

## Chapter 6A.10

### GENERAL TAX PROVISIONS

#### Sections:

- 6A.10.010 Purpose.
- 6A.10.015 Application of chapter.
- 6A.10.020 Tax definitions.
- 6A.10.021 Definition – References to Chapter 82.32 RCW
- ~~6A.10.030 Registration/license requirements.~~
- 6A.10.040 ~~When due and payable~~ – Reporting periods – ~~Monthly, quarterly, and annual returns~~ Due dates – Filing requirements - Threshold provisions ~~or relief from filing requirements~~ – ~~Computing time periods~~ – Failure to file returns.
- 6A.10.050 ~~Payment methods~~ – ~~Mailing~~ Filing returns or remittances – ~~Time extension~~ – ~~Deposits~~ – ~~Recording payments~~ – ~~Payment must accompany return~~ – ~~NSF checks.~~
- 6A.10.060 Records to be preserved – Examination – Estoppel to question assessment.
- 6A.10.070 Accounting methods.
- 6A.10.080 Public work contracts – Payment of ~~fee and~~ tax before final payment for work.
- 6A.10.090 Underpayment of tax, interest, or penalty – Interest.
- 6A.10.095 Time in which assessment may be made.
- 6A.10.100 Overpayment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.
- 6A.10.110 Late payment – Disregard of written instructions – Evasion – Penalties.
- 6A.10.120 ~~Cancellation~~ Waiver of penalties.
- 6A.10.125 Voluntary registration.
- 6A.10.130 Taxpayer quitting business – Liability of successor.
- 6A.10.140 ~~Administrative a~~ Appeal.
- 6A.10.150 Judicial review.
- 6A.10.160 Director to make rules.
- 6A.10.170 Ancillary allocation authority of Director.
- 6A.10.180 ~~Mailing~~ Delivering of notices.
- ~~6A.10.190 Tax declared additional.~~
- 6A.10.200 Public disclosure – Confidentiality – Information sharing.
- ~~6A.10.210 Tax constitutes debt.~~
- 6A.10.220 Unlawful actions – Violation – Penalties.
- ~~6A.10.230 Suspension or revocation of business registration.~~
- 6A.10.240 Closing agreement provisions.
- 6A.10.250 Charge-off of uncollectible taxes.
- 6A.10.260 Severability.

#### **6A.10.010 Purpose.**

This chapter provides for consistent administration of taxes identified in Subtitle 6A.

This section implements Washington Constitution Article XI, Section 12 and RCW 35.22.280(32) (first class cities), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. It is intended that this chapter be as uniform as possible among the various municipalities. Uniformity with provisions of state tax laws should not be presumed, and references in this section to statutory or administrative rule changes do not mean state tax statutes or rules promulgated by the Department of Revenue.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.015 Application of chapter.**

The provisions of this chapter shall apply with respect to the taxes imposed under this Subtitle 6A and under other titles, chapters, and sections in such manner and to such extent as indicated in each such subtitle, chapter, or section.

(Ord. 27297 § 1; passed Nov. 23, 2004)

## **6A.10.020 Tax definitions.**

~~For the purposes of this subtitle, the following terms, phrases, words, and abbreviations shall have the meanings given herein unless otherwise expressly stated. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, and words in the singular number include the plural number, and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Unless otherwise expressly stated, words not defined in this subtitle shall have their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.~~

The following definitions apply to each section in this subtitle of the Tacoma Municipal Code (“TMC”):

“Alcohol” means those substances controlled by the Liquor Control Board.

“Calendar year” means January 1 through December 31 of each year.

“Cash basis” means a basis of accounting which recognizes revenues and expenses as occurring in the reporting period when they were actually either received or paid.

“Certificate” means “~~registration~~license certificate” as defined ~~below~~in subtitle 6B.10.

“Charitable organization” means any organization recognized as a nonprofit corporation under the provisions of Chapter 24.03 of the Revised Code of Washington (“RCW”)<sup>1</sup> and exempt from the Washington State business and occupation tax pursuant to RCW 82.04.3651.

“City” means the City of Tacoma and all of its departments, including Tacoma Public Libraries and Tacoma Public Utilities. It does not include the Metropolitan Park District of Tacoma, Port of Tacoma, Tacoma School District, or Tacoma Housing Authority, which are separate municipal corporations.

“Department” means the Tax and License Division of the Finance Department of the City or any successor department.

“Director” means the Director of the Finance Department of the City or any officer, agent, or employee of the City designated to act on the Director’s behalf.

