

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Update of the Business & Occupation Tax Work Plan		
DEPARTMENT:	Administrative Services		
PRESENTED BY:	Sara Lane, Administrative Services Director Rick Kirkwood, Budget Supervisor		
ACTION:	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

PROBLEM/ISSUE STATEMENT:

The 10 Year Financial Sustainability Plan (10 YFSP), which was accepted by Council on June 16, 2014, prioritized seven target strategies to reduce projected future revenue and expenditure gaps. Council Goal No. 1, Action Step No. 3 directs staff to continue to implement the 10 YFSP including Strategy 6 – engaging the business community in a discussion regarding the potential implementation of a Business and Occupation (B&O) Tax. This discussion will focus on the results of staff’s business engagement and next steps should Council choose to move forward with this strategy.

RESOURCE/FINANCIAL IMPACT:

Assuming no new revenues or changes in service levels, the operating budget 10-year forecast, assuming current service levels, projects potential gaps between revenues and expenses to occur beginning in 2022 with a cumulative gap totaling \$9.685 million over the 10-year forecast. These potential budget gaps will be addressed as the City of Shoreline is required to pass a balanced budget and does so each year within the following policies:

- Current revenues will be sufficient to support current expenditures.
- Resources (fund balance) greater than budget estimates in any fund shall be considered “One-time” and shall not be used to fund ongoing service delivery.

There is no immediate financial impact associated with tonight’s discussion. However, the implementation of a B&O Tax has been identified as a potential revenue source to narrow the gap throughout the 10-year forecast. As discussed with Council previously, no single strategy in the 10 YSFP will solve the forecast shortfall. It will take a combination of all seven strategies to provide financial sustainability of the City’s existing services and to address other unfunded needs, such as urban forestry, long term facility maintenance, space needs for operational maintenance functions such as streets, surface water and parks as well as other unfunded operating and capital needs. The ongoing unreliability of State Shared Revenues further supports the need for an additional stable revenue source.

RECOMMENDATION

No formal action is required at this time. Staff is providing Council with an update on staff's progress related to implementation of Strategy 6 of the 10 YFSP. Staff recommends that the Council direct staff to continue to pursue implementation of a business and occupation tax and authorize staff to move into the next phase of implementation and bring back a draft Business and Occupation Tax Ordinance for Council consideration.

Approved By: City Manager ***DT*** City Attorney ***MK***

INTRODUCTION

In 2014, the City Council formed a subcommittee to develop a 10 Year Financial Sustainability Plan (10 YFSP). The purpose of the 10 YFSP is to strengthen Shoreline's economic base by identifying seven strategies for the City to maintain financial resiliency and financially sustain existing services. The 10 YFSP was accepted by Council on June 16, 2014. The staff report for this action is available at the following link:

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2014/staffreport061614-8a.pdf>).

The City has successfully implemented, and continues to utilize, five of the seven strategies since acceptance of the 10 YFSP. Strategy 5 – replacing the \$290,000 transfer from the General Fund to the Roads Capital Fund with another dedicated funding source and Strategy 6 – engaging the business community in a discussion regarding the possible future implementation of a Business and Occupation (B&O) Tax, are the only remaining strategies to be implemented. The purpose of this discussion is to provide Council with an update on staff's progress in implementing Strategy 6 of the 10 YFSP.

BACKGROUND

RCW A.82.020 (available here: <http://app.leg.wa.gov/rcw/default.aspx?cite=35A.82.020>) provides cities the authority to impose a B&O Tax on businesses that operate in their cities. Cities may impose a B&O Tax primarily measured on gross proceeds of sales or gross income. For purposes of calculating the B&O Tax, businesses may be divided into several classifications (e.g., retailing, manufacturing, services, or wholesale) and those conducting multiple activities will report in more than one classification. The implementation of a B&O Tax, up to a rate of .002 does not require a public vote; however, the ordinance imposing the tax must include a provision for a referendum procedure.

During the Council's 2017 Strategic Planning Workshop held earlier this year, Council reviewed the plan to support implementation of the remaining strategies and directed staff to move forward with implementation of the 10 YFSP and provide an update of Strategy 6 in the summer. Since that time staff procured the support of BERK, a local consulting firm, to engage the business community in the discussion about the potential implementation of a B&O Tax in Shoreline. The following section provides information on BERK's engagement work with the business community in Shoreline.

Business Community Survey

BERK's consultants, Allegra Calder and Jennifer Tippins, worked with City staff to develop an online survey focused on soliciting input from businesses about the various options available to a city when implementing a B&O Tax. Options include rates to be levied, exemption thresholds, and business type exemptions. The survey also asked about the City services that are most valued by businesses and where they would like to see additional resources directed should additional revenue become available beyond that needed to maintain existing service levels.

To ensure that the survey was easy to understand, BERK interviewed representatives from three local businesses in Shoreline prior to releasing the survey: Club Hollywood, Chuck Olson Chevrolet/Kia, and Spiro's Pizza. The feedback that was solicited was beneficial and allowed them to make appropriate changes to the survey.

The survey was published using Survey Monkey and available to businesses from May 17 through June 1, 2017. An email invitation to take the survey was sent to over 2,000 businesses that are registered with the City of Shoreline or remit Sales Tax to the City. Reminders were sent to all businesses at the mid-point and just prior to the closing of the survey.

Business Outreach Workshops

Each survey email included information on two, two-hour Business Outreach Workshops scheduled for June 21 at 5:00 PM and June 22 at 11:00 AM. BERK facilitated the workshops, with City staff providing an overview of City services and the 10 YFSP, and BERK presenting survey results and facilitating a two way dialogue on the topic. The meeting dates were also published in Shoreline Area News, on the City's website, and using social media.

Targeted Outreach

Dan Eernisse, Economic Development Manager, and Sara Lane made a presentation on the proposed work plan to the Shoreline Chamber of Commerce, Economic Development Committee. The Chamber of Commerce suggested that the City make a special effort to ensure that the diverse business community be made aware of the survey and workshops. Staff created flyers and worked with Suni Tolton, Diversity and Inclusion Coordinator, to personally distribute the flyers advertising both the survey and workshops to businesses.

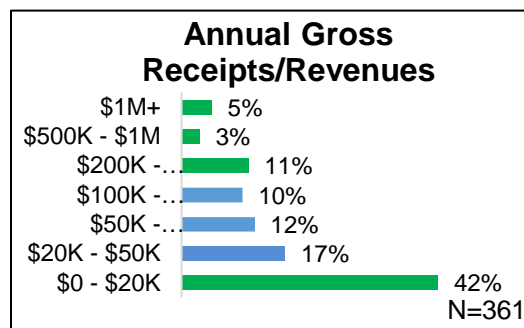
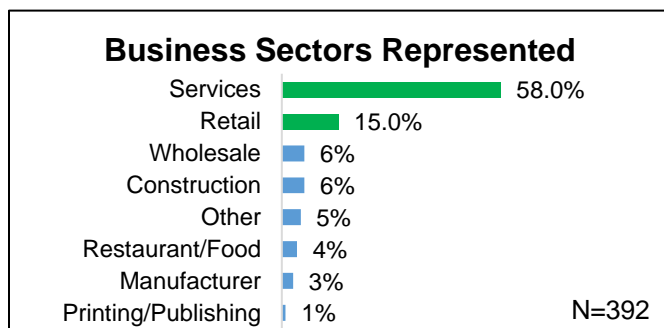
Business Interviews

BERK reached out to businesses to validate the survey and solicit feedback. They were able to interview representatives from seven businesses: Chuck Olson Chevrolet/Kia, Spiro's Pizza, and Club Hollywood prior to issuing the survey. After the survey was completed, BERK was able to conduct phone interviews with 4 additional businesses, Highland Ice Arena, Inland Construction, Central Market, and Bob Donegan President of Ivar's and a Shoreline resident.

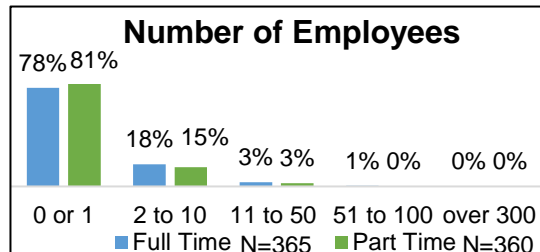
More information about BERK's outreach work, including the summary of their phone interviews, is included in their report (Attachment A). Results of business engagement are provided in the Discussion section below.

Survey Results

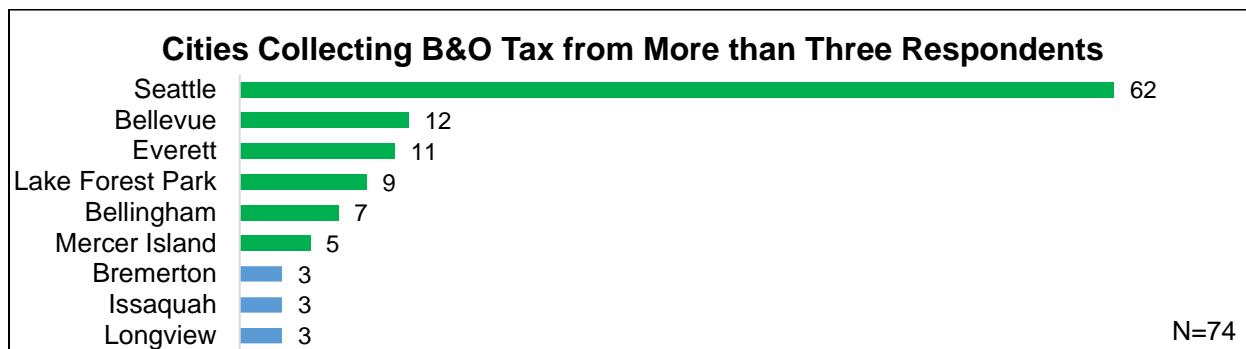
The business community survey was sent to over 5,000 business email addresses for businesses located or doing business in Shoreline. Staff received 435 responses to the survey. Of the respondents, 75% are located in Shoreline, 58% are service businesses, 15% are retail, 42% generate gross receipts of less than \$20,000 per year, and 19% generate more than \$200,000 per year. Demographic data regarding survey respondents is below:



