

Amendment 11
to
CB #119810 – Payroll Expense Tax
Sponsor: Sawant

On line 10 of page 1, amend the following as shown:

~~WHEREAS, the City Council intends to revisit the tax imposed by this new Chapter 5.38 in the event that an organization with overlapping jurisdiction implements a progressive revenue source that provides City of Seattle (“City”) funding at levels equivalent to those generated through this payroll expense tax; and~~

WHEREAS, on March 11, 2020, the World Health Organization announced that the novel coronavirus (COVID-19) is officially a global pandemic; and

WHEREAS, on February 29, 2020, the Washington Governor issued Proclamation 20-05, proclaiming a state of emergency for all counties throughout the state of Washington in response to new cases of COVID-19, and

WHEREAS, on March 25, 2020, the Washington Governor issued Proclamation 20-25, prohibiting all people in Washington from leaving their homes and all non-essential businesses in Washington from conducting business (“Stay Home, Stay Healthy Proclamation”); and

WHEREAS, these actions are appropriate for public health reasons but result in severe economic impacts on families and individuals in Seattle; and

WHEREAS, these impacts are felt most strongly by people with low incomes who have become unemployed or had their work hours severely reduced; and

Tom Mikesell

Date: 6/29/20

Version: 1

WHEREAS, federal and state assistance to people with low incomes will not be sufficient to meet their basic needs during this public health and financial crisis; and

WHEREAS, without additional support, many people with low incomes will face severe financial hardship that will have significant negative impacts, including but not limited to public health impacts and greater housing insecurity, as well as impacts to small businesses and the local economy; and

WHEREAS, on November 2, 2015, the Mayor of Seattle issued a Proclamation of Civil Emergency related to homelessness; on November 3, 2015, the City Council adopted Resolution 31630 ratifying and confirming the Mayoral Proclamation of Civil Emergency; and the civil emergency remains in effect. As of 2019 there were roughly 11 percent more people experiencing homelessness in the region than in 2015; and

WHEREAS, a national study published in the *Journal of Urban Affairs* established the correlation between increasing rent and homelessness, finding that an increase of \$100 in median rent for an area results in a 15 percent (metro areas) and a 39 percent (nearby suburbs and rural areas) increase in homelessness; and

WHEREAS, average rents in Seattle rose 69 percent between 2010 and 2018, far beyond the rate of inflation and more than double the national average; and

WHEREAS, the 2019 Seattle–King County Point in Time Count of persons experiencing homelessness estimates there are 11,199 individuals experiencing homelessness in the region; and

WHEREAS, the October 2019 Report and Recommendations of the King County Regional Affordable Housing Task Force found that 156,000 affordable homes were needed

Tom Mikesell

Date: 6/29/20

Version: 1

immediately, and another 88,000 affordable homes by 2040, to ensure that no low-income or working households were cost-burdened; and

WHEREAS, the Third Door Coalition proposal advocates for the creation of 6,500 permanent supportive housing units as a proven solution for meeting the housing and services needs of those who are chronically homeless; and

WHEREAS, the City recognizes the importance of using a “Housing First” approach in the development of permanent housing for those experiencing homelessness, which prioritizes providing access to low- or no-barrier housing for such persons; and

WHEREAS, the affordable housing crisis, homelessness emergency, and now the COVID-19 pandemic and related economic and unemployment emergencies in Seattle are deeply impacting the lives of people throughout Seattle and the region, and disproportionately harm people of color, immigrants, the LGBTQ community, indigenous peoples’ communities, disabled community members, and women, who already struggle against entrenched inequality; and

WHEREAS, the International Monetary Fund’s recent World Economic Outlook forecasts the worst global recession since the Great Depression; and

WHEREAS, the City Budget Office’s recent economic forecast for the Seattle metropolitan area predicts significant job loss, high unemployment, and declining per capita income; and

WHEREAS, the City Budget Office projects the City’s revenue will be impacted by between \$210 million and \$300 million in 2020; and

WHEREAS, a significant decline in revenue will impact the City’s ability to provide necessary support to communities facing hardship due to the COVID-19 public health crisis and recession and to adequately address the ongoing homelessness crisis; and

