

City of Blaine
Request for Council Action
Meeting Date: December 9, 2019

Subject: Ordinance 19-2940, Revising Chapter 3.81 of the Blaine municipal code and adopting a new Chapter 3.82 of the Blaine municipal code.

Department: Finance & City Attorney

Prepared By: _____
(Digital Signature)

Agenda Location: Consent Agenda Council Action Unfinished Business

Attachments:

1. Memorandum from the City Attorney's Office
 2. Ordinance 19-2940
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Background/Summary:

In 2019, the State Legislature passed two bills which amended portions of the state law pertaining to municipal business and occupational taxes, Chapter 35.102 RCW. The bills passed were HB 1059, related to the annual tax filing deadlines; and HB 1403 related to the apportionment process. These bills prompted changes to the model Business and Occupation Ordinance required by RCW 35.102.040. Cities that have a business and occupation tax must adopt the mandatory changes to the model ordinance by January 1, 2020. The updates are procedural or administrative in nature and do not change the tax rates or the business activities required to pay the tax.

Budget Implications: Current Budget New Budget Request Non-Budgetary

There are no budgetary implications.

Recommendation: Waive the second reading

Staff recommends that Council waive the second reading and approve Ordinance 19-2940, revising Chapter 3.81 of the Blaine municipal code and adopting a new Chapter 3.82 of the Blaine municipal code.

Reviewed By:

City Manager _____ Finance Director _____ City Clerk _____
(Digital Signature) (Digital Signature) (Digital Signature)

MEMORANDUM

TO: JEFF LAZENBY
FROM: TIM SCHERMETZLER 
RE: B&O TAX UPDATE
DATE: NOVEMBER 21, 2019
CC: JON SITKIN

I. OVERVIEW

In 2019, the Washington State Legislature passed two bills which amended portions of the state law pertaining to municipal business and occupational taxes, Chapter 35.102 RCW. The bills passed were HB 1059, related to the annual tax filing deadlines; and HB 1403, related to the apportionment process. These bills prompted changes to the model B&O Ordinance required by RCW 35.102.040. Cities must adopt the mandatory changes to the model ordinance by January 1, 2020.

II. SUMMARY OF UPDATES

- A. Change in Definition of “Engaging in Business”.** To comply with the model ordinance, the City will need to remove subsection (3)(q) from the definition of “engaging in business” in BMC 3.81.030. This was done to align with the definition in the model business license ordinance. This is a mandatory change.
- B. Added Definition of “Digital Automatized Services” and “Digital Products.”** To comply with the model ordinance, the City will need to revise BMC 3.81.077(E) to include definitions for “Digital Automatized Services” and “Digital Products” as those terms are defined in Chapter 82.04 RCW. These definitions are applicable to apportionment related to the sale of digital products in BMC 3.81.077(C). These are mandatory changes.
- C. Change in Apportionment Process.** Substitute House Bill 1403 changed the administration of municipal business and occupation tax apportionment by changing the definition of “customer location” and adding definitions for “Business activities tax” and “customer.” These changes are reflected in BMC 3.81.077(G). The changes in definition impact the apportionment calculations related to gross income, specifically the service income factor, in BMC 3.81.077(F). Additionally, a new subsection to BMC 3.81.077(F)(3) was added to provide guidelines for apportionment for jurisdictions where the taxpayer is not taxable (i.e., a taxpayer not subject to a business activities tax by that city or county, or by a foreign country). These are mandatory changes.

A Model Rule for Apportionment of Service Receipts beginning January 1, 2020 was developed by the Association of Washington Cities, which is attached hereto as **Exhibit A**. This model rule is for guidance purposes only.

III. ADMINISTRATIVE PROVISIONS FOR B&O TAX COLLECTION

In September 2019, the Washington Association of Cities produced a revised model ordinance for administrative provisions applicable to the collection of B&O taxes. The City has not adopted any administrative provisions specific to the collection of B&O taxes. The City intends to utilize an online service provided from Azavar Audit Solutions, Inc. ("Azavar") to offer businesses paying the B&O tax an online tax filing option. In addition to the online service offered by Azavar, the City will still accept paper returns. The draft ordinance authorizing the updates in the City's B&O Ordinance also proposes adoption of a new section to the BMC outlining the administrative procedures for the collection of the B&O tax.

IV. CONCLUSION

A draft ordinance update is enclosed with this memorandum for your review. Let us know if the City is interested in adding any further revisions to the draft ordinance. Please contact us if you have any questions.