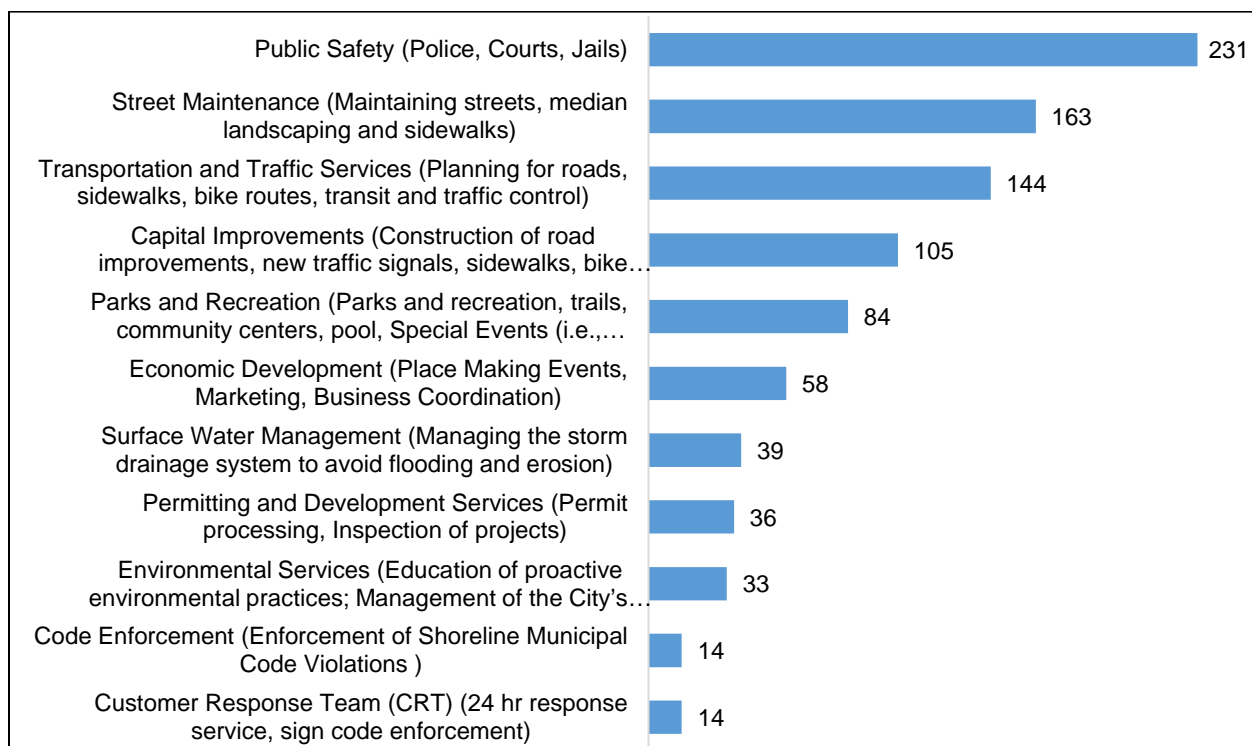
# of Full Time Employees	Respondents	%
0 or 1	285	78%
2 to 10	64	18%
11 to 50	12	3%
51 to 100	2	1%
over 300	1	0%



While only 20% of respondents pay B&O Tax to one or more of 88 other cities, 41% with gross receipts over \$50,000 pay B&O Tax to other cities. The top six cities collecting B&O Tax from respondents are Seattle, Bellevue, Everett, Lake Forest Park, Bellingham, and Mercer Island.

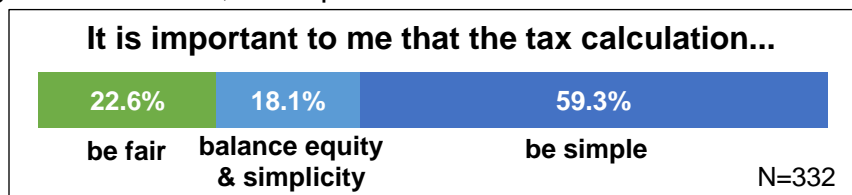


The following chart exhibits which services provided by the City are most important to the respondents.



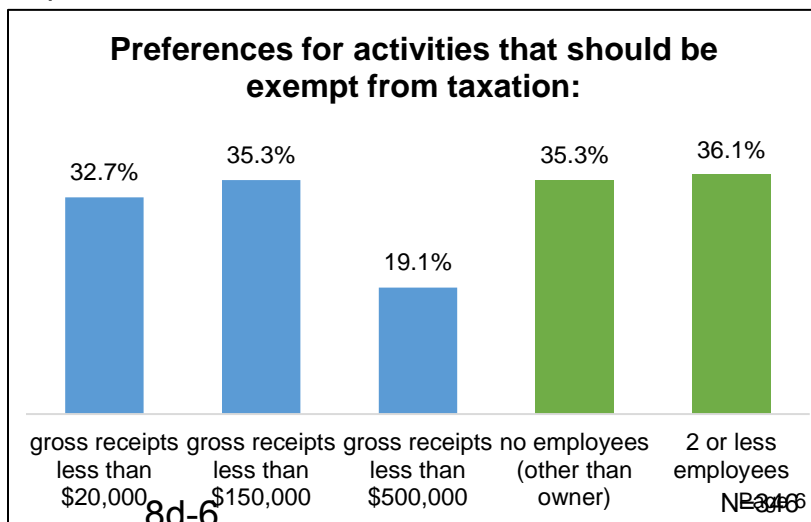
Equity & Complexity vs. Simplicity

The majority of respondents (59.3%) felt that it was important to keep the administrative provisions of the B&O Tax as simple as possible. Simplicity is achieved through limiting deductions and factors used in calculating the tax. For example, a tax that is based solely on gross receipts, or a business license fee solely based on the number of employees or square footage of a business, is simpler to calculate than one that is based on a combination of factors. The down side is that it may not achieve the same level of equity, or fairness, that some might desire.



Exemption Thresholds

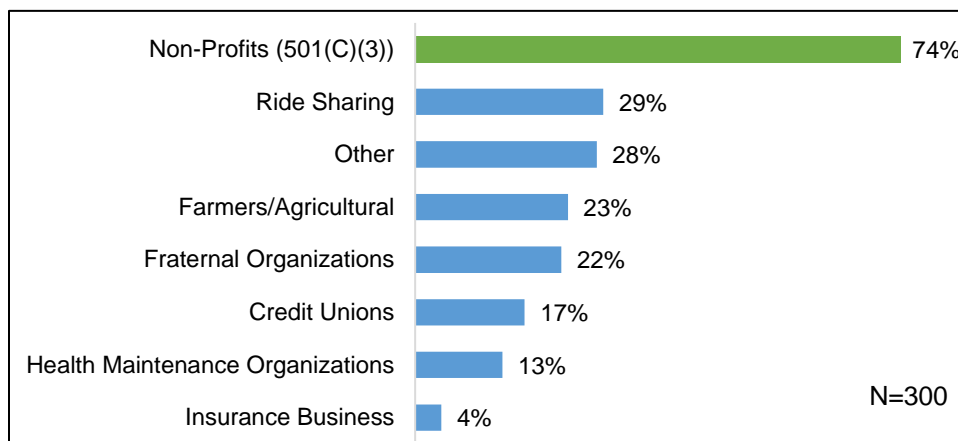
The [Association of Washington Cities' 2012 B&O Tax Model Ordinance](#) (Attachment B) requires that cities create an exemption threshold for small businesses with annual gross receipts equal to or less than \$20,000. The City can choose to set the gross receipts exemption threshold at a higher level to meet individual City objectives. Because it is an exemption threshold, businesses that have gross receipts of less than the threshold amount do not have to pay any B&O



Tax. If the business exceeds the threshold, then all gross receipts are taxable (no exemption for the base exemption). The City can also use additional factors, like number of employees, to create a more generous exemption threshold.

Exemptions

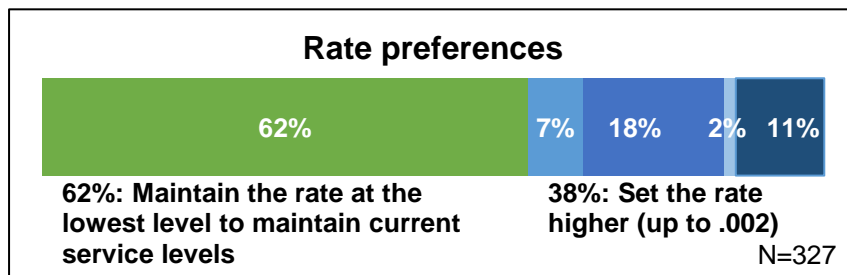
Certain business activities are specifically exempted from B&O Tax in the Model Ordinance. Cities also have the right to set economic policy and exempt additional businesses in



order to maintain local control. This chart exhibits support for business activities identified by respondents as those that should be considered to receive an exemption.

Tax Rate

In the modeling of the 10 YFSP, the City anticipated a B&O Tax rate of .001, or ½ of the rate allowed by RCW, being set to maintain financial sustainability for existing service levels. In the survey, staff asked businesses where they would like to see additional resources directed should the rate be set higher than .001 (up to .002.) Of the respondents, 62% would prefer to maintain the rate at the lowest level to maintain current service levels while 38% would prefer to set the rate higher.



The following tables provide more detail regarding this survey question:

Preference	Respondents	%
Maintain the rate at the lowest level to maintain current service levels.	203	62%
Set the rate higher to fund...		
...some new or enhanced services to specifically benefit businesses.	23	7%
...new or enhanced services for the whole community.	59	18%
...capital projects to specifically benefit the business community.	5	2%
...capital projects to benefit the whole community.	37	11%

For those that would like to see services expanded, the following services areas were mentioned in comments:

Service Area	Respondents	%
Public Safety	7	19%
Human Services	7	19%
Parks	6	16%
Business Workshops	4	11%
Traffic	3	8%
Economic Development	2	5%
Community Building	2	5%
Misc.	6	16%

Impact of a B&O Tax on Businesses

In the survey, staff asked businesses, “If the City were to impose a B&O Tax at a rate of .001, my business would...” The following table provides the responses (please note that businesses were asked to check all that apply):

Response	Respondents	%
Absorb the expense/maintain and operate business as usual.	149	45.7%
Decrease hours of existing employees.	22	6.7%
Lay off existing employees.	11	3.4%
Leave vacant positions open.	21	6.4%
Close business.	21	6.4%
Consider moving to a different location.	80	24.5%
Immediately increase prices to pass the expense on to our customers.	85	26.1%
Other	67	20.6%

DISCUSSION

Policy Options

Prior to implementing a B&O Tax, Council would need to make decisions on the policy questions that were addressed in the Business Survey. These decisions would be incorporated in the City’s Ordinance adopting a B&O Tax/ Following is a discussion of the options for Council consideration.

Exemption Threshold

The State has a Model Ordinance (Attachment B) for B&O Tax that cities are required to utilize when developing their B&O Tax Ordinance. The model requires that cities adopt an exemption threshold of at least \$20,000, where a business grossing less than the threshold would not be subject to the tax. Cities are able to set the exemption thresholds at any level. Attachment C includes a list of all Washington B&O Cities with their rates and exemption thresholds. The exemption thresholds vary from the minimum \$20,000 up to a high of \$1,500,000. The value of the exemption threshold is to exempt

small business from the tax and ease the administrative burden associated with collecting smaller tax due amounts. The following table provides the exemption thresholds for the King County Cities that have a B&O Tax:

City	Exemption Threshold
Kenmore	\$20,000.00
Lake Forest Park	\$20,000.00
North Bend	\$20,000.00
Pacific	\$20,000.00
Des Moines	\$50,000.00
Issaquah	\$100,000.00
Seattle	\$100,000.00
Mercer Island	\$150,000.00
Bellevue	\$160,000.00
Burien	\$200,000.00
Kent	\$250,000.00
Renton	\$1,500,000.00

The following table reflects the estimated number of businesses that would be exempt from tax based on an analysis of information on Shoreline businesses and business that currently remit Sales Tax to Shoreline and the associated revenue estimated to be collected at each exemption threshold level assuming a tax rate of .001 for all classifications:

Exemption Threshold	# of Businesses Exempted	Estimated B&O Gross Revenue* (\$ in '000's)	Estimated Revenue Impact (\$ in '000's)
All Businesses	2,033	\$1,058	
< \$20,000	737	\$1,055	-\$3
< \$50,000	1,000	\$1,050	-\$8
< \$100,000	1,222	\$1,043	-\$15
< \$150,000	1,343	\$1,037	-\$21
< \$200,000	1,429	\$1,033	-\$25
< \$500,000	1,675	\$991	-\$67
< \$1,000 000	1,812	\$953	-\$105

**Not adjusted for administrative costs*

Staff recommends setting the exemption threshold at \$200,000 to minimize impact to small business and the administrative burden of collecting a small tax from a larger number of businesses.