Tom Mikesell

Date: 6/29/20

Version: 1

WHEREAS, the period of economic recovery from the 2007–2009 Great Recession resulted in worsening economic disparities in Washington, and households experiencing deep poverty increased by 15,000 in the state; and

WHEREAS, the economic hardships and loss of wealth resulting from the Great Recession disproportionately impacted households of color, in particular Black households and Hispanic and Latinx households; and

WHEREAS, the gains in income growth associated with the period of economic recovery and growth in Washington leading up to the COVID-19 recession have been concentrated among the wealthiest households; and

WHEREAS, public investments have not kept pace with the growing economy, and in fact have declined from pre–Great Recession levels; and

WHEREAS, austerity measures and spending cuts made in response to the Great Recession resulted in uneven and slow economic recovery, and prolonged hardship for vulnerable and marginalized communities; and

WHEREAS, Washington ranks as the worst in the nation for regressive state and local tax systems; and

WHEREAS, the U.S. Internal Revenue Service states that “a progressive tax takes a larger percentage of income from high-income groups than from low-income groups and is based on the concept of ability to pay”; and

WHEREAS, on November 20, 2017, the City Council unanimously adopted Resolution 31782, “establishing a process by which [T]he City of Seattle will determine new progressive revenues including an Employee Hours Tax, expressing the City Council’s intent to impose such potential revenues, and expressing the City Council’s intent to make

Tom Mikesell

Date: 6/29/20

Version: 1

investments with these revenues that would assist people who are homeless or at a high risk of becoming homeless in obtaining and retaining stable housing”; and

WHEREAS, Resolution 31782 established a Progressive Revenue Task Force (“Task Force”) and requested that the Task Force evaluate and determine “appropriate tax rates and possible exemption levels that are expected to yield between \$25 million and \$75 million in revenue per year”; and

WHEREAS, the Progressive Revenue Task Force’s March 9, 2018, final report recommended that the City seek to collect \$75 million from a new employee hours tax, a new payroll tax, or both to address homelessness and affordable housing; and

WHEREAS, the City imposed an employee hours tax through Ordinance 125578 that would have raised \$47 million annually plus a measure of inflation; and

WHEREAS, the City repealed the employee hours tax through Ordinance 125592; and

WHEREAS, The City of Seattle intends to exercise its taxing authority, as granted by the Washington State Constitution and as authorized by the Washington State Legislature;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

On line 1 of page 6, amend the following as shown:

5.38.020 Definitions

The definitions contained in Chapter 5.30 shall be fully applicable to this Chapter 5.38 except as may be expressly stated to the contrary herein. The following additional definitions shall apply throughout this Chapter 5.38:

Tom Mikesell

Date: 6/29/20

Version: 1

“Business” has the same meaning as that term is defined in Section 5.30.020. Depending on the context, “business” may also mean a person engaging in business in Seattle.

“Compensation” means remuneration as that term is defined in RCW 50A.05.010, net distributions, or incentive payments, including guaranteed payments, whether based on profit or otherwise, earned for services rendered or work performed, whether paid directly or through an agent, and whether in cash or in property or the right to receive property. “Compensation” does not include payments to an owner of a pass-through entity that are not earned for services rendered or work performed, such as return of capital, investment income, or other income from passive activities.

“Employee” means any individual who performs work, labor, or personal services of any nature for compensation paid by a business. For purposes of this Chapter 5.38, the term “employee”:

1. Includes individuals who are members of limited liability companies, members of professional limited liability companies, partners, other owners of pass-through entities, and sole proprietors; and
2. Includes individuals who would be considered to be independent contractors for purposes of the business license tax under subsection 5.45.090.S.

“Grocery business” means:

1. A business whose primary business is making retail sales of food and food ingredients to consumers that are exempt from the retail sales tax under RCW 82.08.0293; and
2. A business whose primary business is making wholesale sales of food and food ingredients that will be exempt from the retail sales tax under RCW 82.08.0293 when resold by the purchaser.

