Examiner may sua sponte determine that the appeal fails to comply with subsection (B)(1) - (3) above. If the Tax Hearing Examiner so determines, the Tax Hearing Examiner shall dismiss the appeal, and shall state whether such dismissal is with or without prejudice, as appropriate, depending upon whether the errors can be corrected within the appeal period set forth in subsection (A) above.

5.05.210 Administrative Appeal Hearing

A. Notice and Record. Upon concluding that an appeal complies with OMC 5.05.200(B)(1)-(3), the Tax Hearing Examiner shall set the time and place at which the appeal will be heard, and shall cause a notice of the time and place to be delivered or mailed to the parties and to the Director at least ten (10) days in advance of the hearing date. The Director shall transmit to the Hearing Examiner a copy of all of the records pertaining to the decision being appealed, together with written reports as the Hearing Examiner deems pertinent.

B. Appeal Hearing Postponement or Waiver. After written notice of the public hearing date has been mailed to interested parties, such hearing shall not be postponed except for good cause as determined by the Tax Hearing Examiner. Any request for such postponement shall be for a specific period and be submitted in writing to the Tax Hearing Examiner and to the Director. If after considering the request and any response from the Director, the Tax Hearing Examiner determines that good cause is presented, the Examiner shall postpone such hearing to a date certain and shall order that all costs of new notice of such hearing shall be paid to the City by the party requesting that the hearing be postponed. By agreement of all parties thereto, the appeal hearing may be waived, with the appeal decided by the Examiner on the basis of written briefs or memoranda.

C. Appeal Hearing. The hearing shall be conducted in accordance with the rules adopted by the Tax Hearing Examiner under OMC 5.05.270. During the hearing, the Tax Hearing Examiner may hear any relevant testimony and receive and consider any other evidence that the Tax Hearing Examiner determines is relevant and bears on the issues to be decided. City staff shall keep a record of the appeal proceedings, which shall consist of the following: (1) a sound recording of the appeal hearing, including all testimony given under oath and oral argument during the appeal hearing, or a written verbatim transcript of the same; (2) all documentary or non-testimonial evidence or exhibits admitted by the Tax Hearing Examiner; and (3) a sound recording or written verbatim transcript of any other proceedings such as prehearing conferences, motion hearings, and the like.

5.05.220 Decision on Administrative Appeal

A. Standard of Review. After giving the Director's decision substantial weight, the Tax Hearing Examiner shall grant the relief requested by the appellant only upon finding that the appellant has established that:

1. The Director engaged in unlawful procedures or failed to follow a prescribed procedure;
2. The Director's determination was an erroneous interpretation of the law;
3. The Director's determination is not supported by substantial evidence within the context of the whole record made during the appeal hearing or via written memoranda or briefs if a hearing was waived;
4. The Director's determination is a clearly erroneous application of the law to the facts;
5. The Director's determination was outside the Director's authority or jurisdiction;

B. Decision.

1. Contents. Within fourteen (14) days of the conclusion of the appeal hearing, unless a longer period is agreed to in writing by the appellant and the Director, the Hearing Examiner shall render a written decision which shall include at least the following:

a. Findings of fact based upon the record and conclusions of law therefrom, which support a decision indicating the correct amount of the fee or tax owing. Such findings and conclusions shall address any and all specific issues raised by the appellant, the Director, or any party of record. In lieu of original findings and conclusions regarding uncontested matters, the Examiner may adopt findings and conclusions recommended by the appellant, the Director, or any party of record. In adopting findings of fact, conclusions of law and a decision, the Tax Hearing Examiner is authorized to take judicial notice of all duly-adopted rules, ordinances, regulations, laws and policies of the City of Olympia and other public agencies.

b. A decision on the appeal, which may be to grant or deny the appeal.

c. A statement that the decision will become final in twenty-one (21) days unless appealed to the Thurston County Superior Court under section 5.05.230, along with a description of the appeal process provided thereunder.

2. Limitations. The decision of the Tax Hearing Examiner shall be limited to those issues timely raised on appeal. The Tax Hearing Examiner may not reconsider or modify aspects of a project previously considered and settled by another final decision of the City. In exercising the powers granted herein, the Tax Hearing Examiner may, in conformity with this title, reverse or affirm, wholly or in part, or may modify the order, requirements, decision or determination appealed, and may make such order, requirement, decision or determination as should be made, and, to that end, shall have all the powers of the Director from whom the appeal is being taken, insofar as the decision on the particular issue is concerned.