Basis & Rate of the Tax

- *Gross Receipts: Single rate vs. varying rates per classification.*
The City can set a single rate for all tax classifications or a varying rate at its discretion. A flat rate provides consistency and simplicity while a varying rate provides some recognition that certain business classifications tend to have

higher or lower overhead. It also can provide the opportunity to accomplish certain economic development goals by setting rates lower for tax classifications that the City may be interested in attracting. Currently, 44 cities in Washington State impose a B&O Tax and 16 of those have set at least one varying rate. The State has varying rates for each classification. Cities with varying rates charge services at a higher rate than retail at a factor ranging from 125% to 364%, with a mean of 200%. For the three King County cities (Issaquah, Kent, and Seattle) that have varying rates between services and retail the factor range is 125-33%. Attachment C provides information on the rates charged by the 44 cities in the State of Washington.

Staff recommends that the City set the service rate two times the retail rate. This maintains significant simplicity but does recognize that the profit margin for service revenue is generally higher than for other categories, a concern that was mentioned frequently in the survey and interviews. The primary source of data available for our evaluation was received from the State and relates to sales tax. Based upon that information all businesses reporting service revenue would appear to fall under a \$200,000 exemption threshold. However, there are likely some service businesses not in the data provided by the state that might not meet the threshold.

- *Gross Receipt Rate Setting*

As part of the 10YFSP staff used a rate of .001 for modeling the impact of this revenue source to support current service levels. Council could set the rate at a higher level of up to .002 to generate additional revenue to meet other unfunded needs such as Urban Forestry, Maintenance Facility, Capital Facility Maintenance, and other capital and operating needs. Assuming an exemption threshold of \$200,000, each addition .5% increase in rate (i.e. going from a rate of .001 to .0015) will generate approximately \$500K in additional revenue.

Staff recommends that Council implements the B&O tax at a minimum rate of .001 for all classifications other than services and .002 for services to support current service levels in the 10 YFSP and consider what additional Council priorities could be addressed by a higher rate.

- *Use of other factor such as number of employees and square footage.*

Some cities will use multiple factors to determine the total tax due. While these other factors are considered a license for revenue they can be collected in combination with the gross receipts tax. Generally additional factors are utilized to help ensure that the tax is more equitable for businesses that may have a business location in the City but for varying reasons a significant portion of gross receipts would not be taxable to the City. This is especially prevalent in warehousing where the gross receipts would be reported to the location where goods are delivered to- not delivered from. This type of option adds a significant amount of complexity both for the businesses filing the tax and for the City collecting the tax.

Staff recommends that the City solely utilizes gross receipts as the basis for its B&O tax due to the complexity that is created for businesses to accurately calculate tax based on multiple factors.

Tax Exemptions & Deductions

- *Exemptions*

Section .090 of the Model Ordinance identifies the following mandatory and standard exemptions from B&O Tax:

1. Public utilities where a Utility Tax is imposed.
2. Investments - dividends from subsidiary corporations.
3. Insurance business.
4. Employees.
5. Amounts derived from sale of real estate.
6. Mortgage brokers' third-party provider services trust accounts.
7. Amounts derived from manufacturing, selling or distributing motor vehicle fuel (Mandatory).
8. Amounts derived from liquor, and the sale or distribution of liquor (Mandatory).
9. Casual and isolated sales.
10. Accommodation sales.
11. Taxes collected as trust funds.

Cities are required to include the mandatory exemptions and encouraged to include the standard to provide consistency for businesses that need to comply with multiple local tax codes.

Cities also have the authority to identify additional exemptions to help address unique situations and accomplish operational objectives. Some of the most common optional exemptions include:

- Athletic Exhibitions
- Fraternal Organizations
- Credit Unions
- Farmers / Agricultural
- Health Maintenance Organizations
- Non-Profits (501(C)(3))
- Racing
- Ride Sharing
- Other gross receipts taxes imposed on the business

Staff recommends that the City adopt all of the mandatory and standard exemptions identified in the Model Ordinance. We would also recommend that all revenue subject to another gross receipts tax imposed by the City on the business be exempt from the B&O Tax. For example, the City currently levies both gross receipt taxes on utility revenue at 6% and card room revenue at 10% and pull tab revenue at 5%. The intent would be to exempt these revenues from the B&O Tax; however other types of revenue generated by those businesses (like service or retail) would still be subject to the City's B&O Gross Receipts tax.

Finally, 74% of respondents to the City's survey indicated a desire to exempt Non-Profit 501c3 businesses from the B&O tax. Staff therefore recommends that Council exempt Non-Profit 501C(3) business revenue from the B&O Tax.

Attachment D provides a matrix of the unique exemptions provided by other B&O cities.

Deductions, Credits, and Allocation

Section .070-.078 of the Model Ordinance mandates a system of deductions, credits and allocation methodology that ensures that businesses are not taxed on the same revenue by multiple jurisdictions.

Section .100 of the model ordinance defines some additional mandatory and standard deductions:

1. Receipts from tangible personal property delivered outside the State (Mandatory).
2. Cash discount taken by purchaser.
3. Credit losses of accrual basis taxpayers.
4. Constitutional prohibitions (Mandatory).
5. Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington.
6. Professional employer services.
7. Interest on investments or loans secured by mortgages or deeds of trust.

While some cities have retained unique deductions, outside the standard and mandatory deductions, most would be better addressed as an exemption.

Staff recommends that the City adopt all mandatory and standard deductions identified in the Model Ordinance.

Licensing and Tax Administration

Should Council choose to implement a B&O Tax, there are several options for tax administration that need to be considered, particularly relating to business licensing and collection of the tax.

- *State Department of Licensing*
The City currently partners with the State for annual business licensing. The State is not able to provide B&O tax administration or collection services to the City. The City could choose to continue to utilize the State for business licensing and administer and collect the B&O tax independently or administer the tax independently and partner with *FileLocal* for online collection of the tax.
- *FileLocal*
FileLocal is an online system created through the partnership of the cities of Seattle, Bellevue, Everett, and Tacoma that allows businesses to apply for City business licenses and file and pay their City B&O taxes at the same time (website: https://www.filelocal-wa.gov/Default_FileLocal.aspx). The original four cities have been working with smaller cities to develop a process to allow the

smaller cities to join with the objective of minimizing the impact on businesses of filing local B&O tax. Lake Forest Park is currently working with FileLocal with the goal of implementation by the end of 2017. The City could choose to join FileLocal for both licensing and tax collection services or just for tax collection.

- ***Tax Administration***

Regardless of which of the above options the City selects, the City will need to administer the collection of the tax. The City would need to maintain all filing history, accounts receivables, track delinquencies, audit information, for each taxpayer account. Generally, city financial systems are not able to fulfill the requirements for tax administration, so a separate tax administration system would need to be procured, implemented and integrated to the licensing and collection systems. Additionally, the City will need some provision for collecting taxes that are not paid online, such as using a lockbox like we will for wastewater utility payments. Alternatively, if we choose to partner with FileLocal and set a significant exemption threshold we could mandate online filling. The costs of administration of a B&O tax have not been included in the revenue analysis presented.

The following table provides the pros and cons of these three licensing and tax administration options:

Option	Pros	Cons
License w/ the State & Collection with <i>FileLocal</i>	Process for licensing works well. All businesses are supposed to register with the State so detection is improved.	More interfaces/integration and relationships to maintain.
License and Collection with <i>FileLocal</i> (or Collection Only)	Easy online filing and renewal. Any business that does business with other cities on <i>FileLocal</i> can do all local tax filing in one place.	<ul style="list-style-type: none"> • <i>FileLocal</i> may not be ready for us in time. • Additional cost.
License with the State and Independent Collection	May be a lower cost. May be necessary if <i>FileLocal</i> isn't ready to bring us on board.	<ul style="list-style-type: none"> • For businesses that file in more than one city it adds an administrative burden to complete one additional tax return. • Online filing and payment is challenging to implement.

Specific decisions around tax administration do not need to be made prior to Council action. Staff recommends that we perform a more thorough cost benefit analysis of the administration options after decisions on tax structure have been made.

Implementation Steps

If Council chooses to continue to explore the option of implementing a B&O Tax, it is important to recognize that the implementation of the tax would likely take at least one year. The following are the major steps that would need to be completed:

1. Draft Ordinance
2. Council Discussion and Policy Direction on Draft Ordinance
3. Adopt the Ordinance (subject to referendum)
4. Develop the administration plan, evaluating options including:
 - a. Contract with the State for administration
 - b. Implement a system and partner with *FileLocal* (Seattle, Bellevue, Everett, Tacoma, Lake Forest Park) to provide joint filing
5. Implement administration plan, including staff training
6. Business education

If Council should adopt an ordinance implementing a B&O Tax prior to the end of 2017, staff estimates that the tax could be implemented by January 1, 2019.

SUMMARY

The 10 Year Financial Sustainability Plan (10 YFSP), which was accepted by Council on June 16, 2014, prioritized seven target strategies to reduce projected future revenue and expenditure gaps. Council Goal No. 1 directs staff to continue to implement the 10 YFSP including Strategy 6 – engaging the business community in a discussion regarding the potential implementation of a Business and Occupation (B&O) Tax. The City continues to face a structural imbalance in operating revenues where, even with diligent care and effort, costs are growing faster than revenues. Attachment E highlights the historic vulnerability of State Shared Revenues. The City has limited revenue options for stable revenue sources to address this structural challenge. A B&O Tax is one of those few options.

COUNCIL GOALS ADDRESSED

This item addresses Council Goal 1, “Strengthen Shoreline's economic base to maintain the public services that the community expects”, and specifically, Action Step #3 of that Goal: “Continue to implement the 10-year Financial Sustainability Plan to achieve sufficient fiscal capacity to fund and maintain priority public services, facilities, and infrastructure”, with a specific focus on Strategy 1 – encouraging a greater level of economic development, Strategy 5 seeking to replace the General Fund support of the Roads Capital Fund with another dedicated funding source, and Strategy 6 – engaging the business community in a discussion regarding the potential implementation of a Business & Occupation (B&O) tax.

RESOURCE/FINANCIAL IMPACT

Assuming no new revenues or changes in service levels, the operating budget 10-year forecast projects potential gaps between revenues and expenses to occur for providing our current service level beginning in 2022 with a cumulative gap totaling \$9.685 million over the 10-year forecast. These potential budget gaps will be addressed as the City of

Shoreline is required to pass a balanced budget and does so each year within the following policies:

- Current revenues will be sufficient to support current expenditures.
- Resources (fund balance) greater than budget estimates in any fund shall be considered “One-time” and shall not be used to fund ongoing service delivery.

There is no immediate financial impact associated with tonight’s discussion. However, the implementation of a B&O Tax has been identified as a potential revenue source to narrow the gap throughout the 10-year forecast. As discussed with Council previously, no single strategy in the 10 YSFP will solve the forecast shortfall. It will take a combination of all seven strategies to provide financial sustainability of the City’s existing services and to address other unfunded needs, such as urban forestry, long term facility maintenance, space needs for operational maintenance functions such as streets, surface water and parks as well as other unfunded operating and capital needs. The ongoing unreliability of State Shared Revenues further supports the need for an additional stable revenue source.

