

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6604

AN ORDINANCE amending the Bellevue City Code (BCC) Sections 4.09.050, 4.09.090 and 4.09.100 and establishing an effective date.

WHEREAS, on June 6, 1977, the Bellevue City Council adopted Ordinance 2435 adopting a square footage tax on persons for the act or privilege of engaging in business activities within the City.

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 established a uniform set of rules administering a Business and Occupation tax and incorporating the City's square footage 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 and amending other provisions to acknowledge the treatment of digital goods and intangibles for the purpose of calculating and reporting square footage tax.

WHEREAS, additional amendments to Bellevue City Code Sections 4.09.050, 4.09.090 and 4.09.100 will reaffirm and simplify the treatment of digital goods and intangibles for the purpose of calculating and reporting square footage tax, consistent with the intent of the Bellevue City Council in the adoption of Ordinance of 6093 on December 3, 2012.

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

Section 1. Section 4.09.050(A)(1) of the Bellevue City Code is hereby amended to read as follows:

A. Square Footage Tax. Upon every person within this city who maintains an office(s) or facility(ies), the amount of tax shall be equal to \$0.1834 for each quarterly period of a calendar year for each square foot of floor area of office space calculated to the nearest square foot. The tax rate set forth herein shall be administratively adjusted on January 1st of each year, beginning January 1, 2004, by the director, to reflect any change in the cost of living, as defined and calculated pursuant to BCC 4.03.020(B).

1. As to such person who maintains an office or facility that performs or supports an activity for which such person pays gross receipts business and

occupation tax under this chapter, an exemption from a portion of the tax of this section is granted. The exemption is calculated by taking the proportion that adjusted gross receipts bears to the total gross receipts of the business location multiplied by the taxable floor area (as defined in subsection (A)(2) of this section), used to perform or support the activity subject to gross receipts business and occupation tax (subsection B of this section).

Adjusted gross receipts” for the purpose of this subsection shall include total gross receipts of the business location less receipts from sales reportable under the wholesale or retail gross receipts tax classification delivered outside the city: (1) which are sales of digital products, as defined in BCC 4.09.030(OO), or (2) are deductible pursuant to BCC 4.09.100(F) or 4.09.100(N) and not taxed under subsection (B)(1) (extracting tax), (B)(2) (manufacturing tax) or (B)(5) (printing tax) of this section.

For any person with more than one location in the city, the floor space and receipts from locations within the city shall be combined for the purpose of calculating this exemption.

The director may promulgate rules and regulations regarding the manner, means and method of calculating the exemption.

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

A. Tax Exemption Thresholds. Any person engaging in any one or more business activities which are otherwise taxable pursuant to BCC 4.09.050(B), whose value of products, gross proceeds of sale, or gross income of business, less applicable deductions and exemptions, is less than or equal to \$125,000 for an annual reporting period, regardless of assigned reporting frequency, shall be exempt from taxation under such section. The annual exemption amount may be divided by the assigned filing frequency and applied to each return due and payable during the year. It is the taxpayer's responsibility to reconcile the exemption taken during the year to the allowable annual deduction. The administrative provisions in BCC 4.03.090 and 4.03.100 apply to any underpayment or overpayment of tax resulting from such reconciliation. In addition, any person whose net taxable income plus receipts from tangible personal property and digital products delivered outside the city is less than or equal to \$125,000 shall be exempt from taxation from BCC 4.09.050(A). The exemption level set forth in this subsection shall be administratively adjusted by the director on January 1st of each year, beginning on January 1, 2006, to reflect any change in the cost of living, as defined and calculated pursuant to BCC 4.03.020(B). The amount of the exemption level so calculated shall be rounded to the nearest \$5,000.

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

In computing the tax imposed by this chapter, the following items may be deducted from the measure of tax.

A. Fees, Dues, Charges. In computing tax, there may be deducted from the measure of tax amounts derived from bona fide:

1. Initiation fees;
2. Dues;
3. Contributions;
4. Donations;
5. Tuition fees;
6. Endowment funds; and
7. Charges made for operation of privately operated kindergartens.

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

B. Compensation from Public Entities for Health or Social Welfare Services – Exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, “employee benefit plan” includes the military benefits program authorized in 10 U.S.C. Section 1071 et seq., as amended, or amounts payable pursuant thereto.

C. 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 nontransient residential properties.

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

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

F. Receipts from Tangible Personal Property and Retail Services 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 or retail services that are delivered by the seller to the buyer or the buyer's representative at a location outside the state of Washington.

G. 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.

H. 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.

I. Repair, Maintenance, Replacement, Etc., of Residential Structures and Commonly Held Property – Eligible Organizations.

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

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

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

3. To qualify for the deductions under this subsection:

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

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

K. Amounts Representing Rental of Real Estate for Boarding Homes. In computing tax, there may be deducted from the measure of tax amounts representing the value of the rental of real estate for “boarding homes.” To qualify for the deduction, the boarding home must meet the definition of “boarding home,” and be licensed by the state of Washington under Chapter 18.20 RCW. The deduction shall be in the amount of 25 percent of the gross monthly billing when the boarder has resided within the boarding home for longer than 30 days.

L. Radio and Television Broadcasting – Advertising Agency Fees – National, Regional, and Network Advertising – Interstate Allocations. In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:

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

M. 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.

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.

O. 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 other 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. For the purposes of this section, a “professional employer organization” and “professional employer

services” shall have the same meanings as in RCW 82.04.540, as it now exists or as it may be amended.

Section 4. The changes adopted in Sections 1 through 3 of this Ordinance shall apply prospectively and retroactively to January 3, 2013.

Section 5. 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 6. 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 _____