Tom Mikesell

Date: 6/29/20

Version: 1

For subsections (1) and (2) of this definition, “primary business” means that 70 percent of the gross income of the business for purposes of calculating the business license tax under Chapter 5.45 is attributable to that business activity.

“Integrated business enterprise” means separate business entities that are organized so that a separate business entity controls the operation of one or more other business entities. The factors to consider to determine control include, but are not limited to:

1. Degree of interrelation between the operations of multiple entities;

2. Degree to which the entities share common management;

3. Centralized control of labor relations; and

4. Degree of common ownership or financial control over the entities.

All business organized into an integrated business enterprise are considered “members” of that integrated business enterprise.

“Local government entity” has the same meaning as that term is defined in RCW 4.96.010.

“Net distribution” means the draws from net income by any owner of a pass-through entity. Taxable distributions are limited by the amount of draws or net income for that owner, whichever is less. If the owner’s draw exceeds that individual’s net profit, the excess draw is a return of capital. A return of capital is not taxable because it is a liquidation of an owner’s assets.

“Pass-through entity” includes a trust, partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as amended,

Tom Mikesell

Date: 6/29/20

Version: 1

or which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity.

“Payroll expense” means the compensation paid in Seattle to employees. Compensation is paid in Seattle to an employee if:

1. The employee is primarily assigned within Seattle;
2. The employee is not primarily assigned to any place of business for the tax period and the employee performs 50 percent or more of their service for the tax period in Seattle; or
3. The employee is not primarily assigned to any place of business for the tax period, the employee does not perform 50 percent or more of their service in any city, and the employee resides in Seattle.

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

“Remuneration” has the same meaning as that term is defined in RCW 50A.05.010.

“Taxable integrated business enterprise” means an integrated business enterprise whose members have a combined having payroll expense, as defined under subsection 5.38.020, of more than \$7,000,000 in the most recent complete calendar year.

“Taxpayer” means any person who engages in any business in Seattle or who performs any act for which a tax is imposed under this Chapter 5.38.

On line 9 of page 8, amend the following as shown:

5.38.030 Tax imposed—Rate

A. A payroll expense tax is hereby levied upon and shall be collected from every person engaging in business within Seattle.

Tom Mikesell

Date: 6/29/20

Version: 1

B. The amount of the payroll expense tax due shall be the payroll expense of the business, subject to any deductions authorized under this Chapter 5.38, multiplied by a rate of 1.63%. ~~the following rates:~~

~~1. For businesses with payroll expense up to \$1 billion, the rate shall be:~~

~~a. Seven tenths percent of the payroll expense of employees with annual compensation of \$150,000 to \$499,999; and~~

~~b. One and four tenths percent of the payroll expense of employees with annual compensation of \$500,000 or more.~~

~~2. For businesses with payroll expense greater than \$1 billion, the rate shall be:~~

~~a. One and four tenths percent of the payroll expense of employees with annual compensation of \$150,000 to \$499,999; and~~

~~b. Two and one tenth percent of the payroll expense of employees with annual compensation of \$500,000 or more.~~

C. The tax imposed by this Chapter 5.38 is levied on businesses. A business may not make any deductions from employees' compensation to pay for this tax.

On line 5 of page 9, amend the following as shown:

5.38.040 Exemptions from the payroll expense tax

A. The following are exempt from the payroll expense tax:

1. Any business, except members of a taxable integrated business enterprise, having payroll expense, as defined under Section 5.38.020, of less than \$7 million in the most recent complete calendar year.

2. Any business engaged in business in Seattle as a grocery business.

3. Any business having a formally recognized exemption from income tax pursuant to Sections 501(c), 501(d), or 401(a) of the Internal Revenue Code of 1986, as

Tom Mikesell

Date: 6/29/20

Version: 1

amended, as qualified by Sections 502, 503, and 504 of the Internal Revenue Code of 1986, as amended.

4. Any business engaged in business as a consumer directed employer as defined in RCW 74.39A.009.

5. Any business engaged in business as a home care agency as defined in RCW 70.127.010, licensed under RCW 70.127 and receiving funding under provisions of RCW 74.39A.310

36. Any individual who is an independent contractor for purposes of the business license tax under subsection 5.45.090.S and whose compensation is included in the payroll expense of another business subject to the tax imposed by Section 5.38.030.