RECOMMENDATION

No formal action is required at this time. Staff is providing Council with an update on staff’s progress related to implementation of Strategy 6 of the 10 YFSP. Staff recommends that the Council direct staff to continue to pursue implementation of a business and occupation tax and authorize staff to move into the next phase of implementation and bring back a draft Business and Occupation Tax Ordinance for Council consideration.

ATTACHMENTS

Attachment A: Report from BERK Consulting
Attachment B: Model B&O Tax Ordinance
Attachment C: AWC Local Business (B&O) Tax Rates
Attachment D: Summary of Local Exemptions
Attachment E: State Shared Revenues Summary



Shoreline Potential B&O Tax

Business Outreach Summary

Introduction

The City hired BERK Consulting to assist with outreach to Shoreline business owners to solicit their perspectives on a potential business and operations (B&O) tax. The City is considering a B&O tax because, like most cities in Washington, it faces a structural imbalance in funding core operations, where the cost of maintaining services is growing faster than the revenues available to support them. In 2014, the City Council developed a 10 Year Financial Sustainability Plan that identifies seven strategies to help achieve financial sustainability over the 10 Year forecast. Since this time, five of the seven strategies have been implemented, and the City forecasts sufficient revenues through 2021, primarily relying on a voter-approved levy lid lift that expires in 2022.

One of two remaining strategies to be implemented is engagement of the business community regarding the potential implementation of a Business & Occupation (B&O) Tax. Currently, the City's revenue stream is primarily supported by residents and residential property owners. Commercial properties are only 10% of the City's assessed valuation largely because commercial properties depreciate the value of their improvement leaving comparatively low assessed values for commercial properties.

This document describes the outreach activities that were implemented to gain feedback and comments from local businesses.

Outreach Activities

Outreach to Shoreline businesses was conducted from May through July 2017. The City employed several engagement methods, including an online survey, phone interviews, and two public workshops.

ONLINE SURVEY

The City created an online survey to better understand the types of businesses in Shoreline, as well as their preferences for a potential B&O tax and its structure. The online survey was open from May 17 through June 2, 2017. The City sent an email with the survey link to 5,180 businesses. In total, there were 435 responses. For detailed results of each of the survey questions, please see Appendix A.

Survey Summary Findings

Who we heard from

- **75% of survey respondents have a business located in Shoreline.** Of the 25% that are not located in Shoreline, many are Shoreline residents, or have businesses located in Seattle and neighboring cities such as Mountlake Terrace, Lynnwood, Edmonds, Lake Forest Park, etc.
- **80% of respondents do not pay a B&O tax to other cities.** Of those that do, most pay a B&O tax in Seattle.
- **58% of respondents were in the service sector,** followed by retail (15%), construction (6%), and wholesale (6%).
- Most respondents were small, sole proprietor businesses. **Approximately 80% of respondents have zero to one full- or part-time employee.**
- **More than half of respondents earn less than \$50,000 annually.** 42% made \$20,000 or less, and 17% made \$20,000 to \$50,000 annually.

Preferences for a B&O tax

- Most respondents (59%) preferred that the tax calculation be **simple**, as opposed to more complex.
- Preferences for activities that should be exempt from taxation include businesses with two or less or no employees, as well as businesses with gross receipts of less than \$150,000. Respondents also supported an exemption for non-profits (74%).
- **62% of respondents wanted the tax rate to be kept at the lowest level** to only maintain current service levels only. Among respondents who would support a higher tax rate, they were interested in a range of public service enhancements including more human services to address homelessness, mental health, services for low income families, improvements for parks, sidewalks, roads, and public space, and support for small businesses.
- If the City were to impose a B&O tax, **most respondents said they would absorb the cost (48%).** 26% of respondents said they would immediately increase prices, and another 25% said they would consider moving.

BUSINESS WORKSHOPS

The City of Shoreline held two public workshops to engage Shoreline business owners in conversation around the need to explore a potential B&O tax. The workshops were held at City hall on the evening of June 21 and morning of June 22, 2017 as a follow-up to the online survey. Businesses were notified via email, and the workshop dates were included at the end of the online survey.

The workshop began with a presentation by City staff and BERK Consulting to explain the City's budgeting issues, approach to long-term financial sustainability, and to share the results of the online survey. This provided business owners with more information about why the City was exploring a B&O tax and how the tax fits into the City's larger plan for financial sustainability. Following the presentation, an open group discussion facilitated further dialogue between business owners and City staff.

Who Attended

In total, the two workshops had nine attendees. There were four attendees at the evening workshop on June 21, all of whom were sole proprietors living and working in Shoreline. The morning workshop on June 22 had five attendees representing four companies with 100 to 150 employees. The represented companies included Carter Subaru, Club Hollywood Casino, Shoreline Health and Rehab, and Northwest Civil Engineers. Among this group, the representative from Northwest Civil Engineers was the only one who lived in Shoreline.

Workshop Comments

All the sole proprietors expressed a desire to be exempt from a B&O tax, as they felt they did not make enough money to justify the filing cost. They also thought a tax structure based on a square footage assessment would not be feasible, as many do not have a physical plant or office.

Representatives of the larger companies were concerned about how an additional tax would further impact their business's bottom line. They noted that the Affordable Care Act and minimum wage mandates have already increased costs for businesses in health care. The representatives of Shoreline Health and Rehab depend on Medicaid and Medicare reimbursement, which they felt was already insufficient. Representatives voiced concerns about limited opportunities for their businesses to increase revenues, should they have to absorb the additional cost of a B&O tax. Both Carter Subaru and Northwest Civil Engineers pay B&O taxes to other cities. The Carter Subaru representative had concerns about a tax calculation based on gross receipts, which while a large dollar amount would not reflect profit margins.

Phone Interviews

Several phone interviews were conducted in May 2017 to test the online survey before it went live. BERK walked through the online survey questions with business owners to ensure that the questions were clear and understandable and also captured general comments businesses had in regards to the B&O tax. Because the survey respondents and workshop attendees were mainly small business owners, BERK also contacted several larger businesses in July 2017 for their thoughts and comments on a potential B&O tax. The following business owners provided feedback:

- Greg Olson, Chuck Olson Kia/Chevrolet
- Evan Voltsis, Spiro's Pizza
- Victor Mena, Club Hollywood Casino
- Rick Stephens, Highland Ice Arena (20 employees, 1-2 million in revenue)
- Bob Donegan, president at Ivar's and Kidd Valley Restaurants (restaurants in surrounding cities, but not in Shoreline)
- Ben Armstrong, Inland Construction (1-4 employees on active project, 22-23 million in revenue)
- Ken Yette, Central Market (190 employees in Shoreline store)

Summary Comments

- Among the businesses interviewed for feedback on the survey, there was some confusion around

B&O tax collection at the state, county and city levels, and some thought Shoreline was already collecting a B&O tax. There were general questions about the City's revenue and expenditures, City management, and why there was a need to implement a B&O tax.

- One interviewee suggested considering business profits rather than just gross receipts. Even though a business may sell high dollar goods, it doesn't mean that the business is profitable.
- One business owner expressed a preference for an income-based tax because revenue-based taxes are hard to pass along and become an additional business expense.
- Because B&O tax rates are different for every city, it creates an administrative cost to businesses. Another interviewee had similar sentiments suggesting it would be easier for businesses that operate in multiple cities to have a B&O tax that was the same across jurisdictions.
- One interviewee cautioned against the use of exemptions, which they feel are unfair. Exemptions create a headache for both the city and businesses, and diminish the revenue collected. If there is a decision made to implement a tax, everyone should have to pay.
- Another felt that the exemptions on gross receipts should be as high as possible while still generating the revenue the City needs.
- Interviewees also highlighted other challenges and pressures that businesses face. These included the pressure of increasing wages, particularly the repercussions the Seattle minimum wage on other locations, costs for employee healthcare, and the increasing cost of occupancy (rents).
- Among those interviewed there is some general dissatisfaction with any new tax, but many also see it as the cost of doing business. An additional tax might be absorbed or passed along to the customer, but taxes are one of many factors that are considered when a business decides how and where to operate.

Appendix A: Online Survey Questions

Q1. Does your business have a physical location in Shoreline?

Answer Options	Response Percent	Response Count
Yes	75.2%	324
No	24.8%	107
<i>answered question</i>		431

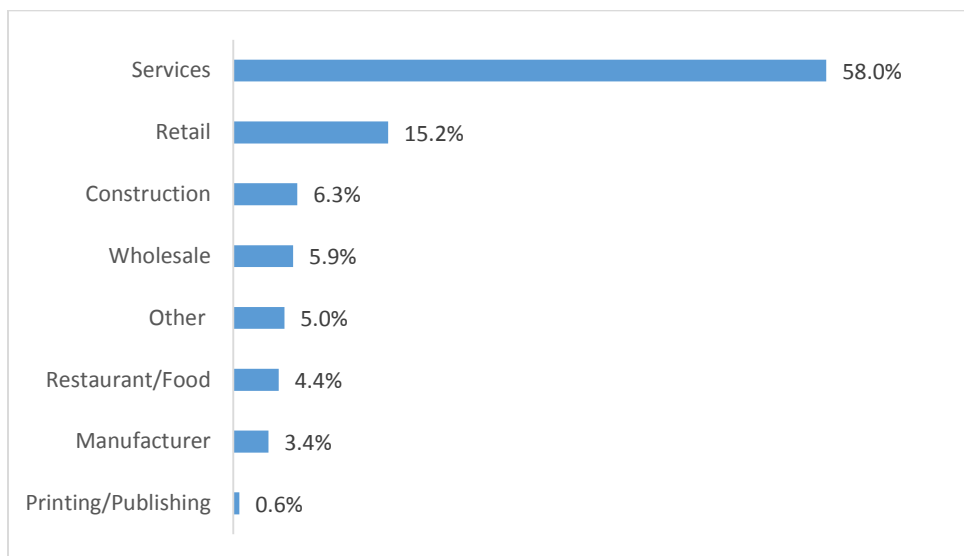
Q2: If you are not located in Shoreline, what city is your business located in?

Categories	Total
Bellevue	1
Des Moines	1
Edmonds	5
Lake Forest Park	2
Lynnwood	4
Mountlake Terrace	4
Redmond	1
Seattle	19
Shoreline	23
Snoqualmie Pass	1
Tacoma	1
Unincorporated King County	1
Woodinville	2
Business is Closed	5
Multiple locations	4
N/A or Other	4
Online/mobile	4
Outside of U.S.	1
Outside WA State	1
<i>answered question</i>	84

Q3: If your business is not located in Shoreline, how frequently do you do business in Shoreline?

Answer Options	Response Percent	Response Count
rarely (1-2 times a year)	59.5%	50
monthly (1-2 times a month)	13.1%	11
weekly (1-2 times a week)	13.1%	11
daily	14.3%	12
answered question		84

Q4: Which business sectors apply to your business? Select all that apply. (N=392)



Q5: Do you pay B&O tax to other cities?

Answer Options	Response Percent	Response Count
Yes	20.2%	79
No	79.8%	312
answered question		391

Q6: Which cities do you pay B&O tax to?