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ORDINANCE NO. 19-2940

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
BLAINE, WASHINGTON, REVISING CHAPTER 3.81 OF THE
BLAINE MUNICIPAL CODE AND ADOPTING A NEW CHAPTER
3.82 OF THE BLAINE MUNICIPAL CODE**

WHEREAS, on March 25, 2019, the City of Blaine (the "City") City Council passed Ordinance No. 2924, which adopted a new section to the City Code authorizing a business and occupational tax pursuant to the provisions of Chapter 35.102 RCW; and

WHEREAS, the Washington State Legislature passed, and the Governor signed, Substitute House Bill 1403, an act amending Chapter 35.102 RCW relating to the administration of municipal business and occupational tax apportionment, which goes into effect on January 1, 2020; and

WHEREAS, the Washington State Legislature passed, and the Governor signed, Second Substitute House Bill 1059, an act amending RCW 35.102.070 and RCW 82.32.045 related to extending the business and occupational tax return filing due date for annual filers; and

WHEREAS, in response to Substitute House Bill 1403 and Second Substitute House Bill 1059, certain provisions of the model ordinance developed pursuant to RCW 35.102.040 were updated; and

WHEREAS, the City desires to adopt administrative provisions outlining the procedures for the collection of the business and occupational tax; and

WHEREAS, the City Council reviewed the updates to the model ordinance developed pursuant to RCW 35.102.040 and desires to make the noted changes in the B&O Tax Code; and

WHEREAS, this Ordinance is adopted pursuant to the powers and authority of the City, including the powers set forth in RCW Chapters 35.21 et seq., 35A.82.020, and 35.102; and

NOW, THEREFORE, THE CITY OF BLAINE, WASHINGTON DOES ORDAIN AND AMEND THE FOLLOWING SECTIONS OF THE BLAINE MUNICIPAL CODE, REPEALING THE EXISTING CODE PROVISIONS AND REPLACING THE SAME AS SET FORTH BELOW:

SECTION 1: The following Sections of the Blaine Municipal Code 3.81.030 are amended as follows:

Subsection (3)(q) under the definition of "Engaging in Business" shall be deleted.

SECTION 2: The following sections of the Blaine Municipal Code 3.81.077 are amended as follows:

Subsection (E) shall be repealed and replaced with the following:

E. For the purposes of subsection (C)(1) through (C)(5) of this section, the following definitions apply:

1. "Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW 82.04.192.
2. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 82.04.050(2)(g) and (6)(c).
3. "Receive" has the same meaning as in RCW 82.32.730.

Subsection (F) shall be repealed and replaced with the following:

F. Gross income derived from activities taxed as services and other activities taxed under BMC 3.81.050(A)(7) shall be apportioned to the City by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two (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 50 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 50 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 the customer location is in the City.

3. Gross income of the business for engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the City, and the gross income is attributable under (2) of this subsection (F) to a city or unincorporated

area of a county within the United States or to a foreign county in which the taxpayer is not taxable. For purposes of this subsection (F)(3), “not taxable” means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.

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

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

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

- a. That the allocation and apportionment provisions of this subsection (F) do not fairly represent the extent of the taxpayer’s business activity in the City; and
- b. That the alternative to such provision is reasonable.

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

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

7. A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer’s income shall not have that permission revoked with respect to

transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

Subsection (G) shall be repealed and replaced with the following:

The definitions in this subsection apply throughout this section:

1. "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.
2. "Business Activities Tax" means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or tax imposed on the privilege of doing business.
3. "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the Federal Internal Revenue Code.
4. "Customer" means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income of the business.
5. "Customer location" means the following:
 - a. For a customer not engaged in business, if the service does not require the customer to be physically present, where the service is performed.
 - b. For a customer not engaged in business, if the service does not require the customer to be physically present:
 - i. The customer's residence; or
 - ii. If the customer's residence is unknown, the customer's billing/ mailing address.
 - c. For a customer engaged in business:
 - i. Where the services are ordered from;
 - ii. At the customer's billing/ mailing address if the location from which the services are ordered is not known; or

iii. At the customer's commercial domicile if none of the above are known.

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

7. "Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

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

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

SECTION 3: A new section of the Blaine Municipal Code shall be created regarding the administrative procedures for the collection of the business and occupational tax authorized in Chapter 3.81 BMC. This new section is set forth in **Exhibit A** of this Ordinance.

SECTION 4: Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance, and each section, subsection, sentence, clause or phrase thereof, separately and independently and, in the event that any one or more sections, subsections, sentences, clauses or phrases may later be declared invalid or unconstitutional, then any ordinance or ordinances, or parts thereof, amended or repealed by such portion of this Ordinance, shall remain in full force and effect.

SECTION 5: Effective Date. This Ordinance is effective upon its passage by the City Council and approval by the Mayor, if approved; otherwise, this Ordinance shall take effect and be in force on January 1, 2020.

CITY OF BLAINE, WASHINGTON

ATTEST/AUTHENTICATE:

Bonnie Onyon, Mayor

Samuel Crawford, City Clerk

APPROVED AS TO FORM:

Jonathan K. Sitkin
City Attorney

EXHIBIT A

**Chapter 3.82
ADMINISTRATIVE PROCEDURES FOR COLLECTION OF
BUSINESS AND OCCUPATIONAL TAX**

Sections:

- 3.82.010 Purpose.**
- 3.82.015 Application of Chapter.**
- 3.82.020 Definitions.**
- 3.82.021 Definitions – References to Chapter 82.32 RCW.**
- 3.82.025 Registration / License Requirements.**
- 3.82.030 Registration / License Certificates.**
- 3.82.040 When Tax is Due and Payable – Reporting periods – Monthly, quarterly, and annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.**
- 3.82.050 Payment Methods – Electronic Filing – Mailing Returns or Remittances – Time Extension – Deposits – Recording Payments – Payments Must Accompany Return – NSF Checks.**
- 3.82.060 Records to be Preserved – Examination – Estoppel to Question Assessment.**
- 3.82.070 Accounting Methods.**
- 3.82.080 Public Works Contracts – Payment of Fee and Tax Before Final Payment for Work.**
- 3.82.090 Underpayment of Tax, Interest, or Penalty – Interest.**
- 3.82.095 Time in Which Assessment may be Made.**
- 3.82.100 Overpayment of Tax, Penalty, or Interest – Credit or Refund – Interest Rate – Statute of Limitations.**
- 3.82.110 Late Payment – Disregard of Written Instructions – Evasion – Penalties.**
- 3.82.120 Cancellation of Penalties.**
- 3.82.130 Taxpayer Quitting Business – Liability of Successor.**
- 3.82.140 Administrative Appeal.**
- 3.82.150 Judicial Review of Administrative Appeal Decision.**
- 3.82.160 Director to Make Rules.**
- 3.82.170 Ancillary Allocation Authority of Director.**
- 3.82.180 Mailing of Notices.**
- 3.82.190 Tax Declared Additional.**
- 3.82.200 Public Disclosure – Confidentiality – Information Sharing.**
- 3.82.210 Tax Constituted Debt.**
- 3.82.220 Unlawful Actions – Violations – Penalties.**
- 3.82.230 Reserved.**
- 3.82.240 Closing Agreement Provisions.**
- 3.82.250 Charge-Off of Uncollectible Taxes.**
- 3.82.300 Severability.**

3.82.010 Purpose.

The purpose of this Chapter is to provide the administrative, procedural and other requirements for reporting, paying, and processing receipts from the business and occupational taxes levied by the City, and related matters.

3.82.015 Application of Chapter Stated.

The provisions of this Chapter shall apply with respect to the taxes imposed under Chapter 3.81 Blaine Municipal Code and under other titles, chapters, and sections in such a manner and to such an extent as indicated in each such title, chapter or section.

3.82.020 Definitions.

For the purposes of this Chapter:

The definition contained in Chapter 3.81 Blaine Municipal Code 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:

“BMC” means Blaine Municipal Code.

“Reporting period” means:

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

“Return” means 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” means 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” means the calendar year.

3.82.021 Definitions – References to Chapter 82.32 RCW.

Where provisions of Chapter 82.32 RCW are incorporated in BMC 3.82.090, “Department” as used in the RCW shall refer to the “Director” as defined in BMC 3.81.030 and “warrant” as used in the RCW shall mean “citation or criminal complaint.”

3.82.025 Registration / License Requirements.

Notwithstanding and in addition to any business license requirements of the City, each business subject to the tax imposed in Chapter 3.81 BMC shall register with the City by obtaining a City business license as required by Chapter 5.06 BMC and maintain such registration and license in a current status.

3.82.030 Registration / License Certificates.

A business license granted under Chapter 5.06 BMC is the registration certificate for the purposes of Chapter 3.81 BMC and this Chapter.

3.82.040 When Tax is Due and Payable – Reporting periods – Monthly, quarterly, and annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.

- A. Other than any annual license fee or registration fee assessed under this Chapter, the tax imposed by Chapter 3.81 BMC and provided for in this Chapter shall be due and payable in quarterly installments. At the Director’s discretion, businesses may be assigned to a monthly or annual reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, 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. Effective January 1, 2021, tax payments are due on or before the time as provided in RCW 82.32.045(1), (2), and (3) as now enacted or hereafter amended.
- B. Taxes shall be paid as provided in this Chapter and accompanied by a return on forms as prescribed by the Director, or via the electronic filing system approved by the Director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true. For the purposes of this subsection B, signatures include electronic signatures for taxpayers electing to utilize the electronic filing system.
- C. Tax returns must be filed, or electronically filed, and returned by the due date whether or not any tax is owed.
- D. For purposes of the tax imposed by Chapter 3.81 BMC, 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 the amount identified in BMC 3.81.050.B shall file a tax return on the form prescribed by the Director, declare no tax due on their tax return, and submit the tax return to the Director.

The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

- E. A taxpayer 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 Director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the Director's estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the City by the taxpayer. The Director shall notify the taxpayer by Regular United States 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.

3.82.050 Payment Methods – Electronic Filing – Mailing Returns or Remittances – Time Extension – Deposits – Recording Payments – Payments Must Accompany Return – NSF Checks.

- A. Taxes shall be paid to the Director 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 Director. 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 Director 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 Director 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 Director.
- C. If a written request is received prior to the due date, the Director, for good cause, may grant, in writing, additional time within which to make and file returns.
- D. The Director shall keep full and accurate records of all funds received or refunded. The Director 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 “non-sufficient funds” (NSF) charge of \$20.00 is received by the Director. Any license issued upon payment with a NSF check will be considered void, and shall be returned to the Director. No license shall be reissued until payment (including the \$20.00 NSF fee) is received.
- G. The Director 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.

3.82.060 Records to be Preserved – Examination – Estoppel to Question Assessment.

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 Director or its duly authorized agent. Every person’s business premises shall be open for inspection or examination by the Director 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 Director; or
 - 2. Bears the cost of examination by the Director’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 Director 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 Director 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 Director shall notify the taxpayer by Regular United States 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.

3.82.070 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.

3.82.080 Public Works Contracts – Payment of Fee and Tax Before Final Payment for Work.

The Director may, before issuing any final payment to any person performing any public works contract for the City, require such person to pay in full all license fees or taxes due under Chapter 3.81 BMC and this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the Director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public works.

3.82.090 Underpayment of Tax, Interest, or Penalty – Interest.

- A. If, upon examination of any returns, or from other information obtained by the Director, it appears that a tax or penalty less than that properly due has been paid, the Director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The Director shall notify the person by Regular United States 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 Director may provide in writing.
- B. For tax periods after December 31, 2004, the Director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.
 - 1. If subsection (B) of this section is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of the ordinance codified in this section shall apply.

3.82.095 Time in Which Assessment may be Made.

The Director 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 Director 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 Director;
- 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.

3.82.100 Overpayment of Tax, Penalty, or Interest – Credit or Refund – Interest Rate – Statute of Limitations.

- 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 Director 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 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 Director discovers that a refund or credit is due.
- C. Refunds shall be made by means of vouchers approved by the Director 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 Director a certified copy of the order or judgment of the Whatcom County Superior Court.
- E. For tax periods after December 31, 2004, the Director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060, as it now exists or as it may be amended.

1. If subsection (E) of this section is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of the ordinance codified in this section shall apply.

3.82.110 Late Payment – Disregard of Written Instructions – Evasion – Penalties.

- A. If payment of any tax due on a return to be filed by a taxpayer is not received by the Director by the due date, the Director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.
- B. If the Director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty in accordance with RCW 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 Director for the collection of taxes, fees, assessments, interest or penalties, there shall be added thereto a penalty in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.
- D. If the Director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this Chapter or Chapter 3.81 BMC and that person has not obtained from the Director a license as required by Chapter 5.06 BMC, the Director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection D if the person who has engaged in business without a license obtains a license prior to being notified by the Director of the need to be licensed.
- E. If the Director 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 RCW 82.32.090(5), as it now exists or as it may be amended.
- F. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the Director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.
- G. The penalties imposed under subsections A through F 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 Director 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 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 the incorporation into the BMC of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time the ordinance codified in this section is effective shall apply.

3.82.120 Cancellation of Penalties.

- A. The Director may cancel any penalties imposed under BMC 3.82.110(A) 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 Director 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 Director within thirty (30) days after the date the City 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 Director may cancel the penalties in BMC 3.82.110(A) 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 City.
- D. The Director shall not cancel any interest charged upon amounts due.

3.82.130 Taxpayer Quitting Business – Liability of 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 Director of the acquisition and the Director has not issued and notified the successor of an assessment.

- C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.
- D. Notwithstanding the above, if a successor gives written notice to the Director of the acquisition, and the Director 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.

3.82.140 Administrative Appeal.

- A. Any person, except one who has failed to comply with BMC 3.82.060, deeming itself aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this Chapter may pay the amount of tax due and appeal from such determination by filing a written notice of appeal with the Director and paying a one-hundred dollar (\$100.00) appeal fee to the City within Thirty (30) Calendar days from the written notice of such amount was mailed to the taxpayer.
- B. Upon receipt of a written notice of appeal and payment of the appeal fee, the finance director shall schedule a date for a public hearing of such appeal before the City Council to be held no sooner than fifteen (15) calendar days and no later than forty five (45) calendar days from receipt of the written notice.
- C. At least ten (10) calendar days prior to the public hearing, the City shall mail notice of the public hearing to the appellant, post the notice on the City website, and mail the notice to all other parties who have filed with the City clerk a written request for notice of the hearing.
- D. The City Council shall hear testimony, take evidence, and may hear oral argument and receive written briefs during an open public hearing. The City Council may establish a schedule for proceedings and establish any other procedures it deems reasonable to assure a fair hearing.
- E. The decision of the City Council is final.

3.82.150 Judicial Review of Administrative Appeal Decision.

Any person, except one who has failed to comply with BMC 3.82.060, having paid any tax as required and deeming itself aggrieved by the amount of the tax assessed, and after first exhausting the right of administrative appeal set forth in this Chapter, may seek judicial review in the Whatcom County Superior Court within twenty-one (21) days of the date of the decision of the City Council.

The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The trial in the Superior Court shall be de novo in accordance with the laws of the State of Washington. The burden shall rest upon the taxpayer to prove by clear, cogent

and convincing evidence that the tax paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax.

3.82.160 Director to Make Rules.

The Director 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.

3.82.170 Ancillary Allocation Authority of Director.

The Director 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 Blaine, 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. 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. 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.

3.82.180 Mailing of Notices.

Except as otherwise provided for in this Chapter, any notice required by this Chapter to be mailed to any taxpayer or licensee shall be sent by Regular United States mail, addressed to the address of the taxpayer or licensee as shown by the records of the Director. 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 Director in writing about a change in the taxpayer’s address.

3.82.190 Tax Declared Additional.

The license fee and tax levied by Chapter 3.81 BMC and this Chapter shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the City except as herein otherwise expressly provided.

3.82.200 Public Disclosure – Confidentiality – Information Sharing.

- A. For purposes of this section, defined terms shall be as set forth in BMC 3.81.030 and BMC 3.82.020; in addition, unless a different meaning is clearly established by context, the following definitions also apply:
1. “Disclose” means to make known to any person in any manner whatever a return or tax information.
 2. “Tax information” means:
 - 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 the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under the BMC for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this Chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material or documents so as to permit its disclosure.
 3. “City agency” means every City office, department, division, bureau, board, commission, or other City agency.
 4. “Taxpayer identity” means the taxpayer’s name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.
- B. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the Director nor any other person may disclose any return or tax information.
- C. This section does not prohibit the Director from:
1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

- a. In respect of any tax imposed under the BMC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or
- b. In which the taxpayer about whom such return or tax information is sought and another State agency are adverse parties in the proceeding;

2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to BNC 3.82.160, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the Director determines that such disclosure would compromise any investigation or litigation by any Federal, State, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

4. Disclosing such return or tax information, for official purposes only, to the Mayor or City Attorney, or to any City agency, or to any member of the City Council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

5. Permitting the City's records to be audited and examined by the proper State officer, his or her agents and employees;

6. Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or County prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or County prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this section;

7. Disclosing any such return or tax information to the proper officer of the Internal Revenue Service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state

or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the City;

8. Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection Agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these Federal agencies or their successors, for official purposes;

9. Publishing or otherwise disclosing the text of a written determination designated by the Director as a precedent pursuant to RCW 82.32.410;

10. Disclosing, in a manner that is not associated with other tax information, the taxpayer's name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, State or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American Industry Classification System or Standard Industrial Classification Code of a taxpayer, and the dates of opening and closing of business. Except that this subsection may not be construed as giving authority to the City or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

11. Disclosing such return or tax information that is also maintained by another Washington State or local governmental agency as a public record available for inspection and copying under the provisions of Chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

12. Disclosing such return or tax information to the United States Department of Agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

13. Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the City for a filed tax warrant, judgment, or lien against the real property;

14. Disclosing to a person against whom the City has asserted liability as a successor under BMC 3.82.130, return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

15. Disclosing real estate excise tax affidavit forms filed under applicable City code in the possession of the City, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

16. Disclosing such return or tax information to the court or hearing examiner in respect to the City's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the Director in connection with its official duties under this title or a civil or criminal investigation.

D. Disclosure of Information.

1. The Director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this subsection D. The disclosure must be in connection with the Department's official duties under this title, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The Department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the Department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, State tax returns, tax return workpapers, or other similar data, materials, or documents.

2. Before disclosure of any tax return or tax information under this subsection D, the Director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The Director may not disclose any tax return or tax information under this subsection D until the time period allowed in subsection (D)(3) of this subsection has expired or until the court has ruled on any challenge brought under subsection (D)(3) of this subsection.

3. The person in possession of the data, materials, or documents to be disclosed by the Department has Twenty (20) days from the receipt of the written request required under subsection (D)(2) of this subsection to petition the Whatcom County Superior Court for injunctive relief. The court must limit or deny the request of the Director if the court determines that:

a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the Department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

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

4. The Director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.
 5. Requesting information under subsection (D)(2) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.
- E. Service of a subpoena issued by the court or under applicable City code provision does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or under applicable City code provision may disclose the existence or content of the subpoena to that person's legal counsel.
 - F. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the City and any person acquiring knowledge of any return or tax information as provided under subsection (C)(4), (5), (6), (7), (8), (9), or (11) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the City, such person must forfeit such office or employment and is incapable of holding any public office or employment in this City for a period of two years thereafter.

3.82.210 Tax Constituted 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 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.

3.82.220 Unlawful Actions – Violations – Penalties.

- A. It shall be unlawful for any person liable for taxes or fees under this Chapter or Chapter 3.81 BMC:
 1. To violate or fail to comply with any of the provisions of this Chapter or any lawful rule or regulation adopted by the Director;
 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 applicable law;
 5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter.

- B. Any person who violates a provision of this Chapter, the rules and regulations created by the Director pursuant to BMC 3.82.160, or Chapter 3.81 BMC shall be subject to a civil penalty of \$250.00 per day, per violation. Upon a violation, the Director shall mail a Notice of Civil Violation to the taxpayer both Regular U.S. Mail and Certified Mail at the address of the taxpayer at the address shown on the taxpayer's business license and registration. The taxpayer may appeal the Notice of Civil Violation pursuant to BMC 3.82.140.
- C. If two or more such violations occur in the course of any 12-month period, then such violation shall be deemed a misdemeanor, and enforced pursuant to Chapter 1.28 BMC.
- D. In addition to the civil and criminal violations as provided for in this section, the Director, or designee, shall have the power and authority to suspend or revoke the taxpayer's business license or registration for any person violating this Chapter, the rules and regulations created by the Director pursuant to BMC 3.82.160, or Chapter 3.81 BMC. The Director, or designee, shall follow the suspension or revocations processes as provided in BMC 5.06.090.

3.82.230 Reserved.

3.82.240 Closing Agreement Provisions.

The Director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by Chapter 3.81 BMC and administered by this Chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the Director 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 Director or the taxpayer; and
- 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.

3.82.250 Charge-Off of Uncollectible Taxes.

The Director may charge off any tax, penalty, or interest that is owed by a taxpayer, if the Director 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; provided, that charge-offs in excess of \$500.00 shall require prior approval of the City Council.

3.82.300 Severability.

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

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