3. Reconsideration / Clarification. Decisions of the Tax Hearing Examiner, either on prehearing matters or resolving an appeal, shall not be reconsidered. Decisions may be clarified as provided below.

a. Any interested party believing that the decision of the Tax Hearing Examiner is ambiguous, vague, or internally inconsistent may within twenty-one (21) days of the date of issue request clarification of the decision by the Tax Hearing Examiner. Such shall set forth the specific provision for which clarification is sought, along with any factual or legal support justifying the request. A copy of the request shall be submitted to the Director.

b. A request for clarification shall not provide an opportunity for reconsideration of a decision nor for introduction of new evidence. Except as ordered by the Examiner, the filing of a request for clarification shall not toll the appeal period under section 5.05.230.

c. If, after allowing a reasonable time for response by the Director, the Tax Hearing Examiner determines that a clarification is warranted, he or she may issue a supplemental or clarified decision, which may be subject to appeal under section 5.05.230 if so indicated by the Tax Hearing Examiner.

5.05.230 Judicial Review of Administrative Appeal Decision

The City, or any taxpayer (except one who has failed to comply with section 5.05.060 of this Code) who has paid any tax as required, who feels aggrieved by a decision of the Tax Hearing Examiner and has first exhausted the right of administrative appeal set forth in this chapter, may seek judicial review via a petition for statutory writ of review in the Thurston County Superior Court within 21 days of the entry of the City's final administrative decision. 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 appealing party shall serve a copy of the application for writ upon the opposing party within the time herein specified and shall file proof of service thereof with the Thurston County Superior Court Clerk. Proceedings in the Superior Court on appeal shall be based upon the administrative record compiled by the Tax Hearing Examiner. The burden shall rest upon the taxpayer to prove that the Tax Hearing Examiner's decision and the tax as paid by the taxpayer are incorrect, either in the whole or in part, and to establish the correct amount of the tax.

The cost of preparing and certifying the administrative record of the Tax Hearing Examiner shall be borne by appellant.

5.05.240 Tax Hearing Examiner Selection

The Tax Hearing Examiner shall be selected by the Council. The Tax Hearing Examiner may be retained on a professional service contract for a term and on conditions determined appropriate by the Council. Such contract may provide that the Tax Hearing Examiner may retain the services of masters to hold hearings as are needed to render aid and advice regarding technical or specialized issues that may be presented. Said contract may also provide for a Tax Hearing Examiner(s) pro tem to serve in the absence of the Tax Hearing Examiner on such terms and conditions deemed appropriate by the Council.

5.05.250 Qualification and removal of Tax Hearing Examiner

The Tax Hearing Examiner shall be appointed solely with regard to his or her training and experience in conducting administrative or quasi-judicial hearings on tax and license-related matters, and in discharging the other functions conferred upon the Tax Hearing Examiner by ordinance. The Tax Hearing Examiner

shall hold no other elective or appointive office or position with the City of Olympia. A Tax Hearing Examiner may be removed from office for cause by majority vote of the Council.

5.05.260 Improper influence, conflict of interest and appearance of fairness

A. No City official, elective or appointive, shall attempt to influence the Hearing Examiner in any matter officially before him so as to constitute misconduct of a public office under RCW 42.20 or a violation of the Appearance of Fairness Doctrine.

B. The Hearing Examiner shall conduct all proceedings in a manner to avoid conflicts of interest or other misconduct and to avoid violations of the Appearance of Fairness Doctrine. If such conflicts or violations cannot be avoided in a particular case, the Hearing Examiner shall assign a Hearing Examiner pro tem to act in his or her absence.

5.05.270 Organization, Rules

A. The Office of the Tax Hearing Examiner shall be under the administrative supervision of the Tax Hearing Examiner and shall be separate from the Director.

B. The Tax Hearing Examiner shall be empowered to adopt rules for the scheduling and conduct of hearings and other procedural matters related to the duties of the office. Such rules may provide for cross examination of witnesses. Further, such rules shall provide for recording of the proceedings and for compliance with the State, Federal and City laws which may govern such a proceeding. The Tax Hearing Examiner shall also be empowered to issue subpoenas, at the request of a party, to compel testimony from a witness as part of an appeal hearing.

IV. Director's Authority

5.05.280 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.

5.05.290 Ancillary allocation authority of Director

The Director is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax," as defined in OMC 5.05.040, to do any of the following:

A. Conduct a joint audit of a taxpayer by using an auditor employed by the City of Olympia, another city, or a contract auditor;

B. Allocate or apportion 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;

C. 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.

V. Miscellaneous

5.05.300 Severability

If any provision of this chapter or its application to any person or circumstance is held invalid for any reason, the remainder of the chapter or the application of the provision or chapter to other persons or circumstances shall not be affected.

5.05.310 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.

Section 4. Amendment of OMC Chapter 5.20. Chapter 5.20 of the Olympia Municipal Code is hereby amended to read as follows:

Chapter 5.20 GAMBLING ACTIVITIES

5.20.000 Chapter Contents

Sections:

- 5.20.010 Tax levied--Authority.
- 5.20.020 Tax applicability determination.
- 5.20.030 Tax payable quarterly--Penalty for late payment.
- 5.20.040 Financial records.
- 5.20.050 Administration and collection.
- 5.20.060 Duties of city clerk-treasurer.
- 5.20.070 Violations -- Misdemeanor -- Gross Misdemeanor -- Civil Infraction.