Answer Options	Response Percent	Response Count	Answer Options	Response Percent	Response Count
Seattle	83.8%	62	Yelm	2.7%	2
Bellevue	16.2%	12	Algona	1.4%	1
Everett	14.9%	11	Bainbridge Island	1.4%	1
Lake Forest Park	12.2%	9	DuPont	1.4%	1
Bellingham	9.5%	7	Everson	1.4%	1
Mercer Island	6.8%	5	Granite Falls	1.4%	1
Bremerton	4.1%	3	Hoquiam	1.4%	1
Issaquah	4.1%	3	Ilwaco	1.4%	1
Longview	4.1%	3	Kelso	1.4%	1
Aberdeen	2.7%	2	Long Beach	1.4%	1
Burien	2.7%	2	North Bend	1.4%	1
Cosmopolis	2.7%	2	Ocean Shores	1.4%	1
Darrington	2.7%	2	Pacific	1.4%	1
Des Moines	2.7%	2	Port Townsend	1.4%	1
Kenmore	2.7%	2	Rainier	1.4%	1
Kent	2.7%	2	Raymond	1.4%	1
Lacey	2.7%	2	Roy	1.4%	1
Olympia	2.7%	2	Ruston	1.4%	1
Renton	2.7%	2	South Bend	1.4%	1
Shelton	2.7%	2	Tenino	1.4%	1
Snoqualmie	2.7%	2	Tumwater	1.4%	1
Tacoma	2.7%	2	Westport	1.4%	1

answered question

74

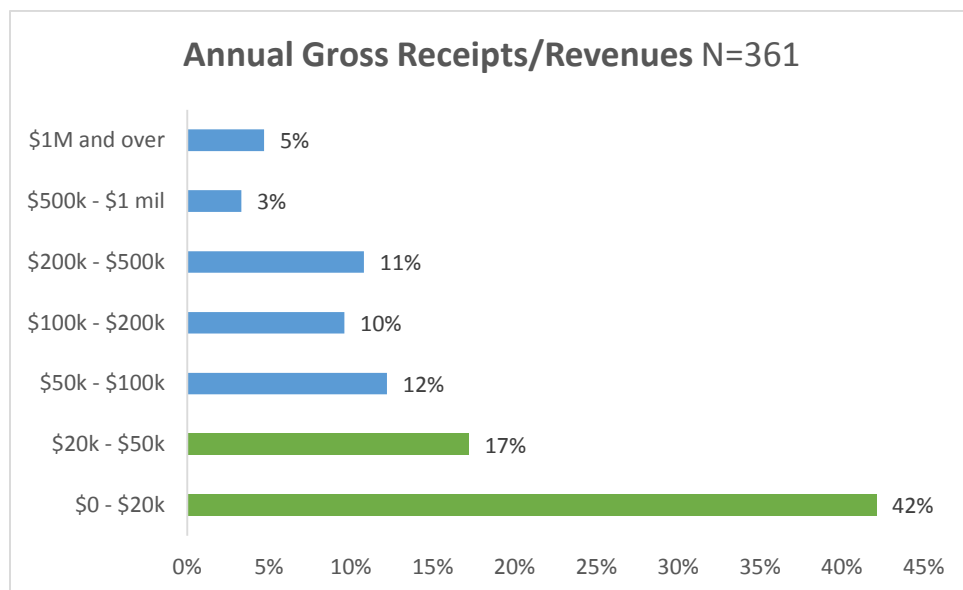
Q7. Approximately how many full-time employees (more than 35 hours/week) does your business have, including yourself? (N=365)

# of Full Time Employees	Count	Percent
0 or 1	285	78.1%
2 to 10	64	17.5%
11 to 50	12	3.3%
51 to 100	2	0.5%
over 300	1	0.3%
<i>answered question</i>	365	

Q8. Approximately how many part-time employees (less than 35 hours/week) does your business have?

# of Part-Time Employees	Count	Percentage
0 to 1	292	81%
2 to 10	55	15%
11 to 50	9	3%
50 and over	1	0%
Not operating	1	0%
Volunteers	1	0%
<i>answered question</i>	360	

Q9. What are your approximate annual gross receipts/revenues for the business conducted in Shoreline?



Q10. Which services provided by the City are most important to you as a business? Pick your top 3.

Answer Options	Response Percent	Response Count
Public Safety	64.2%	231
Street Maintenance	45.3%	163
Transportation and Traffic Services	40.0%	144
Capital Improvements	29.2%	105
Parks and Recreation	23.3%	84
Economic Development	16.1%	58
Surface Water Management	10.8%	39
Permitting and Development Services	10.0%	36
Environmental Services	9.2%	33
Customer Response Team (CRT)	3.9%	14
Code Enforcement	3.9%	14
<i>answered question</i>	360	

Q11. If Shoreline were to impose a B&O tax, which statement below do you think would be the best approach? Choose only 1.

Answer Options:	Response Percent	Response Count
It is important to me that the tax calculation...		
...be equitable to all businesses even if that means the tax calculation might be more complex and rely on multiple factors (e.g. square footage, number of employees, gross receipts).	23%	75
...strike a balance between equity and simplicity. I would accept some complexity but keep it as simple as possible.	18%	60
... be simple and based upon information that I can easily calculate or that I am already required to provide to the State.	59%	197
<i>answered question</i>		332

Q12. If Shoreline were to impose a B&O tax, we could set our own exemption threshold. Which of the following options do you think would be the best approach for Shoreline? Choose up to 2.
Exempt businesses with:

Answer Options	Response Percent	Response Count
gross receipts < \$20,000	33%	113
gross receipts < \$150,000	35%	122
gross receipts < \$500,000	19%	66
no employees (other than owner)	35%	122
2 or less employees	36%	125
<i>answered question</i>		346

Q.13 A city can exempt certain types of business activity; some common exemptions are listed below. Please mark any activities that you think should be exempt from taxation if the City was to impose a B&O Tax.

Answer Options	Response Percent	Response Count
Non-Profits (501C (3))	74%	222
Ride Sharing	29%	86
Other (please specify)	28%	83
Farmers/Agricultural	23%	70
Fraternal Organization	22%	67
Credit Unions	17%	50
Health Maintenance Organizations	13%	40
Insurance Business	4%	12
<i>answered question</i>		300

“Other” Comments:

Top suggestions for other kinds of business exemptions included exempting individual freelancer/consultants (11%), no exemptions at all (10%), no B&O tax at all (10%), and exempting care giving services and businesses for children and seniors (7%).

Q14. If a B&O tax on gross receipts set at a rate of .001 would balance the City's 10 Year operating forecast, but would not provide any revenue for new or enhanced services, would you prefer to:

Answer Options	Response Percent	Response Count
Maintain the rate at the lowest level to maintain current service levels.	62%	203
Set the rate higher (up to .002) to fund new; or enhanced services for the whole community.	18%	59
Set the rate higher (up to .002) to fund capital projects to benefit the whole community.	11%	37
Set the rate higher (up to .002) to fund some new or enhanced services to specifically benefit businesses.	7%	23
Set the rate higher (up to .002) to fund capital projects to specifically benefit the business community.	2%	5
<i>answered question</i>		327

Q15. What additional or enhanced services would you propose to be funded if there was a higher tax rate?

Category	Specific Comments
Public Safety	<ul style="list-style-type: none"> ▪ The biggest concern I have in Shoreline is what looks like racial discriminatory practices by the police department. I'd like to see this remedied. More education, our own police department (rather than KC Sheriff), specific training. 90% of cars I see pulled over are people of color. The population of people of color in Shoreline is no way near 90%. We have a racial bias problem. We need to fix it. ▪ Police patrols on the interurban trail/ public safety/ homeless, drug and mental health services ▪ Public safety - police/fire ▪ Anti-drug / anti-crime / anti-loitering enforcement. services for homeless / marginalized. programs to fix up blighted vacant lots, abandoned buildings, or enforce business / property owners to fix up their derelict storefronts / buildings / lots. ▪ Law enforcement
Human Services	<ul style="list-style-type: none"> ▪ More human services - address homelessness, hunger, mental health, basic needs ▪ Program to check on Elderly citizens that live alone. ▪ Increased funding for mental health services. ▪ More security, eldercare and holistic healthcare non-conventional services like energy Medicine and meditation. ▪ Access to mental health services for no/low income persons; services for the working poor in Shoreline - housing/medical/food; services for children.

Category	Specific Comments
	<ul style="list-style-type: none"> ▪ Anything that supports the education of our children, unifying the members of our community or protecting our amazing green spaces in shoreline. ▪ An Emergency Fund ▪ Homelessness and limited income assistance. ▪ Housing for the homeless in Shoreline.
Parks, Roads, Sidewalks, Public Space	<ul style="list-style-type: none"> ▪ Beautification ▪ More parks, more green spaces, more places for the community to come together in a way that feels like a downtown or town square. ▪ Sidewalks, road maintenance, Traffic solutions/roads ▪ Traffic solutions/roads ▪ Library, parks ▪ Dog parks ▪ Parks and sidewalks ▪ Larger community center or additional location with pickleball courts! ▪ Redevelopment of the Aurora Square and nearby Triangle property in to a more vibrant business and community gathering space.
Small Business Support	<ul style="list-style-type: none"> ▪ Networking events ▪ Business assistance on state and local licensing and tax compliance. ▪ More office rental space for small businesses that do not need a storefront. ▪ New and small business workshops for understanding legal codes and city expectations. ▪ Coordinated services with the state for starting new businesses, especially supporting women and minority new businesses. ▪ Support for small business owners when it comes to marketing and networking. ▪ More support to help small businesses thrive in Shoreline. ▪ Support for small business owners when it comes to marketing and networking. ▪ More support to help small businesses thrive in Shoreline.
No B&O Tax	<ul style="list-style-type: none"> ▪ NO TAX. You will drive business out of Shoreline with an additional tax. ▪ I'm already planning on leaving WA due to the INSANE tax burden for little return in services. ▪ I don't have any specific services in mind but I think that if there are enhanced services, the cost should be spread between residents and businesses. ▪ STOP TAXING BUSINESSES MORE!!! TAX PEOPLE, not business. ▪ Business is still recovering from the recession any new tax would hurt badly ▪ NO B&O Taxes in Shoreline. Shoreline does not need to be Seattle. That is why people and businesses moved here from Seattle! ▪ There should not be a B&O tax. You should look within the city structure and get rid of positions that are not part of the core city operations. Stop taxing us to death.

Category	Specific Comments
Other	<ul style="list-style-type: none"> ▪ I think you should find a way to fund these services with the whole community involved, not just the business community. It is the residents that benefit from these services and therefore all should. ▪ I just want a city that continues to improve for the greater good of the whole community.

