

CITY OF ILWACO

ORDINANCE #755B

AN ORDINANCE ESTABLISHING AN ILWACO BUSINESS & OCCUPATION TAX IN THE AMOUNT OF 2/10TH OF ONE PERCENT ON GROSS SALES.

WHEREAS, the State of Washington provides for City Business & Occupation taxes in accordance with State mandated model code; and

WHEREAS, the City sees pressing needs for augmenting the City General Fund in developing the City budget; and

WHEREAS, the limit of 2/10th of one percent would appear to generate adequate revenue for dealing with budget shortfalls expeditiously (that is without a drawn out process involving balloting); and

WHEREAS, the City has applied the model code to Ilwaco-specific chapters for the Ilwaco Municipal Code; and

WHEREAS, it is necessary to develop a balanced budget for 2010 by December 31, 2009;

NOW, THEREFORE, the City Council of the City of Ilwaco does ordain to adopt the attached added Chapters 3.18 and 3.30 to the Ilwaco Municipal Code Title 3 Revenue and Finance.

Passed by the Council and approved by the Mayor this 14th day of December 2009.

Doug Hubbard, Mayor

Tammie Herman, Deputy Clerk; City of Ilwaco

Chapter 3.18 BUSINESS AND OCCUPATION TAX

3.18.1: PURPOSE:

The purpose of this chapter is to provide for the city's authority to license for revenue as authorized by article XI, section 12 of the Washington state constitution and Revised Code of Washington 35A.11.020.

3.18.2: 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 Ilwaco Municipal Code.

3.18.3: ADMINISTRATIVE PROVISIONS:

The administrative provisions contained in Chapter 3.30 of this title shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

3.18.4: 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: Includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

BUSINESS AND OCCUPATION TAX OR GROSS RECEIPTS TAX: 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.

COMMERCIAL OR INDUSTRIAL USE: The following uses of products, including byproducts, by the extractor or manufacturer thereof:

- A. Any use as a consumer; and
- B. The manufacturing of articles, substances or commodities.

DELIVERY: 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.

ELIGIBLE GROSS RECEIPTS TAX: A tax which:

- A. Is imposed on the act or privilege of engaging in business activities within section 3.18.5 of this chapter; and
- B. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and
- C. Is not, pursuant to law or custom, separately stated from the sales price; and
- D. 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
- E. 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 nonlocal jurisdiction above the county level.

ENGAGING IN BUSINESS:

- A. 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.
- B. This definition 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 minimis 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 definition are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection A of this definition. 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.

C. 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.

1. 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;
2. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the city;
3. Soliciting sales;
4. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;
5. 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;
6. Installing, constructing, or supervising installation or construction of, real or tangible personal property;
7. Soliciting, negotiating, or approving franchise, license, or other similar agreements;
8. Collecting current or delinquent accounts;
9. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials;
10. 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;
11. 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;
12. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings;

13. 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;

14. Investigating, resolving, or otherwise assisting in resolving customer complaints;

15. 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;

16. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf;

17. 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.

D. 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:

1. Meeting with suppliers of goods and services as a customer;

2. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions;

3. 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;

4. Renting tangible or intangible property as a customer when the property is not used in the city;

5. 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;

6. Conducting advertising through the mail;

7. Soliciting sales by phone from a location outside the city.

E. 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 D of this definition. The city expressly intends that engaging in business includes any activity sufficient to establish nexus for purposes of applying the

tax under the law and the constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

EXTRACTING: Is the activity engaged in by an extractor and is reportable under the extracting classification.

EXTRACTOR: 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: A person who performs under contract necessary labor or mechanical services for an extractor.

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

GROSS PROCEEDS OF SALES: The value proceeding or accruing from the sale of tangible personal property or for 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.

MANUFACTURER OR TO MANUFACTURE: A. 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. 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.

B. "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:

1. The production of special made or custom made articles;
2. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;
3. Crushing and/or blending of rock, sand, stone, gravel, or ore; and
4. 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.

C. "To manufacture" shall not include 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.

MANUFACTURING: The activity conducted by a manufacturer and is reported under the manufacturing classification.

PERSON: 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, nonprofit, or otherwise and the United States or any instrumentality thereof.

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

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:

- A. Amusement and recreation services including, but not limited to, golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows,

basketball, racquetball, 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;

B. Abstract, title insurance, and escrow services;

C. Credit bureau services;

D. Automobile parking and storage garage services;

E. Landscape maintenance and horticultural services but excluding: 1) horticultural services provided to farmers and 2) 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;

F. Service charges associated with tickets to professional sporting events; and

G. The following personal services: physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.

H. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

SALE AT RETAIL OR RETAIL SALE: A. 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 Revised Code of Washington 82.04.470 and who:

1. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or
2. 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
3. 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

4. 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
 5. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in Revised Code of Washington 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 subsection A1, A2, A3, A4 of this definition or this subsection A5 following such use.
 6. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection G of this definition, 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.
- B. Every sale of tangible personal property to persons engaged in any business activity which is taxable under section 3.18.5 of this chapter.
- C. Includes the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:
1. 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 healthcare facilities, and excluding services rendered in respect to live animals, birds and insects;
 2. 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;
 3. 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;

4. 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;
5. 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 Revised Code of Washington;
6. 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;
7. The sale of or charge made for tangible personal property, labor and services to persons taxable under subsections C1, C2, C3, C4, C5 and C6 of this definition 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 A of this definition and nothing contained in subsection A of this definition shall be construed to modify this subsection.

D. Includes the providing of competitive telephone service to consumers.

E. Includes the sale of canned software other than a sale to a person who presents a resale certificate under Revised Code of Washington 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

- F. Includes 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).
- G. Includes 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.
- H. Includes 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 Revised Code of Washington, 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).
- I. 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.
- J. Shall not include the sale of or charge made for labor and services rendered for environmental remedial action.

SALE AT WHOLESALE, WHOLESALE SALE: Any sale of tangible personal property 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 Revised Code of Washington 80.04.010 for the purpose of resale, as contemplated by Revised Code of Washington 35.21.715.

SALE, CASUAL OR ISOLATED SALE:

Casual Or Isolated Sale: A sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

Sale: 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.

SERVICES: Those activities that do not fall within one of the other tax classifications used by the city.

TAXPAYER: 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 OF PRODUCTS:

A. The value of products, including byproducts, 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 byproducts by the seller.

B. Where such products, including byproducts, are extracted or manufactured for commercial or industrial use; and where such products, including byproducts, 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 City may prescribe rules for the purpose of ascertaining such values.

C. Notwithstanding subsection B of this definition, 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: 1) 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.

VALUE PROCEEDING OR ACCRUING: 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.

WHOLESALE: Engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

3.18.5: TAX IMPOSED:

A. Except as provided in subsection B 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 byproducts, as the case may be, as follows:

1. 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 byproducts, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of two-tenths of one percent ($\frac{2}{10}$ of 1 percent). The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the city.
2. 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 byproducts, manufactured within the city, multiplied by the rate of two-tenths of one percent ($\frac{2}{10}$ of 1 percent). The measure of the tax is the value of the products, including byproducts, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the city.
3. Upon every person engaging within the city in the business of making sales at wholesale; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of two-tenths of one percent ($\frac{2}{10}$ of 1 percent).

4. 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 two-tenths of one percent ($\frac{2}{10}$ of 1 percent).
 5. Upon every person engaging within the city in the business of: a) printing, b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, c) publishing newspapers, magazines and periodicals, d) extracting for hire, and e) 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 two-tenths of one percent ($\frac{2}{10}$ of 1 percent).
 6. 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 two-tenths of one percent ($\frac{2}{10}$ of 1 percent).
 7. Upon every other person engaging within the city in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of two-tenths of one percent ($\frac{2}{10}$ of 1 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.
- B. 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 byproducts, as the case may be, from all activities conducted within the city during any calendar year is equal to or less than twenty thousand dollars (\$20,000.00), or is equal to or less than five thousand dollars (\$5,000.00) during any quarter if on a quarterly reporting basis.

3.18.6: CONTRACTS 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 section 3.18.10 of this chapter, as to such persons the amount of

tax shall be equal to the gross contract price multiplied by the rate under section 3.18.5 of this chapter that would otherwise apply if the sale or service were taxable pursuant to that section.

3.18.7: CREDIT FOR BUSINESS ACTIVITIES:

- A. Taxable Business Activities: Persons who engage in business activities that are within the purview of two (2) or more subsections of section 3.18.5 of this chapter shall be taxable under each applicable subsection.
- B. Undue Burden: 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.
- C. Documentation: 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.
- D. Selling Products Extracted Or Manufactured: 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: 1) with respect to the manufacturing of the products sold in the city, and 2) with respect to the extracting of the products, or the ingredients used in the products, sold in the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.
- E. Manufactured Products Using Ingredients Extracted: 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 taxes paid with respect to extracting the ingredients of the products manufactured in the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.
- F. Selling Products Printed, Or Published And Printed: 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.

3.18.8: DEDUCTIONS FOR TAXES DUE PRIOR TO JANUARY 1, 2008:

A. Same Activity In More Than One Jurisdiction: 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:

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

B. Person Manufacturing Products Within And Without: 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.

3.18.9: SALE OF 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).

3.18.10: ALLOCATION AND APPORTIONMENT OF INCOME:

Gross income, other than persons subject to the provisions of chapter 82.14A Revised Code of Washington, shall be allocated and apportioned as follows:

A. Gross income derived from all activities other than those taxed as service or royalties under subsection 3.18.5A7 of this chapter shall be allocated to the location where the activity takes place.

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

C. Gross income derived from activities taxed as services and other activities taxed under subsection 3.18.5A7 of this chapter 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 (2).

1. The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if: a) the individual is primarily assigned within the city; b) the individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent (50%) or more of his or her service for the tax period in the city; or c) the individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent (50%) or more of his or her service in any city and the employee resides in the city.
2. The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if: a) the customer location is in the city; or b) the income producing activity is performed in more than one location and a greater proportion of the service income producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or c) the service income producing activity is performed within the city, and the taxpayer is not taxable in the customer location.
3. If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable: a) separate accounting; b) the use of a single factor; c) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

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

APPORTIONABLE INCOME: 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.

COMPENSATION: 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.

CUSTOMER LOCATION: The city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

INDIVIDUAL: 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.

PRIMARILY ASSIGNED: The business location of the taxpayer where the individual performs his or her duties.

SERVICE TAXABLE INCOME OR SERVICE INCOME: Gross income of the business subject to tax under either the service or royalty classification.

TAX PERIOD: 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.

TAXABLE IN THE CUSTOMER LOCATION: 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.

E. 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.

3.18.11: PRINTING AND PUBLISHING ACTIVITIES:

Notwithstanding Revised Code of Washington 35.102.130, 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 Revised Code of Washington 82.04.280(1) by the department of revenue.

3.18.12: EXEMPTIONS:

- A. 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 "Utilities Tax", of this title.
- B. Investments: 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.
- C. Employees:
 - 1. This chapter shall not apply to any person in respect to the person's employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of employee shall include those persons that are defined in the internal revenue code, as hereafter amended.
 - 2. A booth renter is an independent contractor for purposes of this chapter.
- D. 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.
- E. 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 Revised Code of Washington 19.146.050 and any rules adopted by the director of financial institutions.
- F. 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 Revised Code of Washington 82.36.010 and exempt under Revised Code of Washington 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.
- G. Sale Or Distribution Of Liquor: This chapter shall not apply to liquor as defined in Revised Code of Washington 66.04.010 and exempt in Revised Code of Washington 66.08.120.

H. Casual And Isolated Sales: This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

I. Accommodation Sales: This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where: 1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and 2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

J. 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.

3.18.13: DEDUCTIONS:

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

A. 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.

B. Cash Discount: 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.

C. Credit Losses: 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.

D. 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.

E. Property And 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.

F. 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.

3.18.14: 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.

Chapter 3.30
ADMINISTRATIVE PROVISIONS FOR LOCAL TAXES

3.30.1: PURPOSE:

The purpose of this chapter is to provide consistency in administration of all locally collected taxes.

3.30.2: APPLICATION:

The provisions of this chapter shall apply with respect to the taxes imposed under chapters 3.08, "Leasehold Excise Tax", 3.12, "Real Estate Excise Tax", and 3.18 "Business And Occupation Tax", of this title and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter or section. In the event of a conflict regarding the administrative requirements of this chapter and the administrative requirements of the chapter which provides for the imposition of the tax, the administrative requirements of the latter such chapter shall prevail.

3.30.3: DEFINITIONS:

For purposes of this chapter, the definitions contained in 3.18 of this title shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply:

REPORTING PERIOD:

- A. A one month period beginning the first day of each calendar month (monthly); or
- B. A three (3) month period beginning January 1, April 1, July 1 or October 1 of each year (quarterly); or
- C. A twelve (12) month period beginning January 1 of each year (annual).

RETURN: Any document a person is required by the city to file to satisfy or establish a tax or fee obligation that is administered or collected by the city and that has a statutorily defined due date.

SUCCESSOR: Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

TAX YEAR OR TAXABLE YEAR: The calendar year.

3.30.4: LICENSE REQUIREMENTS:

A license shall be required pursuant to Title 5 of this Code.

3.30.5: PROCEDURES:

- A. Other than any annual license fee or registration fee assessed under this Code, the tax imposed by this chapter shall be due and payable in quarterly installments. At the City's discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Tax payments are due on or before the last day of the next month following the end of the assigned reporting period covered by the return.
- B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the City. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.
- C. Tax returns must be filed and returned by the due date whether or not any tax is owed.
- D. For purposes of the tax imposed by Chapter 3.18 of this title, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than five thousand dollars (\$5,000.00) in the current quarter, shall file a return, declare no tax due on their return, and submit the return to the City. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.
- E. A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity.
- F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or city or federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, or city or federal legal holiday.
- G. If any taxpayer fails, neglects or refuses to make a return as and when required in this chapter, the City is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the City's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the city by the taxpayer. The City shall notify the taxpayer by mail or e-mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

3.30.6: PAYMENTS:

- A. Taxes shall be paid to the City in United States currency by bank draft, certified check, cashier's check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the City. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the City shall not discharge the tax or fee due unless the amount paid is the full amount due.
- B. A return or remittance that is transmitted to the city by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the post office upon the envelope containing it. The City may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the city electronically shall be deemed filed or received according to procedures set forth by the City.
- C. If a written request is received prior to the due date, the City, for good cause, may grant, in writing, additional time within which to make and file returns.
- D. The City shall keep full and accurate records of all funds received or refunded. The City shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.
- E. For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.
- F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a "nonsufficient funds" (NSF) charge as per the fee resolution is received by the City. Any license issued upon payment with an NSF check will be considered void, and shall be returned to the City. No license shall be reissued until payment of the NSF fee is received.
- G. The City is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

3.30.7: RECORDS; RETENTION, INSPECTION:

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable; which records

shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the City or its duly authorized agent. Every person's business premises shall be open for inspection or examination by the City or a duly authorized agent.

A. If a person does not keep the necessary books and records within the city, it shall be sufficient if such person:

1. Produces within the city such books and records as may be required by the City;
or
2. Bears the cost of examination by the City's agent at the place where such books and records are kept; provided that the person electing to bear such cost shall pay in advance to the City the estimated amount thereof including round trip fare, lodging, meals and incidental expenses, subject to adjustment upon completion of the examination.

B. Any person who fails, or refuses a department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action, the correctness of any assessment of taxes made by the city for any period for which such records have not been provided, made available or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The City is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the city by the taxpayer. The City shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

3.30.8: ACCOUNTING METHODS:

A. A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer's books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep books of account on a cash receipts basis must file returns with amounts based on the accrual method.

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

3.30.9: PUBLIC WORK CONTRACTS:

The City may, before issuing any final payment to any person performing any public work contract for the city, require such person to pay in full all license fees or taxes due

under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the City a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

3.30.10: UNDERPAYMENT OF TAX:

A. If, upon examination of any returns, or from other information obtained by the City, it appears that a tax or penalty less than that properly due has been paid, the City shall assess the additional amount found to be due and shall add thereto interest on the tax only. The City shall notify the person by mail or e-mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the City may provide in writing.

B.

1. The City shall compute interest in accordance with Revised Code of Washington 82.32.050 as it now exists or as it may be amended; or

2. If subsection B1 of this section is held to be invalid, then the provisions of Revised Code of Washington 82.32.050 existing at the effective date hereof shall apply.

3.30.11: ASSESSMENT ISSUANCE:

The City shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four (4) years after the close of the calendar year in which they were incurred, except that the City may issue an assessment:

A. Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing ten (10) years prior to the close of the calendar year in which the person was contacted in writing by the City;

B. Against a person that has committed fraud or who misrepresented a material fact; or

C. Against a person that has executed a written waiver of such limitations.

3.30.12: OVERPAYMENT OF TAX:

A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the City determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection B of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for, or making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the City discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the City and by the issuance of a city check or warrants drawn upon and payable from such funds as the city may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection C of this section, upon the filing with the City a certified copy of the order or judgment of the court.

E.

1. The City shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with Revised Code of Washington 82.32.060 as it now exists or as it may be amended; or

2. If subsection E1 of this section is held to be invalid, then the provisions of Revised Code of Washington 82.32.060 existing at the effective date hereof shall apply.

3.30.13: TIMELY FILE, PAY:

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the City by the due date, the City shall add a penalty in accordance with Revised Code of Washington 82.32.090(1), as it now exists or as it may be amended.

B. If the City determines that any tax has been substantially underpaid as defined in Revised Code of Washington 82.32.090(2), there shall be added a penalty in accordance with Revised Code of Washington 82.32.090(2), as it now exists or as it may be amended.

C. If a citation or criminal complaint is issued by the City for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with Revised Code of Washington 82.32.090(3), as it now exists or as it may be amended.

D. If the City finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the City a license as required by Title 5 of this code, the City shall impose a penalty in accordance with Revised Code of Washington 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection if the person who has engaged in business without a license obtains a license prior to being notified by the City of the need to be licensed.

- E. If the City determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with Revised Code of Washington 82.32.090(5), as it now exists or as it may be amended.
- F. If the City finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the City shall assess a penalty in accordance with Revised Code of Washington 82.32.090(6), as it now exists or as it may be amended.
- G. The penalties imposed under subsections A through E of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.
- H. The City shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.
- I. For the purposes of this section, "return" means any document a person is required by the city of Ilwaco to file to satisfy or establish a tax or fee obligation that is administered or collected by the city, and that has a statutorily defined due date.
- J. If incorporation into the city of Ilwaco code of future changes to Revised Code of Washington 82.32.090 is deemed invalid, then the provisions of Revised Code of Washington 82.32.090 existing at the effective date hereof shall apply.

3.30.14: CANCELLATION OF PENALTIES:

- A. The City may cancel any penalties imposed under subsection 3.30.13A of this chapter if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer's control, unable to file or pay by the due date. The City has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection C of this section.
 - B. A request for cancellation of penalties must be received by the City within thirty (30) days after the date the department mails the notice that the penalties are due. The request must be in writing and contain competent proof of all pertinent facts supporting a reasonable cause determination. In all cases the burden of proving the facts rests upon the taxpayer.
- C. The City may cancel the penalties in subsection 3.30.13A of this chapter one time if a person:
 - 1. Is not currently licensed and filing returns;

2. Was unaware of its responsibility to file and pay tax; and
3. Obtained business licenses and filed past due tax returns within thirty (30) days after being notified by the department.

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

3.30.15: BUSINESS SUCCESSOR:

- A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.
- B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as:
 1. The taxpayer shall produce a receipt from the city showing payment in full of any tax due or a certificate that no tax is due; or
 2. More than six (6) months has passed since the successor notified the City of the acquisition and the City has not issued and notified the successor of an assessment.
- C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.
- D. Notwithstanding the above, if a successor gives written notice to the City of the acquisition, and the department does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

3.30.16: ADMINISTRATIVE APPEAL:

Any person, except one who has failed to comply with section 3.30.7 of this chapter, aggrieved by the amount of the fee or tax determined by the City to be required under the provisions of this chapter may, pay the amount due, and appeal from such determination by filing a written notice of appeal with the hearings examiner within thirty (30) days from the date written notice of such amount was mailed to the taxpayer. A fifty dollar (\$50.00) filing fee shall be submitted with the appeal, which filing fee is required to process the appeal. The city clerk shall, as soon as practical, fix a time and place for the hearing of such appeal, and shall cause a notice of the time and place thereof to be

delivered or mailed to the parties. The decision of the hearings examiner shall indicate the correct amount of the fee or tax owing.

3.30.17: JUDICIAL REVIEW:

The taxpayer or the city may obtain judicial review of the hearings examiner's administrative decision by applying for a writ of review with the Pacific County superior court within thirty (30) days from the date of the hearings examiner's decision in accordance with Revised Code of Washington, other applicable law, and court rules. The city shall have the same right of review from the administrative decision as does a taxpayer.

3.30.18: RULES AND REGULATIONS:

The City shall have the power, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

3.30.19: AGREEMENTS WITH OTHER CITIES:

The City is authorized to enter into agreements with other Washington cities which impose an "eligible gross receipts tax":

- A. To conduct an audit or joint audit of a taxpayer by using an auditor employed by the city of Ilwaco, another city, or a contract auditor, provided, that such contract auditor's pay is not in any way based upon the amount of tax assessed.
- B. When administering business and occupation tax of chapter 3.18 of this title to allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one Washington city.
- C. When administering business and occupation tax of chapter 3.18 of this title to apply the city's tax prospectively where a taxpayer has no office or place of business within the city and has paid tax on all gross income to another Washington city where the taxpayer is located; provided that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the city.

3.30.20: MAILING OF NOTICES:

Any notice required by this chapter to be mailed to any taxpayer or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer or licensee as shown by the records of the City. Failure of the taxpayer or licensee to receive any such mailed notice shall not release the taxpayer or licensee from any tax, fee, interest, or any penalties

thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the City in writing about a change in the taxpayer's address.

3.30.21: TAX DECLARED ADDITIONAL:

The license fee and tax herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the city of Ilwaco except as herein otherwise expressly provided.

3.30.22: PUBLIC DISCLOSURE:

For purposes of this section, unless a different meaning is clearly established by context, the following definitions apply:

DISCLOSE: To make known to any person in any manner.

TAX INFORMATION: A. A taxpayer's identity;

- B. The nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over assessments, or tax payments, whether taken from the taxpayer's books and records or any other source;
- C. Whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing; or
- D. Other data received by, recorded by, prepared by, or provided to the City with respect to a taxpayer.