5.20.010 Tax levied –Authority

In accordance with RCW 9.46, there is levied upon all persons, associations and organizations who have been duly licensed by the Washington State Gambling Commission:

A. To conduct or operate any card games, a tax of three percent of the gross receipts received therefrom less the amount awarded as cash or merchandise prizes; to conduct or operate any bingo games or raffle games, a tax of five percent (5%) of the gross receipts received therefrom less the amount awarded as cash or merchandise prizes; and to conduct or operate any amusement games, a tax of two percent of the gross receipts received therefrom less the amount awarded as cash or merchandise prizes; provided, however, that any bona fide charitable or nonprofit organization, as defined in RCW 9.46.0209, which has no paid operating or management personnel and has gross income from bingo or amusement games, or both, not exceeding five thousand dollars (\$5,000) per year less the amount awarded as cash or merchandise prizes, shall pay a declaration fee of ten dollars (\$10.00) only and shall be exempt from any further excise or tax or payment of any additional fee; and provided further, no tax under this chapter shall be imposed on the first ten thousand dollars (\$10,000) of gross receipts less the amount awarded as cash or merchandise prizes from raffles conducted by any bona fide charitable or nonprofit organization; and

B. To utilize punchboards or pull tabs pursuant to RCW Chapter 9.46, an excise tax or tax computed at the rate of three percent based upon the gross receipts received in the conduct of such activity when used as a commercial stimulant, as defined in RCW 9.46.0217, and at the rate of seven percent based upon the gross receipts, less the amount awarded as cash or merchandise prizes, received in the conduct of such activity by any bona fide charitable or nonprofit organization; the gross receipts in either case shall be computed by multiplying the number of chances played on such board or pull tab times the price or value of each individual chance per play.

5.20.020 Tax applicability determination

A. For the purpose of identifying who shall be subject to the tax imposed by this chapter, any person, association or organization intending to conduct or operate any gambling activity authorized by Chapter 155, Laws of Washington, 1974 First Extraordinary Session, as amended, shall, prior to commencement of any such activity file with the city clerk-treasurer a sworn declaration of intent to conduct or operate such activity, together with a copy of the license issued in accordance with RCW Chapter 9.46, as amended.

B. Thereafter, for any period covered by such state license or any renewal thereof, any person, association or organization, shall, on or before the ~~fifteenth~~last day of the month following the end of the quarterly period in which the tax accrued, file with the city clerk-treasurer a sworn statement, on a

form to be provided and prescribed by the city clerk-treasurer for the purpose of ascertaining the tax due for the preceding quarterly period.

5.20.030 Tax payable quarterly –Penalty for late payment

A. The tax imposed by this chapter shall be due and payable in quarterly installments, and remittance therefor shall accompany each return and be made on or before the ~~fifteenth~~ last day of the month next succeeding the quarterly period in which the tax accrued.

B. For each payment due, if such payment is not made by the due date therefor, there shall be added a penalty as follows:

1. One to seventeen days' delinquency, ten percent with a minimum penalty of two dollars;
2. Eighteen to forty days' delinquency, fifteen percent with a minimum penalty of four dollars;
3. Forty-one or more days' delinquency shall be deemed to be a violation of Section 5.20.070.

5.20.040 Financial records

It is the responsibility of all officers, directors and managers of any organization conducting gambling activities to provide access to such financial records as the city clerk-treasurer, his authorized representative, or law enforcement officers may require in order to determine compliance with this chapter.

5.20.050 Administration and collection

The administration and collection of the tax imposed by this chapter shall be by the city clerk-treasurer, and pursuant to rules and regulations as may be adopted by the Washington State Gambling Commission.

5.20.060 Duties of city clerk-treasurer

The city clerk-treasurer shall:

A. Adopt, publish and enforce such rules and regulations not inconsistent with this chapter as are necessary to enable the collection of the tax imposed by this chapter;

B. Prescribe and issue the appropriate forms for determination and declaration of the amount of tax to be paid;

C. Have the power to enter into a contract with Thurston County for the collection of the tax imposed on gambling activities conducted within Olympia.

5.20.070 Violations -- Misdemeanor -- Gross Misdemeanor -- Civil Infraction

A. Any person, firm, or corporation who knowingly violates or fails to comply with any term or provision of this chapter shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed One Thousand Dollars (\$1,000), and/or to imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-five (365) days or both such time and imprisonment. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

B. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

1. First offense: Class 3 (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
3. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Civil Enforcement.

