



ORDINANCE NO. 28647

1 AN ORDINANCE relating to business and occupation tax; amending Subtitle 6A
2 of the Tacoma Municipal Code, relating to the Tax Code, by amending
3 Sections 6A.10.040, 6A.30.077, and 6A.30.090 thereof to change the due
4 date for annual business and occupation tax returns, and to simplify how
taxpayers apportion income reported under the service and other tax
classification.

5 WHEREAS state legislation adopted in 2003 required all cities with local
6 business and occupation (“B&O”) taxes to adopt a city B&O tax model ordinance
7 pursuant to RCW 35.102, and
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9 WHEREAS the last update to the City’s B&O tax model ordinance occurred
10 in 2012, and during the summer of 2019, a work group of cities, in consultation with
11 the business community, revised the model ordinance to include the changes in
12 RCW 35.102 and to reflect other changes made to state law since 2012, and
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14 WHEREAS two mandatory changes to cities’ B&O tax model ordinance were
15 made by the 2019 State Legislation, in Substitute House Bill 1403 (“SHB 1403”) and
16 Second Substitute House Bill 1059 (“2SHB 1059”), and

17 WHEREAS SHB 1403 amended RCW 35.102 to, in part, simplify the two-
18 factor apportionment formula used by cities to assign gross receipts to a local
19 jurisdiction for municipal B&O purposes, and
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21 WHEREAS independent contractors receive IRS Form 1099 by January 31
22 of the year following payment, which does not leave sufficient time for independent
23 contractors to prepare and file their annual tax return due on January 31;

24 2SHB 1059 requires cities to change the due date for annual B&O tax filers from
25 January 31 to April 15, beginning in 2021, and
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WHEREAS the mandatory amendments to Title 6 are required to be adopted by the end of 2019, and staff is recommending that the proposed TMC amendments be approved: Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That Subtitle 6A of the Tacoma Municipal Code, relating to the Tax Code, is hereby amended as set forth in the attached Exhibit "A."

Passed _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



EXHIBIT "A"

**SUBTITLE 6A
TAX CODE**

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6A.10.040 Reporting periods – Due date – Filing Requirements – Threshold provisions – Failure to file returns.

A. The tax imposed by this subtitle 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.

B. 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, unless it is a Saturday, Sunday, or City or federal legal holiday, in which case the due date shall be the next succeeding day which is neither a Saturday, Sunday, or City or federal legal holiday. Effective January 1, 2021, for annual filers, tax payments, along with reports and returns on forms prescribed by the department are due on or before April 15 of the year immediately following the end of the period covered by the return as provided in RCW 82.32.045(2).

C. Taxes shall be paid as provided in this subtitle and accompanied by a return on forms as prescribed 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.

D. Tax returns must be filed and returned by the due date whether or not any tax is owed, except that persons whose gross income is exempt from taxation under 6A.30.90.V are not required to submit a tax return.

E. For purposes of the tax imposed by Chapter 6A.30, 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 \$20,000 in the current calendar year shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due, except that persons whose gross income is exempt from taxation under 6A.30.90.V are not required to submit a tax return.

F. A taxpayer that commences to engage in business activity shall file a return and pay the tax for the portion of the reporting period during which the taxpayer is engaged in business activity.

G. If any taxpayer fails, neglects, or refuses to make a return as and when required in this subtitle, the Director is authorized to determine the amount of the tax payable by obtaining facts and information upon which to base the Director’s estimate of the tax 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 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.

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**CHAPTER 6A.30
BUSINESS AND OCCUPATION TAX**

1 * * *

2 **6A.30.077 Allocation and apportionment of income when activities take place in more than
3 one jurisdiction.**

4 For tax reporting periods beginning January 1, 2008, gross income, other than persons subject to the
5 provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

6 * * *

7 E. For purposes of subsections 6A.30.077.C.1 through 6A.30.077.C.5, the following definitions
8 apply:

9 1. "Digital automated services," "digital codes," and "digital goods" have the same meaning as in
10 RCW 82.04.192;

11 2. "Digital products" means digital goods, digital codes, digital automated services, and the services
12 described in RCW 82.04.050(2)(g) and (6)(c); and

13 3. "Receive" has the same meaning as in RCW 82.32.730.

14 F. Effective January 1, 2020, Ggross income derived from activities taxed as services and other
15 activities taxed under 6A.30.050(A)(9) shall be apportioned to the city by multiplying
16 apportionable income by a fraction, the numerator of which is the payroll factor plus the service-
17 income factor and the denominator of which is two.

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

21 a. The individual is primarily assigned within the city;

22 b. The individual is not primarily assigned to any place of business for the tax period and the
23 employee performs 50 percent or more of the individual's service for the tax period in the city; or

24 c. The individual is not primarily assigned to any place of business for the tax period, the individual
25 does not perform 50 percent or more of the individual's service in any city and the employee
26 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.:

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. Gross income of the business from engaging in an apportionable activity must be excluded from
the denominator of the service income factor if, in respect to such activity, at least some of the
activity is performed in the city, and the gross income is attributable under subsection 2 of this
subsection F to a city or unincorporated area of a county within the United States or to a foreign
country in which the taxpayer is not taxable. For purposes of this subsection F.3, "not taxable"
means that the taxpayer is not subject to a business activities tax by that city or county within the



1 United States or by that foreign country, except that a taxpayer is taxable in a city or county within
2 the United States or in a foreign country in which it would be deemed to have a substantial nexus
3 with the city or county within the United States or with the foreign country under the standards in
4 RCW 35.102.050 regardless of whether that city or county within the United States or that foreign
5 country imposes such a tax.

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

11 a. Separate accounting;

12 b. ~~The use of a single factor~~ The exclusion of any one or more of the factors;

13 c. The inclusion of one or more additional factors that will fairly represent the taxpayer's business
14 activity in the city; or

15 d. The employment of any other method to effectuate an equitable allocation and apportionment of
16 the taxpayer's income.

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

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

22 b. That the alternative to such provisions is reasonable.

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

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

G. The definitions in this subsection apply throughout this section unless otherwise provided for
periods prior to January 1, 2020.

"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.

"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 a tax imposed on the privilege of doing business.

1 “Compensation” means wages, salaries, commissions, and any other form of remuneration paid to
2 individuals for personal services that are or would be included in the individual’s gross income
under the federal internal revenue code.

3 “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.

4 “Customer location” means the following:

5 A. For a customer not engaged in business, if the service requires the customer to be physically
present, where the service is performed.

6 B. For a customer not engaged in business, if the service does not require the customer to be
physically present:

7 1. The customer’s residence; or

8 2. If the customer’s residence is not known, the customer’s billing/ mailing address.

9 C. For a customer engaged in business:

10 1. Where the services are ordered from;

11 2. At the customer’s billing/ mailing address, if the location from which the services are ordered is
not known; or

12 3. At the customer’s commercial domicile, if none of the above are known.

13 “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.

14 “Customer location” means the city or unincorporated area of a county where the majority of the
contacts between the taxpayer and the customer take place.

15 “Primarily assigned” means the business location of the taxpayer where the individual performs
their duties.

16 “Service-taxable income” or “service income” means gross income of the business subject to tax
under either the service or royalty classification.

17 “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.

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

22 H. For periods prior to January 1, 2020, the following language is still in effect:

23 Section 6A.30.077.F.2 provides “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:

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1. The customer location is in the city; or
2. 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
3. The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.”

Section 6A.30.077.G provides “Customer location” means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

Section 6A.30.077.G provides “Taxable in the customer location” means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.

H. 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.

6A.30.090 Exemptions.

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O. Amounts derived from manufacturing, selling, or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term “motor vehicle fuel” is defined in RCW ~~82.36.01~~82.38.020 and exempt under RCW ~~82.36.440~~82.38.280, provided that any fuel not subject to the state fuel excise tax or any other applicable deduction or exemption will be taxable under this chapter.

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