Provided, that tax information shall not include data, material, or documents that do not disclose information related to a specific or identifiable taxpayer.

- A. Tax returns and information may be "public records" as that term is defined in Revised Code of Washington 42.17.020. The City shall not disclose tax information if disclosure would violate Revised Code of Washington chapter 42.17 or any other law prohibiting disclosure.
- B. Tax information may be disclosed to the following:
 - 1. The mayor, city treasurer, members of the city council, city attorney, city clerk, or their authorized designees, for official purposes;
 - 2. Any agency or officer of the United States of America, the state of Washington, or a tax department of any state, county, city or town, provided that the agency or officer grants substantially similar privileges to the city, and further provided

that the agency or officer shall not further disclose the tax information except as authorized in this section;

3. The taxpayer to whom it pertains or to such person or persons as the taxpayer may designate in writing as the taxpayer's designee; except that tax information not received from the taxpayer shall not be so disclosed if the City determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the City that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court.

C. Nothing in this section shall prevent the use of tax information by the City or any other agency in any civil or criminal action involving any license, tax, interest, or penalty.

D. A person disclosing tax information to a person not entitled to receive that information under this section is guilty of a misdemeanor, and if the person violating this privacy requirement is an officer or employee of the city, such person may be required to forfeit their office or employment.

3.30.23: TAX CONSTITUTES DEBT:

Any license fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the city of Ilwaco and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

3.30.24: UNLAWFUL ACTIONS; VIOLATION; PENALTIES:

A. It shall be unlawful for any person liable for fees under this chapter (or other chapters as listed):

1. To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the City;
2. To make any false statement on any license application or tax return;
3. To aid or abet any person in any attempt to evade payment of a license fee or tax;
4. To fail to appear or testify in response to a subpoena issued pursuant to this chapter; or

5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

B. It is unlawful for any person, firm or corporation to violate or fail to comply with any of the provisions of this chapter. A violation of any provision of this chapter will qualify as an infraction. Each violation will be punished by a fine not to exceed two hundred fifty dollars (\$250.00) per violation nor to exceed a fine of two hundred fifty dollars (\$250.00) per day that violations occur. All proceedings for the civil violation will be in accordance with Section 1.20.020 of this code.

3.30.25: SUSPENSION OR REVOCATION OF BUSINESS LICENSE:

A. The City, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of this Code. The City, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefore. Any license issued under this Code may be suspended or revoked based on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact;
2. The licensee has failed to comply with any provisions of this title;
3. The licensee has failed to comply with any provisions of this code;
4. The licensee is in default in any payment of any license, fee, or tax owed to the city; or
5. The licensee or employee has been convicted of a crime involving the business.

B. Any licensee may, within seven (7) days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal setting forth the grounds therefore with the City. A copy of the petition must be provided by the licensee to the City and the city attorney on or before the date the petition is filed with the hearings examiner. The city clerk shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. After the hearing thereon the hearings examiner shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

No suspension or revocation of a license issued pursuant to the provisions of this section shall take effect until seven (7) days after the mailing of the notice thereof by the department, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the hearings examiner. All licenses which are suspended or revoked shall be surrendered to the city on the effective date

of such suspension or revocation.

The decision of the hearings examiner shall be final. The licensee and/or the department may seek review of the decision by the superior court of Washington in and for Thurston County within fourteen (14) days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the superior court.

- C. Upon revocation of any license as provided in this section no portion of the license fee shall be returned to the licensee.

3.30.26: CLOSING AGREEMENT:

The City may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the City and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

- A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the City or the taxpayer.
- B. In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

3.30.27: UNCOLLECTIBLE TAXES:

The City may charge off any tax, penalty, or interest that is owed by a taxpayer, if the City reasonably ascertains that the cost of collecting such amounts would be greater than the total amount that is owed or likely to be collected from the taxpayer. A written memorandum shall evidence such action.