

**Title 5, CHANGES FROM 2012 MODEL ORD. and other administrative changes)  
BUSINESS TAXES, LICENSES AND REGULATIONS**

**Chapters:**

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(Ord. 6798 §1, 2012; Ord. 6694 §§4 and 6 – 10, 2010, repealed Chapters 5.08, 5.28, 5.32, 5.36, 5.40 and 5.44; Ord. 6461 §3, 2007; Ord. 6456 §3, 2007, new Chapter 5.88; Ord. 6328 §2, 2004, replaced Chapter 5.04; Ord. 6328 §2, 2004, repealed Chapter 5.04; Ord. 6329 §1, 2004, new chapter; Ord. 6315 §1, 2004).

**Chapter 5.02  
BUSINESS LICENSES**

5.02.000 Chapter Contents

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(Ord. 6798 §1, 2012).

### **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 State of Washington Master-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.

NOTE: THE PROVISIONS BELOW ARE IDENTICAL TO 5.10.500 and 5.76.070

E. 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.

F. 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. (Ord. 6694 §18, 2010; Ord. 6081 §19, 2001; Ord. 2569 §7, 1947. Formerly 5.76.060).

F.

(Ord. 6798 §1, 2012; Ord. 6694 §2, 2010).

#### **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.

(Ord. 6798 §1, 2012; Ord. 6694 §2, 2010; Ord. 4493 §1, 1984; Ord. 4419 §5, 1983; Ord. 4417 §5, 1983).

#### **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.

(Ord. 6798 §1, 2012; Ord. 6694 §2, 2010).

#### **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.

(Ord. 6798 §1, 2012; Ord. 6694 §2, 2010).

#### **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

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” have the same meaning as in RCW 82.04.192

“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



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

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

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

6. “Sale at retail” or “retail sale” shall also include 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.)

“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 section 5(b)(i), 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”:

(11) “Sale at retail” or “retail sale” shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

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

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

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

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

A retail sale of digital goods, digital codes, or digital automated services under this subsection [insert reference to section 5(11)] includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

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

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

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 person 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.

#### **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. Any business of any kind that enters into a contract to provide goods, services, or products of any kind to the City of Olympia must obtain a City of Olympia business license and renew it as necessary for the life of the contract. (jth added this!)~~

~~BC. 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.~~

~~(Ord. 6492 §1, 2007; Ord. 6328 §2, 2004).~~

#### Legislative intent information

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

#### **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.



### 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:

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

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

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

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

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

(D) If none of the methods in subsection [insert city code reference to .077(3) 5.04.104a (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 [insert city code reference to .077(3)(a) through .077(3)(e) 5.04.104 (c) a through e], then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection [insert city code reference to .077(D)5.04.104a (C) (d)]. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections [insert city code reference to .077(3)(a) through .077(3)(e) 5.04.104a (C) (a) through (e)] are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

(5) For purposes of subsections [insert city code reference to .077(3)(a) through .077(3)(e) 5.04.104a (C) (a) through (e)], "Receive" has the same meaning as in RCW 82.32.730.

~~C-e~~ 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.



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.

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.

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.~~ 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.

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 Department of Revenue Business Master-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.

(Ord. 6798 §2, 2012; Ord. 6694 §3, 2010; Ord. 6329 §1, 2004).

### **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.

(Ord. 6798 §2, 2012; Ord. 6329 §1, 2004).

## **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, quarterly, 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. (Ord. 6798 §2, 2012; Ord. 6329 §1, 2004).

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.

(Ord. 6798 §2, 2012; Ord. 6329 §1, 2004).

#### **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.

(Ord. 6798 §2, 2012; Ord. 6329 §1, 2004).

#### **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 as set forth below and in Section 5.04.040.

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

2. "Tax information" means:

- A taxpayer's identity;
- The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net work, 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~~ 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,; PROVIDED, that tax information shall not include records- 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.



(c) "City agency" means every City office, department, division, bureau, board, commission, or other City agency.

(d) "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.

(2) 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.

(3) This section does not prohibit the Director from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) 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

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

(b) Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to [OMC Title 5, Chapter 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;

(c) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(d) 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 tauthorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

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



(f) 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;

(g) 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;

(h) 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;

(i) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(j) 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;

(k) 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;

(l) 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;

(m) 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;

(n) Disclosing to a person against whom the department has asserted liability as a successor under [Model ordinance section .130] return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(o) Disclosing real estate excise tax affidavit forms filed under [City's real estate excise tax code if applicable] in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

(p) 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.

(4)(a) 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 (4). 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.

(b) Before disclosure of any tax return or tax information under this subsection (4), 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 (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) 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 (b) 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:

(i) 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;

(ii) 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

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

(d) 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.

(e) 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.

(5) Service of a subpoena issued by the court or under [city code provision authorizing hearing examiner to issue subpoenas] does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under OMC 5.05.270 [city code provision authorizing hearing examiner to issue subpoenas] may disclose the existence or content of the subpoena to that person's legal counsel.

(6) 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 (3) (d), (e), (f), (g), (h), (i), or (k) 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.

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.~~

~~(NOTE from JTH: I think we can leave the section D below in our code, perhaps reposition it at the bottom of everything with a new alpha-numeric designation?)~~

D. 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.~~

(Ord. 6798 §2, 2012; Ord. 6329 §1, 2004).

#### **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.

(Ord. 6798 §2, 2012; Ord. 6329 §1, 2004).

#### **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

(Ord. 5978 §1, 1999; Ord. 5733 §1, 1997; Ord. 4837 §1, 1987; Ord. 4346 §1, 1982; Ord. 4224 §2, 1980; Ord. 3870 §1, 1974).

#### **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.

(Ord. 3870 §3, 1974).

#### **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.

(Ord. 3870 §4, 1974).

#### **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.

(Ord. 3870 §7, 1974).

#### **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.

(Ord. 3870 §2, 1974).

## 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.  
(Ord. 6694 §18, 2010; Ord. 2569 §2, 1947. Formerly 5.76.020).

### 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.  
(Ord. 6694 §18, 2010; Ord. 2569 §2, 1947).

### 5.76.030 License application filing

Application for licenses shall be made as provided in Section 5.02.020.  
(Ord. 6694 §18, 2010; Ord. 2569 §4, 1947).

### 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.  
(Ord. 6694 §18, 2010; Ord. 6348 §1, 2005; Ord. 4753 §1, 1987; Ord. 4490 §1, 1984; Ord. 4419 §4, 1983; Ord. 4224 §11, 1980; Ord. 4049 §1, 1977; Ord. 3259, 1963; Ord. 2569 §5, 1947).