“Gambling” means any activity included in the provisions of RCW 9.46.0237.

“Generally accepted accounting principles” means those national accounting standards promulgated by the Financial Accounting Standards Board for businesses and nonprofit associations or by the Governmental Accounting Standards Board for state agencies or local governments.

“Gross income” means the value proceeding or accruing by reason of the transaction of business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidence 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 without any deduction on account of losses.

“Gross receipts” has the same meaning as gross income. “Person” means 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.

“Records” means the books of accounts and other business-related records of a taxpayer subject to the City’s Tax Code or License Code. Such records include ledgers, subsidiary ledgers, invoices, receipts, registration and incorporation documents, federal, state and local tax returns, and any other records necessary to establish the amounts due under the provisions of the City’s Code.

---

<sup>1</sup> All references to the Revised Code of Washington are available upon request from the City Clerk’s Office.

~~“Registration certificate” means a non-transferable certificate issued by the Department required to be displayed at the place of business by all persons operating a business under the provisions of Subtitles 6A or 6B of the TMC.~~

“Reporting period” means:

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

“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 business 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” means the amount, usually based upon gross income, assessed upon a person doing business under the provisions of Subtitle 6A of the TMC for the privilege of doing business in the City.

“Tax Code” means the Subtitle 6A of the TMC.

“Tax year” or “taxable year” means the calendar year.

“Taxpayer” means any person subject to the provisions of Subtitles 6A and/or 6B of the TMC, regardless of whether they owe or have previously paid taxes to the City.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.021 Definitions – References to Chapter 82.32 RCW**

Where provisions of Chapter 82.32 RCW are incorporated in 6A.10 of this Title, "Department" as used in the RCW shall refer to the "Director" as defined in 6A.10.020 and "warrant" as used in the RCW shall mean "citation or criminal complaint."

(Ord. 27676 Ex. A; passed Dec. 18, 2007)

#### **~~6A.10.030 — Registration/license requirements~~**

~~No person, whether subject to the payment of a tax or license fee, shall engage in any business or activity in the City for which a license fee or tax may be imposed by this chapter without first obtaining and continuing to hold a valid registration certificate, herein designated “certificate,” issued under the provisions of this chapter. Any such certificate previously issued by the Department<sup>2</sup> or hereafter issued pursuant to the provisions of this chapter shall be valid as long as the person to whom the same is issued continues in business and pays the license fee or occupation tax due pursuant to the provisions of Title 6. Applications for the certificate shall be made to and issued by the Director on forms provided by the City.~~

~~Said certificate shall be personal and nontransferable. In case business is transacted at two or more separate places by one taxpayer, a separate certificate for each place at which business is transacted shall be required. Each certificate shall be numbered, shall show the name, place, and character of business of the taxpayer, such other information as the Director shall deem necessary, and shall at all times be conspicuously posted in the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer shall return their certificate to the Director and a new certificate shall be issued for the new place of business.~~

~~No person to whom a certificate has been issued shall allow any person for whom a separate certificate is required to operate under or display his or her certificate; nor shall such other person operate under or display such certificate.~~

(Ord. 27297 § 1; passed Nov. 23, 2004)

---

<sup>2</sup> Pursuant to Ordinance Nos. 13990, 14895, 17926, or 27010.

**6A.10.040    ~~When due and payable—Reporting periods – Monthly, quarterly, and annual returns~~Due date – Filing requirements - 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 title, t~~ The tax imposed by this chapter 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.

~~BC.~~ Taxes shall be paid as provided in this chapter 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.

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

~~DE.~~ 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 for persons whose gross income is exempt from taxation under 6A.30.90.V are not required to submit a tax return.

~~EF.~~ 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 subtitle~~, 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 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.

(Ord. 28268 Ex. A; passed Dec. 9, 2014; Ord. 27297 § 1; passed Nov. 23, 2004)

**6A.10.050    ~~Payment methods – Mailing Filing returns or remittances –Time extension – Deposits—Recording payments—Payment 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 on the date submitted.

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 Subtitle 6A.~~

~~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 twenty dollars (\$20) 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 twenty dollar (\$20) 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 Subtitle 6A.~~

~~H. The taxpayer's account will remain on an active status and be subject to all taxes, penalties, and interest until such time as the Director is notified in writing that the taxpayer has discontinued business activity in the City.~~

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.060 Records to be preserved – Examination – Estoppel to question assessment.**

A. Every person liable for any ~~fee or~~ tax imposed by Subtitle 6A shall keep and preserve, for a period of 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 a duly authorized agent. Every person's business premises shall be open for inspection or examination by the Director or a duly authorized agent.

