

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6603

AN ORDINANCE amending the Bellevue City Code (BCC) Sections 4.09.077, 4.09.090, and 4.09.100 and establishing an effective date.

WHEREAS, on February 18, 2003 the Bellevue City Council adopted Ordinance 5436 implementing a new chapter 4.09 of the Bellevue City Code adopting the model ordinance for Business and Occupation Tax which establishes a uniform set of rules administering a Business and Occupation tax.

WHEREAS, on December 3, 2012 the Bellevue City Council adopted Ordinance 6093 amending certain provisions of the Bellevue City Business and Occupation tax code consistent with changes to the model ordinance.

WHEREAS, on November 18, 2019 the Bellevue City Council adopted Ordinance 6487 amending certain provisions of the Bellevue City Business and Occupation tax code consistent with changes to the model ordinance.

WHEREAS, additional amendments to BCC Sections 4.09.077, 4.09.090, and 4.09.100 are necessary to further align with the model ordinance and to provide clarity.

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.09.077(F) of the Bellevue City Code is hereby amended to read as follows:

F. Effective January 1, 2020, gross income derived from activities taxed as services and other activities under BCC 4.09.050(B)(7) shall be apportioned to the city by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two.

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

- a. The individual is primarily assigned within the city;
- b. The individual is not primarily assigned to any place of business for the tax period and the individual performs 50 percent or more of his or her service for the tax period in the city; or

c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform 50 percent or more of his or her service in any city and the individual resides in the city.

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

3. Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under subsection (F)(2) of this section to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable. For purposes of this subsection (F)(3), "not taxable" means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

4. If the allocation and apportionment provisions of this subsection F do not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

- a. Separate accounting;
- b. The exclusion of any one or more of the factors;
- c. The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
- d. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

5. The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer's income pursuant to subsection (F)(4) of this section must prove by a preponderance of the evidence:

a. That the allocation and apportionment provisions of this subsection F do not fairly represent the extent of the taxpayer's business activity in the city; and

b. That the alternative to such provisions is reasonable. The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.

6. If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this section.

7. A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

Section 2. Section 4.09.090(I) of the Bellevue City Code is hereby amended to read as follows:

I. 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.

Section 3. Section 4.09.100(N) of the Bellevue City Code is hereby amended to read as follows:

N. Receipts from the Sale of Tangible Personal Property and Retail Services Delivered Outside the City but Within Washington. For tax periods beginning on or after January 1, 2008, amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property and retail services 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.

Section 4. If any provision of this Ordinance is held unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 5. This Ordinance shall take effect and be in force five (5) days after its passage and legal publication.

Passed by the City Council this _____ day of _____, 2021
and signed in authentication of its passage this _____ day of _____,
2021.

(SEAL)

Lynne Robinson, Mayor

Approved as to form:
Kathryn L. Gerla, City Attorney

Cheryl Zakrzewski, Assistant City Attorney

Attest:

Charmaine Arredondo, City Clerk

Published _____