47. Businesses that are preempted from taxation by cities pursuant to federal or state statutes or regulations, including, but not limited to, the following:

a. Insurance businesses and their agents as defined by RCW 48.01.050 and 48.17.010, respectively, and whose total revenue is exempt from the business license tax per Chapter 5.45.

b. Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.38.020 and exempted under RCW 82.38.080.

c. Businesses that only distribute or sell liquor as defined in RCW 66.04.010 and exempted in RCW 66.08.120.

d. Federal and state government agencies and any local governmental entity.

On line 1 of page 11, amend the following as shown:

Tom Mikesell

Date: 6/29/20

Version: 1

5.38.060 Payroll expense tax—When due

The payroll expense tax imposed by this Chapter 5.38 shall be due and payable on a quarterly basis in accordance with Section 5.55.040. Notwithstanding Section 5.55.040, the tax due for 2020 and 2021 shall be payable on the same date that the tax payment for the fourth quarter of 2021 is due. The Director may use discretion to assign businesses to an annual reporting period. Forms for such filings shall be prescribed by the Director. Persons discontinuing their business activities in Seattle shall report and pay the payroll expense tax at the same time as they file their final business license tax return under Chapter 5.45.

On line 9 of page 11, amend the following as shown:

5.38.070 Adjustments for inflation

A. Beginning on January 1, 2022, and on January 1 of every year thereafter, the Director shall adjust in the manner described in subsection 5.38.070.B the following dollar amounts:

1. The amount of the dollar thresholds in Section 5.38.030; and
2. The amount of the exemption in subsection 5.38.040.A.1.

B. The amounts listed in subsection 5.38.070.A shall increase commensurate with the rate of growth of the prior year's June-to-June Consumer Price Index (CPI-U) for the Seattle-Tacoma-Bellevue area as published by the United States Department of Labor. The amounts calculated shall be rounded to the nearest whole dollar.

C. If the annual change in the CPI-U is negative, no adjustment to the amount must be made.

On line 7 of page 12, amend the following as shown:

Tom Mikesell

Date: 6/29/20

Version: 1

5.38.100 Maintaining a level playing field

~~To maintain a level playing field for the payroll expense tax imposed in this Chapter 5.38, the Council intends to monitor proposals for any taxes imposed by King County or the State of Washington on progressive revenue, including payroll expense taxes. The City intends to work with King County and the State of Washington to consider amendments to the tax imposed by this Chapter 5.38 in the event that businesses become subject to future significant progressive taxes at the county or state level.~~

On line 19 of page 12, amend the following as shown:

5.38.120 Sunset

~~For all periods from January 1, 2021, through December 31, 2030, a payroll expense tax as imposed by this Chapter 5.38 is hereby levied. No business shall owe a payroll expense tax for payroll expenses after December 31, 2030, and this Chapter 5.38 shall be limited to determining and collecting the payroll expense tax due for all business activities prior to December 31, 2030.~~

On line 1 of page 22, amend the following as shown:

Section 13. Sections 1 through 11 of this ordinance shall take effect on ~~January 1,~~

~~2024~~August 1, 2020.

Effect: To generate a total \$500 million in estimable annual revenue using the 'Tax Amazon' tax structure, this amendment includes the following changes:

- Removes sunset provision;
- Removes level playing field provision;
- Makes the following changes to rate structure:
 - Removes all compensation rate tiers;
 - Removes differential total payroll rate tiers above the \$7 million total payroll;
 - Adds a single tax rate of 1.63% applied to all non-exempt payroll expense.
- Exempts non-profit businesses and home care agencies;
- defines two or more businesses informally organized as an integrated business enterprise as a single business for the purpose of calculating and measuring payroll expense against the payroll expense tax's \$7 million threshold
- Precludes downward adjustments to the exemption threshold due to declines in the annual consumer price index; and,
- Changes the tax start date to August 1, 2020 and makes 2020 tax liabilities payable with the 2021 payment.