Q16. If the City were to impose a B&O tax at a rate of .001, my business would...(Check all that apply)

Answer Options	Response Percent	Response Count
Absorb the expense/maintain and operate business as usual	45.7%	149
Immediately increase prices to pass the expense on to our customers	26.1%	85
Consider moving to a different location	24.5%	80
Other (please specify)	20.6%	67
Decrease hours of existing employees	6.7%	22
Leave vacant positions open	6.4%	21
Close business	6.4%	21
Lay off existing employees	3.4%	11
<i>answered question</i>		326

“Other” Comments

Category	Specific Comments
Gross Receipts	<ul style="list-style-type: none"> ■ Please keep in mind that gross receipts do not equate to profit. I often had receipts over \$100,000 and after paying my employee salaries, benefits, rent and other operating expenses I most often earned less than what the government considers poverty income. If gross receipts or any other method is used, the exemption should be as high as possible. ■ I am thinking of dissolving the business anyway, I don't think it should be calculated on gross income. Most of my gross income is paid to tour expenses in India. My net profit is small and my income from the company is minuscule. ■ The B&O tax is one of the dumbest forms of taxation available. You should understand it as a gross receipts tax and all that implies. The State is already a national oddity for having one. Don't join the fools parade!
Leave Shoreline	<ul style="list-style-type: none"> ■ I have previously moved businesses out of Seattle due to their B and O tax ■ I've moved to Lynnwood. ■ We would move elsewhere. Not consider it. We would go. ■ LEAVE ■ I would not move my business back to shoreline ■ Move to another municipality that doesn't impose them. ■ Work in Seattle is more lucrative. I choose projects in Shoreline in large part because of simpler codes and lower costs. if you impose a B&O tax, and I have to deal with your paperwork and increasingly aggravating bureaucracy, I might as well work in Seattle where I can make a lot more money. ■ Not do business in Shoreline. ■ Not in Shoreline ■ I'm too small to pay it, however my business is entirely online, so I do periodically consider moving to a location with lower overall taxes once my kids are out of school. I suppose this would potentially contribute to making such a decision, if my business grows when I have more time for it.
Raise Prices	<ul style="list-style-type: none"> ■ Since my products can be price matched on any app I cannot "just raise my prices." I will have to raise my prices on the services we provide. My lease is coming up. Any more increase in costs and I will fire my two employees and close my business. Why not lower the salaries of and services of Shoreline Gov't? That is what you are making businesses do, with constantly adding taxes and fees. ■ Until I couldn't, then I'd raise prices. ■ We would need to raise tuition to our students and many are on scholarships that we fundraise for. ■ Increase price cost to customers
Close Business	<ul style="list-style-type: none"> ■ I am closing this business in 2018, at the same time my husband will be retiring. ■ Increase rents and attach your tax form. ■ Might sell ■ My business is not profitable. Any new tax will make it harder for me to stay in business

Category	Specific Comments
Cut Government Spending	<ul style="list-style-type: none"> ▪ Urge policymakers to cut spending. ▪ Why don't you stop throwing money away to begin with? You have redone Echo Lake park 3 times, you have sidewalks (new Meridian) that go nowhere... into a pole, you run a museum that could fit in a corner of city hall, shall I go on? ▪ Figure you aren't managing the money you have well.
Consider Other Revenue Sources	<ul style="list-style-type: none"> ▪ This cannot be answered without an understanding of the rate, exemption allowances, etc. ▪ Suggestion: impose the tax on government employees. And every time government wants to increase our taxes, that amount has to be equaled by a tax on government employees. ▪ Wonder why there's no income tax ▪ challenge the legality of double-taxation ▪ We cannot increase prices because our market has thin margins. We already have a punitive sales tax because you don't enforce use tax. PEOPLE need to pay their tax, not businesses. ▪ This is a push poll. You did not offer the option of reducing city expenses/services. Seems it's always about more taxation.
Hope for exemption	<ul style="list-style-type: none"> ▪ All our funding comes from the State of Washington. As a not for profit contracted by the State, we do not function as a typical might. I would be happy to further explain, if needed. ▪ My business not large enough to be taxed. ▪ My business is tax exempt ▪ Since we exist on less than \$10,000 year and sell nothing I feel we would be exempted so this question would be better answered by businesses that would be affected ▪ It will hurt for sure. Maybe try staying under exempt amount. ▪ Probably not have to pay anything until I actually make money. ▪ My business is currently exempt ▪ Sounds like I would probably be exempt so the impact would be none ▪ Would depend on whether I qualify for exemption or not. If I could not pay the tax and absorb the expense I would consider closing the location in Shoreline or consider moving to a different location. ▪ most likely be exempt ▪ At my present income, I would likely qualify for an exemption, so a B&O tax would not impact me right away, giving me time to plan accordingly. ▪ This homeowner's association (HOA) is Not a business and therefore should not be taxed. Our HOA is simply a means to hold four homeowners accountable for upkeep of their houses. ▪ Not be required to pay. State law exempts child cares that provide care for children 7 and under. ▪ Hopefully not pay it since I have no physical location in the city and only get my mail there.

Category	Specific Comments
Absorb the cost/ No effect	<ul style="list-style-type: none"> ▪ We operate in Seattle so already pay a B&O (absorb the cost) ▪ Be unaffected ▪ Would not affect me. ▪ I most likely wouldn't be affected by the tax due to self-employment and income average around 20 to 25 K. ▪ I would be exempt, but I would happily pay and continue business as usual if my business qualified. ▪ My business is too small to be affected. ▪ No impact since my business is currently not generating revenue
Impacts to small business	<ul style="list-style-type: none"> ▪ We are barely surviving with current income ▪ It would be a burden for my small business. ▪ Why does small business need to absorb the burden of more taxes? Are small business discouraged?
Unsure, Wait and See	<ul style="list-style-type: none"> ▪ I have no idea, I produce YouTube videos ▪ Assess the best interests of our operations to include staying in or moving out of Shoreline. ▪ Wait and see, perhaps close ▪ Not sure

Model Ordinance**Final revised version of the City model ordinance for business license tax. Dated October 2012.**

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

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

MODEL ORDINANCE
CHAPTER ____.

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

.020 Exercise of revenue license power. The provisions of this chapter shall be deemed an exercise of the power of the City to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the City code.

Legislative intent information

This section implements Washington Constitution Article XI, Sec. 12 and RCW 35A.82.020 and 35A.11.020 (code cities); 35.22.280(32) (first class cities); RCW 35.23.440(8) (second class cities); 35.27.370(9) (fourth class cities and towns), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. See Enterprise Leasing v. City of Tacoma, 139 Wn.2d 546 (1999). It is intended that this model ordinance be uniform among the various municipalities adopting it.

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

.030 Definitions. In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

"Business." "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. **(Mandatory)**

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

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

(1) Any use as a consumer; and

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

"Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than

under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation. **(Mandatory)**

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

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

"Eligible gross receipts tax." The term "eligible gross receipts tax" means a tax which:

- (1) Is imposed on the act or privilege of engaging in business activities within section .050; and
- (2) Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
- (3) Is not, pursuant to law or custom, separately stated from the sales price; and
- (4) Is not a sales or use tax, business license fee, franchise fee, royalty or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right or a privilege; and
- (5) Is a tax imposed by a local jurisdiction, whether within or without the State of Washington, and not by a Country, State, Province, or any other non-local jurisdiction above the County level. **(Mandatory)**

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

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

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

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

- (a) Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.
- (b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City.
- (c) Soliciting sales.
- (d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
- (e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
- (f) Installing, constructing, or supervising installation or construction of, real or tangible personal property.
- (g) Soliciting, negotiating, or approving franchise, license, or other similar agreements.
- (h) Collecting current or delinquent accounts.
- (i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

- (j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
 - (k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
 - (l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
 - (m) Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.
 - (n) Investigating, resolving, or otherwise assisting in resolving customer complaints.
 - (o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.
 - (p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.
 - (q) Accepting or executing a contract with the City, irrespective of whether goods or services are delivered within or without the City, or whether the person's office or place of business is within or without the City.
- (4) If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.
- (a) Meeting with suppliers of goods and services as a customer.
 - (b) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
 - (c) Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.
 - (d) Renting tangible or intangible property as a customer when the property is not used in the City.
 - (e) Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.
 - (f) Conducting advertising through the mail.
 - (g) Soliciting sales by phone from a location outside the City.
- (5) A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (4).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts. **(Mandatory)** [Comment: Section (2) has been added to the State's definition of engaging in business to give guidelines and parameters to businesses in order for them to better ascertain whether or not they need to license and pay tax to the cities.]

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

"Extractor." "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

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

"Gross income of the business." "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. **(Mandatory)**

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

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

"Manufacturer," "to manufacture." (1) "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, materials or ingredients equal to less than twenty percent (20%) of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire, and not a manufacturer. **(Mandatory)** (A business not located in this City that is the owner of materials or ingredients processed for it in this City by a processor for hire shall be deemed to be engaged in business as a manufacturer in this City.) **(Optional)** [Comment: This definition differs from that found in RCW 82.04.110. The manufacturing vs. processing for hire language has been included within this definition rather than covered by rule as provided in RCW 82.04.110. The optional portion of this definition is different from the RCW in that the RCW allows for the owner of materials that are processed in Washington to be excluded as a manufacturer. It is presumed that the RCW was written in this way to encourage material owners to bring their materials into Washington to be processed by Washington processors for hire. The State chooses to forego the tax that the owner would pay on the value of the materials under the manufacturing classification. The aluminum and nuclear fuel assembly provisions were excluded since no B & O city contains these types of activities.]

(2) "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

- (a) The production of special made or custom made articles;
- (b) The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
- (c) Crushing and/or blending of rock, sand, stone, gravel, or ore; and
- (d) The producing of articles for sale, or for commercial or industrial use from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties or combinations including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser. **(Mandatory)** [Comment: This definition is different from RCW 82.04.120. The cutting, delimbing, and measuring of felled, cut, or taken trees does not usually take place within cities so that was deleted. The RCW also states that some activities which are covered in other special taxing classifications at the State level are not manufacturing. Although some of these activities normally do not take place in cities we included them into manufacturing since they fall within the definition. Manufacturing activities covered in other tax classifications at the State level such as slaughtering, curing, preserving, or canning were included in this definition since the Cities do not have the other classifications.]

"Person." "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit, or otherwise and the United States or any instrumentality thereof. **(Mandatory)**

"Retailing." "Retailing" means the activity of engaging in making sales at retail and is reported under the retailing classification. **(Mandatory)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

"Retail Service." "Retail service" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

- (1) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. "Amusement and recreation services" also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term "amusement and recreation services" does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.
- (2) Abstract, title insurance, and escrow services;
- (3) Credit bureau services;
- (4) Automobile parking and storage garage services;
- (5) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;
- (6) Service charges associated with tickets to professional sporting events; and
- (7) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.
- (8) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator. **(Mandatory)**

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

"Sale," "casual or isolated sale." (1) "Sale" means any transfer of the ownership of, title to, or possession of, property for a valuable consideration and includes any activity classified as a "sale at retail," "retail sale," or "retail service." It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis. [Comment: the term "routine or continuous" comes from WAC 458-20-106.]

"Sale at retail," "retail sale." (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

- (a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
- (b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use.

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

(2) "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under .050(1)(g).

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

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

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

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

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

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

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

the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

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

~~((g))~~ (h) 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. [Comment: Cities can only include "competitive telephone service" since telephone business is taxed under the utility tax.]

(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))~~ . For purposes of this subsection (5)(a) the sale of the sale of prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may 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 ~~((custom))~~ software; or

(ii) The ~~((the))~~ customization of prewritten ~~((canned))~~ 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 the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state, the State of Washington, or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(Public road construction)

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

(8) "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

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

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

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

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

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

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

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

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

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time.

A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

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

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

"Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in [insert reference to "sale at retail" section 5(b)(i)], which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715. **(Mandatory)** [The last sentence must be included since telephone business would normally be taxed under the utility tax. The wholesale treatment of telephone business to another telecommunications company is dictated by State law.]