Section 5. Amendment of OMC Chapter 5.76. Chapter 5.76 of the Olympia Municipal Code is hereby amended to read as follows:

Chapter 5.76 MISCELLANEOUS BUSINESSES

5.76.000 Chapter Contents

Sections:

- 5.76.010 License required.
- 5.76.020 License required – Posting.
- 5.76.030 License application filing.

- 5.76.040 License fees.
- 5.76.050 Suspension or revocation of licenses – Hearing.
- 5.76.060 License terms and expirations.
- 5.76.070 Violations – Misdemeanor – Gross misdemeanor – Civil infraction.

5.76.010 License required

It is unlawful for any person, firm or corporation to engage in any of the businesses, trades or occupations enumerated in this chapter within the corporate limits of the City without having first obtained a license therefor as provided in this chapter. Any business not mentioned elsewhere in Title 5 of the OMC shall make application at the ~~office of the Director~~ State of Washington Department of Revenue Business License Service for a business license.

5.76.020 License required – Posting

The license provided for herein shall be posted and shall remain posted in a conspicuous place in the place of business of the licensee.

5.76.030 License application filing

Application for licenses shall be made as provided in Section 5.02.020.

5.76.040 License fees

The license fees for the various businesses, trades and occupations included in this chapter are fixed at \$30.00.

Any person, firm or corporation which pays a business and occupation tax pursuant to Chapter 5.04 of this code and does not pay a license fee to the City of Olympia other than that fee imposed by Section 5.05.025 of this code, shall be licensed as miscellaneous service or activity, the fee for which is the sum of thirty dollars per year. It is intended that this license cover persons generally engaged in the rendering of any type of service for hire for which a specific license has not been required under the terms of this title.

5.76.050 Suspension or revocation of licenses – Hearing

The City Council may at any time suspend or revoke any license issued under the authority of this chapter, whenever the holder thereof has been convicted in any court of competent jurisdiction for gambling on the premises or permitting gambling upon the premises in violation of any state law, or ordinance of the City; or for conviction of the sale of liquor upon the premises or the possession of liquor for the purpose of sale upon the premises in violation of any law of the United States, the state, or any ordinance of the City, or the holder of any taxicab license, who is convicted in any court competent in its

jurisdiction, for the violation of any of the United States or state laws or city ordinances relative to the sale or possession of liquor or bootlegging, or for the conviction of any crime involving moral turpitude committed upon the premises, or where the place is a frequent gathering place of people who by loud and raucous noise, fighting, property damage, excessive littering or other violations of the Olympia Municipal Code create a public nuisance or unreasonably disturb others; but a hearing thereon shall be had before such revocation, and the person, persons, firm or corporation holding such license shall be notified in writing of the intention of the City Council to revoke the license at a regular meeting of the City Council at a time and date appointed in the notice giving the licensee at least six days' notice prior to the date for the hearing and the holder of the license may appear at the time fixed for the hearing and be heard in opposition to such revocation.

5.76.060 License terms and expirations

Each City license issued shall have a term as determined by the State of Washington Department of Licensing in cooperation with the City. The City license term or expiration date will be coordinated with the terms or expiration date of all other licenses or permits required by the State for each business.

5.76.070 Violations – Misdemeanor – Gross misdemeanor – Civil infraction

A. Any person, firm, or corporation who knowingly violates or fails to comply with any term or provision of this chapter shall be deemed to have committed a misdemeanor, and if found guilty, shall be subject to a fine not to exceed One Thousand Dollars (\$1,000), and/or to imprisonment not to exceed ninety (90) days or to both such fine and imprisonment. Each day shall be a separate offense. In the event of a continuing violation or failure to comply, the second and subsequent days shall constitute a gross misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000) and/or imprisonment not to exceed three hundred and sixty-five (365) days or both such time and imprisonment. Continuing violation shall mean the same type of violation which is committed within a year of the initial violation.

B. As an additional concurrent penalty, it shall be a civil infraction for a person, firm, or corporation to violate or fail to comply with any term or provision of this chapter. Each day shall be a separate infraction. A person, firm, or corporation found to have committed a civil infraction shall be assessed a monetary penalty as follows:

1. First offense: Class 3 (\$50), not including statutory assessments.
2. Second offense arising out of the same facts as the first offense: Class 2 (\$125), not including statutory assessments.
3. Third offense arising out of the same facts as the first offense: Class 1 (\$250), not including statutory assessments.

See also OMC Chapter 4.44, Uniform Code Enforcement.

Section 6. Severability. The provisions of this Ordinance are declared separate and severable. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of this Ordinance or application of the provision to other persons or circumstances, shall be unaffected.

Section 6. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 8. Effective Date. This ordinance shall take effect thirty (30) days after publication, as provided by law.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

Darren Nienaber

DEPUTY CITY ATTORNEY

PASSED:

APPROVED:

PUBLISHED: