



# SEATTLE CITY COUNCIL

## Legislative Summary

CB 119682

Record No.: CB 119682

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125996

In Control: City Clerk

File Created: 09/18/2019

Final Action: 12/02/2019

**Title:** AN ORDINANCE relating to the business license tax; repealing business license standards for periods prior to 2008; amending apportionment provisions to reflect amendments to the model business license tax ordinance and other state amendments; amending Sections 5.45.081, 5.45.082, and 5.45.090 of the Seattle Municipal Code; and repealing Section 5.45.080 of the Seattle Municipal Code.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Bagshaw

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Uploaded By: adam.schaefer@seattle.gov

Filing Requirements/Dept Action:

### History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	09/23/2019	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	10/14/2019	sent for review	Council President's Office			
1	City Council	10/21/2019	referred	Select Budget Committee			
1	Select Budget Committee	11/06/2019					
1	Select Budget Committee	11/19/2019	pass				Pass
<b>Action Text:</b> The Committee recommends that City Council pass the Council Bill (CB).							
In Favor: 8 Chair Bagshaw, Member González, Member Harrell, Member Herbold, Member Juarez, Member O'Brien, Member Pacheco, Member Sawant							
Opposed: 0							

- 1 City Council 11/25/2019 passed Pass  
**Action Text:** The Council Bill (CB) was passed by the following vote, and the President signed the Bill:  
In Favor: 9 Councilmember Bagshaw, Councilmember González , Council  
President Harrell, Councilmember Herbold, Councilmember Juarez,  
Councilmember Mosqueda, Councilmember O'Brien, Councilmember  
Pacheco, Councilmember Sawant  
Opposed: 0
- 1 City Clerk 11/26/2019 submitted for Mayor  
Mayor's signature  
**Action Text:** The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
- 1 Mayor 11/27/2019 Signed
- 1 Mayor 12/02/2019 returned City Clerk
- 1 City Clerk 12/02/2019 attested by City Clerk  
**Action Text:** The Ordinance (Ord) was attested by City Clerk.
-

CITY OF SEATTLE

ORDINANCE 125996

COUNCIL BILL 119682

AN ORDINANCE relating to the business license tax; repealing business license standards for periods prior to 2008; amending apportionment provisions to reflect amendments to the model business license tax ordinance and other state amendments; amending Sections 5.45.081, 5.45.082, and 5.45.090 of the Seattle Municipal Code; and repealing Section 5.45.080 of the Seattle Municipal Code.

WHEREAS, during the 2019 regular session, the Washington State Legislature enacted SHB 1403, now codified in RCW 35.102.130, that modifies the apportionment formula for local business and occupation tax by: (1) simplifying the service income factor by adopting a market-based sourcing hierarchy; (2) providing for income that is attributable to a jurisdiction where the taxpayer would not be subject to tax to be excluded from the denominator of the income factor; and (3) establishing guidelines for the application of an alternative apportionment method; and

WHEREAS, as required by RCW 35.102.040, a committee of city representatives has worked with the Association of Washington Cities to amend the model ordinance that allocates and apportions gross income and incorporate the legislative changes of SHB 1403, now reflected in RCW 35.102.130, a mandatory provision of the model ordinance; and

WHEREAS, under 35.102.040, cities that impose a business and occupation tax must adopt the changes to the mandatory provisions of the model ordinance by January 1, 2020;

WHEREAS, the City intends to repeal Seattle Municipal Code (SMC) 5.45.080, which assigned and allocated income for tax periods prior to January 1, 2008 and the adoption of the original model ordinance; and to make technical corrections in SMC Sections 5.45.090, SMC 5.45.081 and SMC 5.45.082; and

1 WHEREAS, the City intends to adopt the changes to the model ordinance as required by RCW  
2 35.102.040 to simplify the administration of municipal business and occupation tax  
3 apportionment; NOW, THEREFORE,

4 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

5 Section 1. Section 5.45.080 of the Seattle Municipal Code, last amended by Ordinance  
6 125211, is repealed:

7 ~~((5.45.080 Persons conducting business both within and without the City~~

8 ~~This section instructs taxpayers which revenues will be assigned to the City as taxable for~~  
9 ~~periods prior to January 1, 2008. Once the amount subject to tax in Seattle is determined~~  
10 ~~according to this Section 5.45.080, then the credit or deductions contained in Sections 5.45.070~~  
11 ~~and 5.45.075 may be calculated, if applicable.~~

12 ~~A. A person who maintains an office or place of business in the City shall be taxable~~  
13 ~~on the gross income, gross proceeds of sales, or value of products derived from the business~~  
14 ~~activities rendered by, generated from, or attributable to the office or place of business~~  
15 ~~located within the City, unless specific deductions or exemptions apply.~~

16 ~~B. A person engaging in business activities in the City who does not maintain an~~  
17 ~~office or place of business in the City shall allocate to the City that portion of the taxpayer's~~  
18 ~~gross income or gross proceeds of sales that are derived from business activities performed in~~  
19 ~~the City.~~

20 ~~C. A person who maintains an office or place of business in the City and also~~  
21 ~~elsewhere:~~

22 ~~1. Shall be taxable on that portion of gross income or gross proceeds of sales,~~  
23 ~~or value of products, that is derived from business activity rendered by, generated from, or~~

1 ~~attributable to the office or place of business located within the City, unless specific~~  
2 ~~deductions or exemptions apply; and~~

3 ~~2. Shall allocate to the City and be taxable on gross income, or gross proceeds~~  
4 ~~of sales, from business activities performed in the City but supported by the office or place of~~  
5 ~~business located outside the City, where the business activity performed in the City is a~~  
6 ~~significant factor in making or holding the market for the goods or services sold, and:~~

7 ~~a. Delivery of product or the performance of services occurs in Seattle;~~

8 ~~or~~

9 ~~b. The customer is located in Seattle.~~

10 ~~Allocations of amounts under this Section 5.45.080 shall be made in accordance~~  
11 ~~with and in full compliance with the provisions of the interstate commerce clause of the United~~  
12 ~~States Constitution where applicable.~~

13 ~~D. If the Director determines that the allocation of gross income from business~~  
14 ~~activities for a person subject to subsection 5.45.080.C and taxable under the "other business~~  
15 ~~activities" classification in subsection 5.45.050.F does not fairly reflect gross income derived~~  
16 ~~from business activities within the City, the Director shall determine such gross income by~~  
17 ~~either of the following methods: (1) by a fair and equitable formula agreed upon by the~~  
18 ~~Director and the taxpayer after a consideration of the facts; or (2) by the ratio that the cost of~~  
19 ~~doing business within the City bears to the cost of doing business both within and without the~~  
20 ~~City. For apportionment purposes, all costs must be assigned to an office location.~~

21 ~~E. This section does not apply to allocate gross income of motor carriers included in~~  
22 ~~the measure of the tax pursuant to subsection 5.45.050.E of the Seattle Municipal Code. This~~

1 ~~section may apply to allocate gross receipts of motor carriers included in the measure of the~~  
2 ~~tax pursuant to any other subsection of Section 5.45.050.)~~)

3 Section 2. Section 5.45.081 of the Seattle Municipal Code, last amended by Ordinance  
4 125211, is amended as follows:

5 **5.45.081 Assignment of revenues**

6 Beginning on January 1, 2008, and with the exception of those persons subject to the provisions  
7 of chapter 82.14A RCW, this ~~((section))~~ Section 5.45.081 will be used to assign revenue for  
8 purposes of the business license tax imposed under Section 5.45.050.

9 A. Gross income derived from all activities other than those taxed under subsections  
10 5.45.050.E and 5.45.050.F shall be assigned to the location where the activity takes place.

11 B. For sales of tangible personal property, the activity takes place where delivery to the  
12 buyer occurs.

13 C. In the case of sales of digital products, the activity takes place where delivery to the  
14 buyer occurs. The delivery of digital products will be deemed to occur at:

15 1. The seller's place of business if the purchaser receives the digital product at the  
16 seller's place of business;

17 2. If not received at the seller's place of business, the location where the purchaser  
18 or the purchaser's donee, designated as such by the purchaser, receives the digital product,  
19 including the location indicated by instructions for delivery to the purchaser or donee, known to  
20 the seller;

21 3. If the location where the purchaser or the purchaser's donee receives the digital  
22 product is not known, the purchaser's address maintained in the ordinary course of the seller's  
23 business when use of this address does not constitute bad faith;

1                   4. If no address for the purchaser is maintained in the ordinary course of the  
2 seller's business, the purchaser's address obtained during the consummation of the sale,  
3 including the address of a purchaser's payment instrument, if no other address is available, when  
4 use of this address does not constitute bad faith; and

5                   5. If no address for the purchaser is obtained during the consummation of the sale,  
6 the address where the digital good or digital code is first made available for transmission by the  
7 seller or the address from which the digital automated service or service described in RCW  
8 82.04.050 (2)(g) or (6)((b))(c) was provided, disregarding for these purposes any location that  
9 merely provided the digital transfer of the product sold.

10                  D. If none of the methods in subsection 5.45.081.C for determining where the delivery of  
11 digital products occurs are available after a good faith effort by the taxpayer to apply the  
12 methods provided in subsections 5.45.081.C.1 through 5.45.081.C.5, then the city and the  
13 taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of  
14 income from the sale of digital products. The taxpayer will be responsible for petitioning the city  
15 to use an alternative method under this subsection 5.45.081.D. The city may employ an  
16 alternative method for allocating the income from the sale of digital products if the methods  
17 provided in subsections 5.45.081.C.1 through 5.45.081.C.5 are not available and the taxpayer  
18 and the city are unable to mutually agree on an alternative method to effectuate an equitable  
19 allocation of income from the sale of digital products.

20                  E. For purposes of subsection~~(s)~~ 5.45.081.C~~((1 through 5.45.081.C.5))~~, "Receive" has  
21 the same meaning as in RCW 82.32.730.

22                  F. ~~((Gross))~~ Effective January 1, 2008 through December 31, 2019, gross income derived  
23 ~~((from international investment management services taxed under subsection 5.45.050.F and))~~

1 from service and other business activity taxed under subsection ~~((5.45.050.G))~~ 5.45.050.F shall  
2 be apportioned to the City by multiplying apportionable income by a fraction, the numerator of  
3 which is the payroll factor plus the service and other business activity income factor and the  
4 denominator of which is two.

5 1. The payroll factor is a fraction, the numerator of which is the total amount paid  
6 for compensation in the city during the tax period by the taxpayer and the denominator of which  
7 is the total compensation paid everywhere during the tax period. Compensation is paid in the city  
8 if:

9 a. The individual ~~((or employee))~~ is primarily assigned within the city;  
10 b. The individual is not primarily assigned to any place of business for the  
11 tax period and the employee performs ~~((fifty))~~ 50 percent ~~((50%))~~ or more of ~~((his or her))~~ the  
12 employee's service for the tax period in the city; or

13 c. The individual is not primarily assigned to any place of business for the  
14 tax period, the individual does not perform ~~((fifty))~~ 50 percent ~~((50%))~~ or more of ~~((his or her))~~  
15 the employee's service in any city, and the employee resides in the city.

16 2. The service and other business activity income factor is a fraction, the  
17 numerator of which is the total service and other business activity income of the taxpayer in the  
18 city during the tax period, and the denominator of which is the total service and other business  
19 activity income of the taxpayer everywhere during the tax period. Service and other business  
20 activity income is in the city if:

21 a. The customer location is in the city; or  
22 b. The income-producing activity is performed in more than one ~~((1))~~  
23 location and a greater proportion of the service income-producing activity is performed in the



1 city than in any other location, based on costs of performance, and the taxpayer is not taxable at  
2 the customer location; or

3 c. The service and other business activity income producing activity is  
4 performed within the city, and the taxpayer is not taxable in the customer location.

5 3. If the allocation and apportionment provisions of this subsection 5.45.081.F do  
6 not fairly represent the extent of the taxpayer's business activity in the city or cities in which the  
7 taxpayer does business, the taxpayer may petition for or the tax administrators may jointly  
8 require, in respect to all or any part of the taxpayer's business activity, that one of the following  
9 methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

10 a. Separate accounting;

11 b. The use of a single factor;

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

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

16 G. Effective January 1, 2020, gross income derived from services and other activities  
17 taxed under subsection 5.45.050.F shall be apportioned to the city by multiplying apportionable  
18 income by a fraction, the numerator of which is the payroll factor plus the service income factor  
19 and the denominator of which is two.

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

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

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

5                    c. The individual is not primarily assigned to any place of business for the  
6 tax period, the individual does not perform 50 percent or more of the employee's service in any  
7 city and the employee resides in the city.

8                    2. The service income factor is a fraction, the numerator of which is the total  
9 service income of the taxpayer in the city during the tax period, and the denominator of which is  
10 the total service income of the taxpayer everywhere during the tax period. Service income is in  
11 the city if the customer location is in the city.

12                    3. Gross income of the business from engaging in an apportionable activity must  
13 be excluded from the denominator of the service and other business income factor if, in respect  
14 to such activity, at least some of the activity is performed in the city, and the gross income is  
15 attributable under subsection 5.45.081.G.2 to a city or unincorporated area of a county within the  
16 United States or to a foreign country in which the taxpayer is not taxable. For purposes of this  
17 subsection 5.45.081.G.3, "not taxable" means that the taxpayer is not subject to a business  
18 activities tax by that city or county within the United States or by that foreign country, except  
19 that a taxpayer is taxable in a city or county within the United States or in a foreign country in  
20 which it would be deemed to have a substantial nexus with the city or county within the United  
21 States or with the foreign country under the standards in RCW 35.102.050 regardless of whether  
22 that city or county within the United States or that foreign country imposes such a tax.

1                   4. If the allocation and apportionment provisions of this subsection 5.45.081.G. do  
2 not fairly represent the extent of the taxpayer's business activity in the city, the taxpayer may  
3 petition for or the tax administrator may require, in respect to all or any part of the taxpayer's  
4 business activity, if reasonable:

5                   a. Separate accounting; or

6                   b. The exclusion of any one or more of the factors; or

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

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

11                   5. The party petitioning for, or the tax administrator requiring, the use of any  
12 method to effectuate an equitable allocation and apportionment of the taxpayer's income  
13 pursuant to subsection 5.45.081.G.4 must prove by a preponderance of the evidence:

14                   a. That the allocation and apportionment provisions of this subsection  
15 5.45.081.G do not fairly represent the extent of the taxpayer's business activity in the city; and

16                   b. That the alternative to such provisions is reasonable. The same burden  
17 of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring,  
18 the use of an alternative, reasonable method to effectuate an equitable allocation and  
19 apportionment of the taxpayer's income.

20                   6. If the tax administrator requires any method to effectuate an equitable  
21 allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any  
22 civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's

1 reasonable reliance solely on the allocation and apportionment provisions of this subsection

2 5.45.081.G.

3 7. A taxpayer that has received written permission from the tax administrator to  
4 use a reasonable method to effectuate an equitable allocation and apportionment of the  
5 taxpayer's income shall not have that permission revoked with respect to transactions and  
6 activities that have already occurred unless there has been a material change in, or a material  
7 misrepresentation of, the facts provided by the taxpayer upon which the tax administrator  
8 reasonably relied in approving a reasonable alternative method.

9 ~~((G.))~~ H. The definitions in this subsection 5.45.081.H apply throughout this ((section))  
10 Section 5.45.081.

11 ~~((I.))~~ "Apportionable income" means the gross income of the business taxable  
12 under the service and other business activity classification, including income received from  
13 activities outside the city if the income would be taxable under the service and other business  
14 activity classification if received from activities within the city, less any exemptions or  
15 deductions available.

16 "Business activities tax" means a tax measured by the amount of, or economic  
17 results of, business activity conducted in a city or county within the United States or within a  
18 foreign country. The term includes taxes measured in whole or in part on net income or gross  
19 income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar  
20 transaction tax, imposed on the sale or acquisition of goods or services, whether or not  
21 denominated a gross receipts tax or a tax imposed on the privilege of doing business.

1                   ((2-)) “Compensation” means wages, salaries, commissions, and any other form of  
2 remuneration paid to individuals for personal services that are or would be included in the  
3 individual’s gross income under the federal Internal Revenue Code.

4                   “Customer,” effective January 1, 2020, means a person or entity to whom the  
5 taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross  
6 income of the business.

7                   “Customer location,” effective January 1, 2008 through December 31, 2019,  
8 means the city or unincorporated area of a county where the majority of the contacts between the  
9 taxpayer and the customer take place. “Customer location,” effective January 1, 2020, means the  
10 following:

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

13                   b. For a customer not engaged in business, if the service does not require  
14 the customer to be physically present:

15                                   1) The customer’s residence; or

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

18                   c. For a customer engaged in business:

19                                   1) Where the services are ordered from;

20                                   2) At the customer’s billing/ mailing address if the location from  
21 which the services are ordered is not known; or

22                                   3) At the customer’s commercial domicile if none of the above are  
23 known;

1                   “Digital automated services,” “digital codes,” and “digital goods” have the same  
2 meaning as in RCW 82.04.192.

3                   “Digital products” means digital goods, digital codes, digital automated services,  
4 and the services described in RCW 82.04.050(2)(g) and (6)(c).

5                   ~~((3.))~~ “Individual” means any individual who, under the usual common law rules  
6 applicable in determining the employer-employee relationship, has the status of an employee of  
7 that taxpayer.

8                   ~~((4. “Customer location” means the city or unincorporated area of a county where~~  
9 ~~the majority of the contacts between the taxpayer and the customer take place.))~~

10                   ~~((5.))~~ “Primarily assigned” means the business location of the taxpayer where the  
11 individual performs ~~((his or her))~~ duties.

12                   ~~((6.))~~ “Service-taxable income” or “service income” means gross income of the  
13 business subject to tax under the service and other business activity classification, including but  
14 not limited to royalty income.

15                   ~~((7.))~~ “Tax period” means the calendar year during which tax liability is accrued.  
16 If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall  
17 calculate the factors for the previous calendar year for reporting in the current calendar year and  
18 correct the reporting for the previous year when the factors are calculated for that year, but not  
19 later than the end of the first quarter of the following year.

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



1 corporations(~~(, provided that, dividends subject to tax pursuant to SMC 5.45.085 will not be~~  
2 exempt)).

3 \* \* \*

4 V. Amounts Derived From Manufacturing, Selling, or Distributing Motor Vehicle Fuel.

5 This (~~chapter~~) Chapter 5.45 shall not apply to the manufacturing, selling or distributing motor  
6 vehicle fuel, as the term “motor vehicle fuel” is defined in RCW (~~(82.36.010)~~) 82.38.020 and  
7 exempted under RCW (~~(82.36.440)~~) 82.38.280, provided that any fuel not subjected to the state  
8 fuel excise tax, or any other applicable deduction or exemption, will be taxable under this  
9 (~~chapter~~) Chapter 5.45.

10 \* \* \*

11 Section 5. This ordinance does not affect any existing right acquired or liability or  
12 obligation incurred under the sections amended or repealed in this ordinance or under any rule or  
13 order adopted under those sections, nor does it affect any proceeding instituted under those  
14 sections.



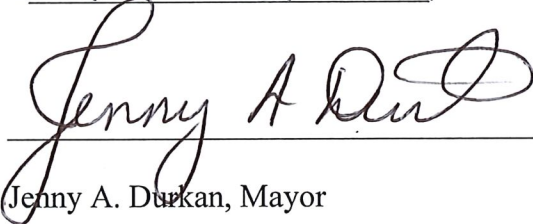
1 Section 6. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 25<sup>th</sup> day of NOVEMBER, 2019,  
5 and signed by me in open session in authentication of its passage this 25<sup>th</sup> day of  
6 NOVEMBER, 2019.

7 

8 President \_\_\_\_\_ of the City Council

9 Approved by me this 27<sup>th</sup> day of November, 2019.

10   
11 Jenny A. Durkan, Mayor

12 Filed by me this 2<sup>nd</sup> day of December, 2019.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal) 