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

"Taxpayer." "Taxpayer" means any "person", as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

"Value proceeding or accruing." "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

(Mandatory if you have a manufacturing tax)

"Value of products." (1) The value of products, including by-products, extracted or manufactured, shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

(2) Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported or transferred out of the City, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values. (3) Notwithstanding subsection (2) above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (a) the retail selling price of such new or improved product when first offered for sale; or (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. [Comment: This definition is slightly different than that contained in RCW 82.04.450. The meaning is intended to be the same, and the only difference is in grammatical construction. The model also adds a sentence, taken from WAC 458-20-112, at the end of subsection (2) explaining the use of costs to ascertain the value of the products.]

(Mandatory if you have manufacturing or extracting tax)

“Wholesaling.” “Wholesaling” means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification. **(Mandatory)** [Comment: This definition is not contained in state law, however RCW 35.102.120 requires that the model ordinance include this definition.]

.050 Imposition of the tax - tax or fee levied. (1) Except as provided in subsection (2) of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person’s office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

(a) Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of _____ of one percent (_____). The measure of the tax is the value of the products, including by-products, so

extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(b) Upon every person engaging within the City in business as a manufacturer, as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the city, multiplied by the rate of _____ of one percent (_____). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

(c) Upon every person engaging within the City in the business of making sales at wholesale, except persons taxable under subsection ____ of this section; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of _____ of one percent (_____).

(d) Upon every person engaging within the City in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of _____ of one percent (_____).

(e) Upon every person engaging within the City in the business of (i) printing, (ii) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (iii) publishing newspapers, magazines and periodicals, (iv) extracting for hire, and (v) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of _____ of one percent (_____).

(f) Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of _____ of one percent (_____).

(g) Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of _____ of one percent (____). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger or other than by outright sale), persons engaged in the business of developing, or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service. [Comment: Most cities do not use all of the classifications listed above, so they need only adopt those that are imposed within their jurisdictions.] (Mandatory wording for those classifications that are adopted).

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

~~((.060 Doing business with the City. Except where such a tax is otherwise levied and collected by the City from such person, there is hereby levied a tax on the privilege of accepting or executing a contract with the City. Such tax shall be levied and collected whether goods or services are delivered within or without the City and whether or not such person has an office or place of business within or without the City.~~

~~Except as provided in _____ [insert city code reference to section .077], as to such persons the amount of tax shall be equal to the gross contract price multiplied by the rate under section .050 that would otherwise apply if the sale or service were taxable pursuant to that section.))~~

Legislative intent information

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

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

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

(2) Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

(3) To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied.

(4) Credit for persons that sell in the City products that they extract or manufacture. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (a) with respect to the manufacturing of the products sold in the City, and (b) with respect to the extracting of the products, or the ingredients used in the products, sold in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(5) Credit for persons that manufacture products in the City using ingredients they extract. Persons taxable under the manufacturing classification with respect to manufacturing products in this City shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products. (6) Credit for persons that sell within the City products that they print, or publish and print. Persons taxable under the retailing or wholesaling classification with respect to selling products in this City shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold within the

City. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products. **(Mandatory)**

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

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

Legislative intent information

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

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

(1) Amounts subject to an eligible gross receipts tax in another city that also maintains nexus over the same activity. For taxes due prior to January 1, 2008, a taxpayer that is subject to an eligible gross receipts tax on the same activity in more than one jurisdiction may be entitled to a deduction as follows:

(a) A taxpayer that has paid an eligible gross receipts tax, with respect to a sale of goods or services, to a jurisdiction in which the goods are delivered or the services are provided may deduct an amount equal to the gross receipts used to measure that tax from the measure of the tax owed to the City.

(b) Notwithstanding the above, a person that is subject to an eligible gross receipts tax in more than one jurisdiction on the gross income derived from intangibles such as royalties, trademarks, patents, or goodwill shall assign those gross receipts to the jurisdiction where the person is domiciled (its headquarters is located).

(c) A taxpayer that has paid an eligible gross receipts tax on the privilege of accepting or executing a contract with another city may deduct an amount equal to the contract price used to measure the tax due to the other city from the measure of the tax owed to the City. **(Mandatory)**

Legislative intent information

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

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

Service. A taxpayer that has paid an eligible gross receipts tax on services to the jurisdiction where the service is performed may deduct the gross receipts used to measure that tax from the measure of the tax owed to another jurisdiction on that service. If a taxpayer has not paid tax to the jurisdiction where the service is

performed, then the service income shall be taxed by the city where the office or place of business that generated the sale is located. For both sales and services, the order of taxing rights is delivery city, first; and business office location, second.

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

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

(2) Person manufacturing products within and without. A person manufacturing products within the City using products manufactured by the same person outside the City may deduct from the measure of the manufacturing tax the value of products manufactured outside the City and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

(Mandatory)

.076 Assignment of gross income derived from intangibles.

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

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

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

(1) Gross income derived from all activities other than those taxed as service or royalties under _____ [insert city code reference to .050(1)(g)] shall be allocated to the location where the activity takes place.

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

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

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

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

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

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

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

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

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

~~((3))~~ (6) Gross income derived from activities taxed as services and other activities taxed under _____ [insert city code reference to .050(1)(g)] shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

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

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

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

- (i) The customer location is in the city; or
- (ii) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or
- (iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

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

- (i) Separate accounting;
- (ii) The use of a single factor;
- (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
- (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

~~((4))~~ (7) The definitions in this subsection apply throughout this section.

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

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

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

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

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

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

(g) "**Tax period**" means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.

(h) "**Taxable in the customer location**" means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

~~((5))~~ (8) Assignment or apportionment of revenue under this Section shall be made in accordance with and in full compliance with the provisions of the interstate commerce clause of the United States Constitution where applicable.

[Mandatory – Effective January 1, 2008]

Legislative intent information

This section is required by RCW 35.102.130 and provides allocation and apportionment formulas to be applied when a single taxable activity takes place in more than one jurisdiction, whether or not that jurisdiction imposes a gross receipts tax. A definition of delivery has been added in section .030. Retail services will be allocated to where the activity takes place. Digital goods will be allocated according to the new factors set out in RCW 35.102.130, as amended.

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

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

Legislative intent information

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

.090 Exemptions.

(1) **Public utilities.** This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of **[local utility tax cite]**.

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

~~(3)~~ **Insurance business.** This chapter shall not apply to amounts received by any person who is an insurer or their appointed insurance producer upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020, and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

~~(4((3)))~~ **Employees.**

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

(b) A booth renter is an independent contractor for purposes of this chapter.

~~(5((4)))~~ **Amounts derived from sale of real estate.** This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

~~(6((5)))~~ **Mortgage brokers' third-party provider services trust accounts.** This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts

are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

(7)(6)) Amounts derived from manufacturing, selling or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term "motor vehicle fuel" is defined in RCW 82.36.010 and exempt under RCW 82.36.440, provided that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

(Mandatory)

(7) Amounts derived from liquor, and the sale or distribution of liquor. This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120. **(Mandatory)**

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

(9) Accommodation sales. This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen days to reimburse in kind a previous accommodation sale by the buyer to the seller.

(10) Taxes collected as trust funds. This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

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

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

(2) Cash discount taken by purchaser. In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

(3) Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

(4) Constitutional prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States. **(Mandatory)**

(5) Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington. Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

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

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

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

.120 Tax part of overhead.

It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

.130 Severability Clause.

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

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

Definitions omitted:

- (1) Advancement, Reimbursement
- (2) Agricultural Product
- (3) Artistic or cultural organization
- (4) Consumer
- (5) In this City, within the City
- (6) Newspaper
- (7) Non-profit organization or non-profit corporation
- (8) Office, or Place of business
- (9) Precious metal bullion or monetized bullion
- (10) Product, byproduct
- (11) Royalties
- (12) Software, canned software, custom software, customization of canned software, master copies, retained rights
- (13) Tuition fee

Sections omitted:

- (.040) Agency—sales and services by agent, consignee, bailee, factor or auctioneer
- (.110) Application to City's business activities.

Exemptions and Deductions omitted:

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

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

Local Business (B&O) Tax Rates

Effective January 1, 2017

City	Phone #	Manufacturing rate	Retail rate	Services rate	Wholesale rate	Threshold	
						Quarterly	Annual
Aberdeen	(360) 533-4100	0.002	0.003 e	0.00375 e	0.003 e	\$5,000	\$20,000
Algona	(253) 833-2897	0.00045	0.00045	0.00045	0.00045	\$10,000	\$40,000
Bainbridge Island	(206) 780-8668	0.001	0.001	0.001	0.001		\$150,000
Bellevue	(425) 452-6851	0.001496	0.001496	0.001496	0.001496		\$160,000
Bellingham	(360) 778-8010	0.0017	0.0017	0.0044 e	0.0017	\$5,000	\$20,000
Bremerton	(360) 473-5311	0.0016	0.00125	0.002	0.0016		\$160,000
Burien	(206) 241-4647	0.001	0.001	0.001	0.001		\$200,000
Cosmopolis	(360) 532-9230	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Darrington	(360) 436-1131	0.00075	0.00075	0.00075	0.00075		\$20,000
Des Moines	(206) 878-4595	0.002	0.002	0.002	0.002		\$50,000
DuPont	(253) 964-8121	0.001	0.001	0.001	0.001	\$5,000	\$20,000
Everett	(425) 257-8610	0.001	0.001	0.001	0.001	\$5,000	\$20,000
Everson	(360) 966-3411	0.002			0.002		\$1,000,000
Granite Falls**	(360) 691-6441						
Hoquiam	(360) 532-5700	0.00200	0.00200	0.00200	0.00200	\$5,000	\$20,000
Ilwaco	(360) 642-3145	0.00200	0.00200	0.00200	0.00200		\$20,000
Issaquah	(425) 837-3054	0.00120	0.00120	0.00150	0.00120	\$25,000	\$100,000
Kelso	(360) 423-0900	0.00100	0.00100	0.00200	0.00100		\$20,000
Kenmore	(425) 398-8900	0.00200 *				\$5,000	
Kent	(253) 856-6266	0.00046	0.00046	0.00152	0.00152	\$62,500	\$250,000
Lacey	(360) 491-3214		0.00100	0.00200		\$5,000	\$20,000
Lake Forest Park	(206) 368-5440	0.00200	0.00200	0.00200	0.00200	\$5,000	
Long Beach	(360) 642-4421	0.00200	0.00200	0.00200	0.00200	\$5,000	
Longview	(360) 442-5040	0.00100	0.00100	0.00200	0.00100		\$20,000
Mercer Island	(206) 275-7783	0.00100	0.00100	0.00100	0.00100		\$150,000
North Bend	(425) 888-1211	0.00200	0.00200	0.00200	0.00200	\$5,000	
Ocean Shores	(360) 289-2488	0.00200	0.00200	0.00200	0.00200	\$5,000	\$20,000
Olympia	(360) 753-8327	0.00100	0.00100	0.00200	0.00100	\$5,000	\$20,000
Pacific	(253) 929-1100	0.00200	0.00200	0.00200	0.00200	\$5,000	\$20,000
Port Townsend	(360) 385-2700	0.00200	0.00200	0.00200	0.00200	\$5,000	\$20,000
Rainier	(360) 446-2265	0.00200	0.00200	0.00200	0.00200	\$5,000	
Raymond	(360) 942-3451	0.00200	0.00200	0.00200	0.00200	\$5,000	\$20,000
Renton	(425) 430-6400	0.00085	0.00050	0.00085	0.00085		\$1,500,000
Roy	(253) 843-1113	0.00100	0.00200	0.00200	0.00100	\$5,000	\$20,000
Ruston	(253) 759-3544	0.00110	0.00153	0.00200	0.00102	\$5,000	\$20,000
Seattle***	(206) 684-8484	0.00219 v	0.00219 v	0.00423 v	0.00219 v		\$100,000
Shelton	(360) 426-4491	0.00100	0.00100	0.00100	0.00100	\$5,000	\$20,000
Snoqualmie	(425) 888-1555	0.0015	0.0015	0.0015	0.0015	\$5,000	
South Bend	(360) 875-5571	0.001	0.002	0.002	0.002	\$5,000	
Tacoma	(253) 591-5252	0.00110	0.00153	0.00400 e	0.00102		\$250,000
Tenino	(360) 264-2368	0.002	0.002	0.002	0.002	\$5,000	\$20,000
Tumwater	(360) 754-5855	0.001	0.001	0.002	0.001	\$5,000	\$20,000
Westport	(360) 268-0131	0.0025 e	0.005 e	0.005 e	0.0025 e	\$5,000	
Yelm	(360) 458-3244	0.001	0.002	0.002	0.001	\$5,000	

(v) = voter approved increase above statutory limit

(e) = rate higher than statutory limit because rate was effective prior to January 1, 1982 (i.e., grandfathered).