AB. 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.

BC. 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 with respect to 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 mail of the amount of tax so determined, together with any penalty and, interest, ~~and fees~~ due; the total of such amounts shall thereupon become immediately due and payable.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.070 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.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.080 Public work 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 work contract for the City, require such person to pay in full all ~~license fees or taxes, interest and penalty~~ due under this subtitle 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 work.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.090 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, ~~interest~~ 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 mail~~ of the additional amount, which shall become due and shall be paid within 30 days from the date of the notice, or within such time as the Director may provide in writing.

~~B. 1. Interest owed on taxes due prior to January 1, 2003, shall be computed at 1 percent compounded each month, or portion thereof.~~

~~2. Interest imposed on reporting periods beginning on January 1, 2003 and prior to January 1, 2005, shall be computed from the last day of the month following the end of the reporting period and will continue to accrue until payment is made. In case of an audit, the interest shall be computed from the first day of the month following each calendar year or portion thereof included in the audit period.~~

~~3. For the purposes of subsection (2), the rate of interest to be charged to the taxpayer subject to the provisions of subsection (2) shall be an average of the federal short term rate as defined in 26 U.S.C. Sec. 1274(d) plus 2 percentage points. The rate shall be computed by taking an arithmetical average to the nearest percentage point of the federal short term rate, compounded annually. That average shall be calculated using the rates from 4 months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The rate shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.~~

~~4B.~~ For tax reporting periods beginning on or after December 31, 2004 the interest shall be computed in accordance with RCW 82.32.050 as it now exists or as it may be amended.

~~5. If 6A.10.090 B(3) is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.~~

(Ord. 27676 Ex. A; passed Dec. 18, 2007; Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.095 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 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 has not filed a tax return as required by this title for taxes due within the period commencing 10 years prior to the close of the calendar year in which the person ~~registered with the City 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.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.100 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 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 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 court.~~

~~E. 1. Interest on overpayment of taxes for reporting periods prior to 2003, refunds or credits of amounts paid or other recovery allowed to a taxpayer, the rate of interest shall be 3 percent per annum.~~

~~2. Interest on overpayments of taxes for reporting periods beginning on or after January 1, 2003 and prior to December 31, 2004, refunds or credits of amounts paid or other recovery allowed to a taxpayer, the rate of interest shall be the federal short term interest rate as outlined for assessments under Section 6A.10.090.B.3 less 2 percentage points.~~

~~3C.~~ Interest on overpayments of taxes for reporting periods beginning on or after January 1, 2005, shall be computed in accordance with RCW 82.32.060 as it now exists or as it may be amended.

~~4. If 6A.10.100 E(3) is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of this ordinance shall apply.~~

(Ord. 27676 Ex A; passed Dec. 18, 2007; Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.110 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, or a criminal penalty is imposed, for the collection of taxes, fees, assessments, interests, 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 Subtitle 6A and that person has not obtained from the Director a license as required by this Title 6, 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(~~67~~), 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 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 purpose 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.~~

~~H.~~ If incorporating future changes of RCW 82.32.090 into the City Municipal Code is deemed invalid, then the provisions of RCW 82.32.090 existing at the time this ordinance is effective shall apply.

(Ord. 27676 Ex A; passed Dec. 18, 2007; Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.120 ~~Cancellation-Waiver~~ of penalties.**

A. The Director may cancel any penalties imposed under Section 6A.10.110.A if ~~a~~the taxpayer:

~~1. s~~Shows that ~~the taxpayers 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.~~

~~B2. Submits Aa~~ request for ~~cancellation waiver~~ of penalties ~~in writing; and, must be received by the Director within 30 days after the date the Department mails the notice that the penalties are due.~~

~~3. Includes in T~~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.

~~CB.~~ The Director may ~~cancel-waive~~ the penalties in Sections 6A.10.110.A ~~one-time~~ if a person:

1. ~~Was~~Is not currently licensed and filing returns;

2. Was unaware of the person's responsibility to file and pay tax; and

3. ~~Paid and filed all~~Obtained-business license ~~fees~~ and ~~filed past due~~ tax returns within 30 days after being notified by the Department or entered into a payment agreement approved by the Director and the past due license fees and tax returns are paid within the terms outlined in the agreement. -

C. The Director may waive the penalties in 6A.10.110 when a person has filed and paid on time all tax returns required for the two calendar years prior to the year in which the tax return was filed late even if the reason for late filing does not meet the criteria of 6A.10.120.A or 6A.10.120.B.

D. The Director shall not ~~cancel-waive~~ any interest charged upon amounts due.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.125 Voluntary registration.**

In the case of any unregistered taxpayer doing business in the City that voluntarily registers prior to being contacted by the department, the department shall not assess for back taxes or interest for more than four calendar years prior to the year of registration. In addition, the late payment penalty imposed under TMC 6A.10.110(A) shall not apply.

(Ord. 27406 § 1; passed Aug. 30, 2005)

#### **6A.10.130 Taxpayer quitting business – Liability of successor.**

A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his or her business or his or her stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within 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 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 Department does not, within 6 months of the date it received the notice, issue an assessment against the taxpayer and ~~mail-deliver~~ a copy of that assessment to the successor, the successor shall not be liable for the tax.



(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.140     ~~Administrative a~~Appeal.**

Any taxpayer aggrieved by the amount of any ~~fee~~, tax, interest, or penalty found by the Department to be required under the provisions of this Subtitle 6A may, upon full payment of the amount assessed, appeal from such finding pursuant to the following procedures.

A. Form of appeal. Any appeal must be in writing and must contain the following:

1. The name and address of the taxpayer,
2. A statement identifying the determination of the Department from which the appeal is taken,
3. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the Department is alleged to have made in making the determination, and
4. A statement identifying the requested relief from the determination being appealed.

B. Time and place to appeal. Any appeal shall be filed with the City Clerk no later than 21 days following the date on which the determination of the Department was ~~delivered mailed~~ to the taxpayer. Failure to follow the appeal procedures in this section shall preclude the taxpayer's right to appeal.

C. Appeal hearing. The Office of the Hearing Examiner shall, as soon as practicable, 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 hearing shall be conducted in accord with the provisions of TMC 1.23.

D. Burden of proof. The appellant taxpayer shall have the burden of proving by a preponderance of the evidence that the determination of the Department is incorrect.

~~E. Hearing record. The Hearing Examiner shall make an electronic sound recording of each appeal unless the appeal is conducted solely in writing.~~

~~FE~~. Decision of the Hearing Examiner. Following the hearing, the Hearing Examiner shall enter a decision on the appeal, supported by written findings and conclusions in support thereof. A copy of the findings, conclusions and decision shall be mailed to the appellant taxpayer and to the Department. The decision shall state the correct amount of the ~~fee~~, tax, interest or penalty owing.

~~G. Refund. If the Hearing Examiner determines that the taxpayer is owed a refund, such refund amount shall be paid to the taxpayer in accordance with Section 6A.10.100.~~

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.150     Judicial review.**

The decision of the Hearing Examiner may be appealed by any person having paid any assessment as required by the Department, except one who has failed to keep and preserve books, records, and invoices as required in this chapter, by filing a proper request for a writ of review with the Pierce County Superior Court. A request for a writ of review must be filed within ~~30~~21 calendar days following the date that the decision of the Hearing Examiner was ~~delivered mailed~~ to the parties. Review by the superior court shall be on, and shall be limited to, the record on appeal created before the Hearing Examiner. The Department shall have the same right of review from a decision of the Hearing Examiner as does a taxpayer.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.160     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 Subtitle 6A or with law for the purpose of carrying out the provisions of this subtitle and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.170 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, 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.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.180 ~~Mailing~~ Sending of notices.**

Any notice required by this chapter to be ~~mailed~~ sent to any taxpayer ~~or licensee~~ shall be sent ~~by ordinary mail~~, ~~addressed to the~~ any 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.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **~~6A.10.190 — 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, except as herein otherwise expressly provided.~~

~~(Ord. 27297 § 1; passed Nov. 23, 2004)~~

#### **6A.10.200 Public disclosure – Confidentiality – Information sharing.**

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

- 1. Disclose” means to make known to any person in any manner.
- 2. "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, subtitle 6A, which is filed with the Director, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;
- 3. 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; and
  - d. Other data received by, recorded by, prepared by, furnished to, or collected by the Director with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the TMC 6A 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,

4. "City agency" means every City office, department, division, bureau, board, commission, or other City agency;

5. "Taxpayer identity" means the taxpayer's name, address, telephone number, registration or license 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 subtitle 6A 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 City are adverse parties in the proceeding;

2. Disclosing, subject to such requirements and conditions as the Director prescribes by rules adopted pursuant to 6A.10.160 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 Director 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 Director's records to be audited and examined by the proper city or 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 similar tribal officer, or county or city 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, tribal officer, or county or city 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;

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, for official purposes;

9. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, reseller permit numbers and the 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. This subsection may not be construed as giving authority to the Director to give, sell, or provide access to any list of taxpayers for any commercial purpose;

10. 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;

11. Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

12. 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 Director for a filed judgment, or lien against the real property;

13. Disclosing to a person against whom the Director has asserted liability as a successor under Chapter 6A.10.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded; or

14. Disclosing such return or tax information to the court or hearing examiner in respect to the Director's application for a subpoena if there is probable cause to believe that records in the possession of a third party will aid the Director in connection with its official duties relating to an audit, collection activity, or a civil or criminal investigation.

(D)(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 Director's official duties relating to an audit, collection activity, 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 Director may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the Director 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 (3) of this subsection has expired or until the court has ruled on any challenge brought under (3) of this subsection.

(3) The person in possession of the data, materials, or documents to be disclosed by the Director has twenty days from the receipt of the written request required under (2) of this subsection to petition the superior court of the county in which the petitioner resides 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 Director, 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 (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 by a hearing examiner 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 a hearing examiner 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 Director and any person acquiring knowledge of any return or tax information as provided under subsection C(4), (5), (6), (7), (8), 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.

(Repealed and reenacted by Ord. 28005 Ex. A; passed Jul. 26, 2011)

#### ~~**6A.10.210 — Tax constitutes debt.**~~

~~Any license fee or tax due and unpaid under this Title 6, 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.~~

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.220 Unlawful actions – Violation – Penalties.**

A. It shall be unlawful for any person liable for taxes ~~or fees~~ under ~~this Title~~ subsection 6A:

1. To violate or fail to comply with any of the provisions of this title 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 testify falsely in any investigation, audit, or proceeding conducted pursuant to this title.

B. Unless another criminal penalty has been prescribed for a violation of a specific provision of this chapter, violation of any of the provisions of Subtitle 6A is a misdemeanor. Any person failing to comply with any of the provisions of this subtitle or any lawful rule or regulation adopted by the Director pursuant thereto, upon conviction thereof, may be punished by a fine in any sum not to exceed \$1,000, or by imprisonment not exceeding 90 days, or by both such fine and imprisonment.

C. Penalties or punishments provided in this subtitle may be in addition to all other penalties provided by law.

(Ord. 27406 § 2; passed Aug. 30, 2005; Ord. 27297 § 1; passed Nov. 23, 2004)

#### ~~**6A.10.230 — Suspension or revocation of business registration.**~~

~~A. The Director shall have the power and authority to suspend or revoke any registration or license issued under the provisions of Title 6. The Director shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under Title 6 may be suspended or revoked based on one or more of the following grounds:~~

- ~~1. The registration 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 the TMC.~~
- ~~4. The licensee is in default in any payment of any license fee or tax under Title 6.~~
- ~~5. The licensee or employee has been convicted of a crime involving the business.~~

~~B. Any licensee may, within 10 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 ("petition") setting forth the grounds therefor with the City Clerk. A copy of the petition must be provided by the licensee to the Director and the~~

~~City Attorney on or before the date the petition is filed with the City Clerk. The hearing shall be conducted in accordance with the procedures for hearing contested cases set out in TMC 1.23. The Hearing Examiner 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 Hearing Examiner shall, after appropriate findings of fact and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the registration, and may impose any terms upon the continuance of the registration.~~

~~No suspension or revocation of a registration issued shall take effect until 10 days after the mailing of the notice thereof by the Director and, if appeal is taken as herein prescribed, the suspension or revocation shall be stayed pending final action by the Hearing Examiner. All registrations which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.~~

~~The decision of the Hearing Examiner shall be final. The licensee and/or the Director may seek review of the decision by the Pierce County Superior Court within 21 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.~~

~~Upon revocation of any license as provided in this title, no portion of the license fee shall be returned to the licensee.~~

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.240 Closing agreement provisions.**

The Director may enter into an agreement, in writing, with any person relating to the liability of such person with respect of any tax, interest or penalties imposed by any of the chapters within Subtitle 6A 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 liability or 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.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.250 Charge-off of uncollectible taxes.**

The Director may charge off in accordance with TMC 1.06.226 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.

(Ord. 27297 § 1; passed Nov. 23, 2004)

#### **6A.10.260 Severability.**

If any provision of this Subtitle 6A or its application to any person or circumstance is held invalid, the remainder of the subtitle or the application of the provision to other persons or circumstances shall not be affected.

(Ord. 27297 § 1; passed Nov. 23, 2004)