*Kenmore's B&O tax applies to heavy manufacturing only.

**Granite Falls repealed its B&O tax for all businesses other than extracting.

*** Seattle changed its rates effective January 1, 2017.

NOTE: Tax rates may apply to businesses categories other than those above. Thresholds are subject to change. Exemptions, deductions, or other exceptions may apply in certain circumstances. Contact the city finance department for more information.

Unique Exemptions

Other Exemptions:

Cities offering unique exemptions that are not defined in the Model Ordinance need to declare these variations from the Model. The following table shows some of the other exemptions offered by Cities.

<http://mrsc.org/Home/Explore-Topics/Finance/Revenues/Business-and-Occupation-Taxes.aspx>

Exemptions	Bellevue	Bellingham	Burien	Des Moines	Kelso	Kent	Longview	Olympia	Seattle	Shelton	Tacoma
Adult family homes	X	X									
Admission tax							X				
Any person who accepts or executes contracts with City									X		
Athletic exhibitions	X				X	X			X	X	X
Boxing/wrestling exhibitions		X						X			
Auctions							X				
Business conducted from a temporary booth or shelter							X				
Carnival, street fairs and circuses							X				
Certain corporations furnishing aid and relief						X		X	X		
Certain fraternal and beneficiary organizations		X				X		X	X		X
Certain hospitals and clinics									X		
Child care/child care resources & referral services by non-profits		X							X		
City	X										
City annexation for three years											X
Community events and Farmers Markets								X			

Unique Exemptions

Exemptions	Bellevue	Bellingham	Burien	Des Moines	Kelso	Kent	Longview	Olympia	Seattle	Shelton	Tacoma
Credit & debt services by non-profits		X									
Credit unions		X				X		X	X		X
Dances and dance halls							X				
Day care homes in residences	X										
Day care provided by churches									X		
Farmers - Agriculture	X	X			X	X		X	X	X	X
From Jan. 1, 2002 and thereafter for persons with gross income less than \$70,000)											X
Gambling activities subject to gambling tax	X						X				
Gross receipts taxed under other Municipal Code Sections								X	X		
Health maintenance organization, health care service contractor, certified health plan	X	X			X	X		X	X	X	
Healthcare facilities operated by religious society, religious association or religious corporation		X									
Higher minimum income threshold	X										
Income received by the US, Washington State,											X

Unique Exemptions

Exemptions	Bellevue	Bellingham	Burien	Des Moines	Kelso	Kent	Longview	Olympia	Seattle	Shelton	Tacoma
or any municipal subdivision											
Insurance business	X	X			X			X	X	X	X
International banking facilities	X					X	X	X	X	X	X
Interstate Trucking											
Investments – dividends from subsidiary corporations		X									
Non-profit corporations or organizations (organized under IRC 501(C)(3), (4), or (7))	X				X	X		X	X	X	
Non-profit healthcare organization costs											X
Non-profit Organizations – Credit and Debt Services									X		
Non-profit Organizations that are Guarantee Agencies, Issue Debt, or Provide Guarantees for Student Loans									X		
Operation of sheltered workshops						X		X	X		
Persons with gross income less than \$10,000 will not be required to submit a tax return											X
Public utilities subject to taxation											X
Pool or billiard tables							X				
Racing	X	X			X	X			X	X	X

Unique Exemptions

Exemptions	Bellevue	Bellingham	Burien	Des Moines	Kelso	Kent	Longview	Olympia	Seattle	Shelton	Tacoma
Real estate salesperson and associate broker commissions	X								X		
Research and development under federal contracts						X					
Ride sharing	X	X			X	X		X	X	X	X
Rummage and bake sale							X				
Sales of licenses to use grave sites											
Sales of secondhand merchandise conducted from residences							X				
Short-term public event											
Skill games							X				
Social welfare services – except employee benefit plans											
Taxes imposed by other code provisions							X				
Taxicab business							X				
Transport of empty containers											
United States, Washington State governmental entities						X					
United States gross income								X			
Utilities							X				

Deductions:

Unique Exemptions

The Model Ordinance requires that each City creates a series of deductions, credits, allocations of revenue that ensure that local B&O tax is only paid to one jurisdiction. Because it is a gross receipts tax, rather than a net income tax, deductions are typically limited and jurisdictions use exemptions to protect certain industries from taxation.

Additional Mandatory and Standard Deductions are also defined in the Model Ordinance:

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

(Mandatory)

(2) **Cash discount taken by purchaser.** In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the "value of product" provisions.

(3) **Credit losses of accrual basis taxpayers.** In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

(4) **Constitutional prohibitions.** In computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States. **(Mandatory)**

(5) **Receipts From the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington.** Effective January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer's representative outside the City but within the State of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

Unique Exemptions

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

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

State Shared Revenues

August 2017

Summary:

The City relies on three main state-shared revenue sources to fund certain programs in the General Fund: Criminal Justice Funding; Liquor Excise Tax & Board Profits; and, Marijuana Excise Tax. For 2010 through 2016, these sources provided on average 2.1% of the General Fund's operating revenues. The state legislature has taken significant actions that have threatened, and in some case actually reduced, the level of funding shared with the City.

- *Criminal Justice Funding:* Prior to 2000, state funding consisted of a combination of Motor Vehicle Excise Tax (MVET) and state general revenues. Due to the repeal of the MVET by the legislature, the MVET portion was eliminated. Subsequently, the only state funding anticipated is from the state's general fund.
- *Liquor Tax Distribution:* In 2012, legislation resulted in a permanent diversion of \$10 million per year of city and county money from the liquor excise tax fund to the state general fund. In addition, the 2013-2015 state budget reduced the share remitted to cities and counties from 35% to 22.5%. The distribution was returned to 35% with the 2015-2017 state budget.
- *Marijuana Excise Tax:* The formula in legislation adopted during the 2013-2015 state biennial budget required the legislature appropriate an amount equal to 30%, up to a maximum of \$15 million per year in fiscal years 2018 and 2019 and \$20 million annually thereafter, if marijuana excise tax collections deposited into the state general fund in the prior fiscal year exceed \$25 million, which it has easily surpassed every year so far. The state biennial budget for 2017-2019 amended the formula to lower the cap for fiscal years 2018 and 2019 to \$6 million annually unless the February 2018 forecast of state revenues for the general fund in the 2017-2019 biennium exceeds the amount estimated in the June 2017 revenue forecast by over \$18 million. In that event, the total share distributed to counties and cities will reset the cap to \$15 million annually for fiscal years 2018 and 2019, with the intent to reset all subsequent caps to \$6 million annually.

Criminal Justice Funding: There are two sources of dedicated funding for local criminal justice programs: an optional County sales tax of 0.1% and state shared funding. Prior to 2000, state funding consisted of a combination of Motor Vehicle Excise Tax (MVET) and state general revenues. Due to the repeal of the MVET by the State legislature, the MVET portion was eliminated, subsequently; the only state funding anticipated is from the State's General Fund.

Liquor Excise Tax & Board Profits: Revenue sources in this category used to be comprised of a portion of the liquor excise tax receipts collected by the State and a portion of the markups on liquor, commonly referred to as Liquor Board Profits. Liquor tax distribution has seen a lot of changes over the past ten years:

- Initiative 1183, passed in November 2011, privatized the distribution and retail sale of liquor effective June 1, 2012. The result of this initiative for local governments was that instead of a calculation based on the profits generated from state-run liquor sales, the revenue distribution for liquor profits is now based on the collection of license fees paid by retailers and distributors.
- 2012 legislation resulted in a permanent diversion of \$10 million per year (\$2.5 million per quarter) of city and county money from the liquor excise tax fund to the state general fund (RCW 82.08.170(3)). The reduction in liquor excise tax distributions is applied to cities and counties in the same proportion as the initial tax distribution; 80% of the liquor excise tax is distributed to cities and 20% to counties.

State Shared Revenues

August 2017

- The 2013-2015 state budget (3ESSB 5034, Section 1003) reduced the share of liquor taxes collected and remitted to cities and counties from 35% to 22.5%.
- The 2015-2017 state budget (ESSB 6052) returned the distribution from the liquor excise tax to 35% of revenues collected, and the current state budget for the 2017-2019 biennium (SSB 5883) maintains the 35% distribution.

Marijuana Excise Tax: HB 2136 was adopted during the 2013-2015 state biennial budget and amended the state's marijuana regulatory and taxation system. The state distributes a portion of the marijuana excise taxes to the Liquor and Cannabis Board (LCB) and various state agencies and programs on a quarterly basis. At the end of the fiscal year (June 30), the state treasurer must transfer any remaining unappropriated marijuana excise tax revenues into the state general fund.

Previously, the formula stated that beginning in state fiscal year 2018 (July 1, 2017 – June 30, 2018), if marijuana excise tax collections deposited into the state general fund in the prior fiscal year exceed \$25 million, which it has easily surpassed every year so far, then the legislature must appropriate an amount equal to 30% of those state general fund deposits to cities, towns, and counties, up to a maximum of \$15 million per year in fiscal years 2018 and 2019 and \$20 million annually thereafter.

However, the state biennial budget for 2017-2019 (SSB 5883) amended RCW 69.50.540 and lowered the cap for fiscal years 2018 and 2019 to \$6 million annually, with a caveat:

"If the February 2018 forecast of state revenues for the general fund in the 2017-2019 fiscal biennium exceeds the amount estimated in the June 2017 revenue forecast by over eighteen million dollars after adjusting for changes directly related to legislation adopted in the 2017 legislative session, the total share of marijuana excise tax revenue distributed to counties and cities [will reset the cap to \$15 million annually for fiscal years 2018 and 2019, with the intent to reset all subsequent caps to \$6 million annually]."

The City is considering the reduction in revenues for the remainder of 2017.