



Legislation Text

File #: CB 119130, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to taxation; imposing an employee hours tax; adding a new Chapter 5.38 to Title 5 of the Seattle Municipal Code; and amending Sections 5.30.010, 5.55.010, 5.55.040, 5.55.060, 5.55.150, 5.55.165, 5.55.220, and 5.55.230 of the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 5.38 is added to the Seattle Municipal Code as follows:

Chapter 5.38 - EMPLOYEE HOURS TAX

5.38.010 Administrative provisions

All of the provisions contained in Chapter 5.55 shall have full force and application with respect to taxes imposed under the provisions of this Chapter 5.38 except as may be expressly stated to the contrary herein.

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:

“Business” means any person engaging in business as defined in Section 5.30.030.

“Employee” means any person who performs work, labor, or services for a business, is on the business’s payroll, and performs any part of their duties within the City of Seattle. For purposes of this Chapter 5.38, the term “employee” also includes all full-time, part-time, and temporary employees or workers on the business’ payroll. A business’s payroll includes the payroll of any related company that acts as a paymaster for the related entities. Sole proprietors and partners shall be considered employees.

“Full-time employee” means an employee who works at least 1,920 hours in a calendar year.

“Part-time employee” means an employee who works fewer than 1,920 hours in a calendar year.

"Payroll" means the regular remuneration by a business to the individuals who perform work, labor, services, or make other similar contributions for the business. Payroll includes, but is not limited to, salaries, wages, or other draws or distributions made to employees, officers, partners, or members of Limited Liability Companies and Professional Limited Liability Companies as compensation for their labor and services.

5.38.030 Tax imposed - Measure of the tax

A. Beginning on January 1, 2019, an employee hours tax is hereby levied upon and shall be collected from every person for the act or privilege of engaging in business activities within the City. The tax shall be measured by the number of employee hours of work conducted within the City during the calendar year.

B. The amount of the tax shall be equal to the employee hours worked within the City during the calendar year, multiplied by the rate of \$0.052083 per hour worked. The employee hours worked exclude vacation and sick leave hours. If an employee works both within and outside the City, it will be the responsibility of the business to calculate and report the number of hours worked within the City.

C. Alternative Full Time Equivalent (FTE) calculation method. A business may choose to calculate its annual employee hours tax based on the number of its FTE employees as follows:

1. Calculation of FTEs. The number of FTE employees for the calendar year is (i) the number of a business’s full-time employees for the calendar year, plus (ii) the sum of the hours worked by part-time employees in the calendar year divided by 1,920 hours.

2. Tax. Any fractional FTE remaining after the determination of FTE employees under subsection 5.38.030.C.1 shall be rounded up to the nearest whole number. Once the number of FTE employees is thus determined, that number shall be multiplied by \$100 to determine the annual employee hours tax. Once the FTE alternative method is used, it must be used for all future reporting periods, unless a change is approved by the Director.

D. Businesses with more than one place of business must use the same method of calculation for all places of business.

E. The tax applies to employee hours worked or FTEs inside the City regardless of whether the place of business is located within or outside the City.

F. Temporary employment agencies that supply temporary employees to business engaging in business activities within the City, and pay the temporary employee's salary, shall report and pay the tax on all such temporary employees. Businesses engaging temporary employees who are on the business' payroll shall report and pay the tax on the employee hours of such temporary employees, whether or not they are from an employment agency.

5.38.040 Employee hours tax - When due

The employee hours tax shall be reported and paid on an annual calendar year basis, at the same time as the fourth quarter or annual tax return is due in accordance with Section 5.55.040, and on forms as prescribed by the Director. Persons discontinuing their business activities in Seattle shall report and pay the tax at the same time as their final business tax return is due.

5.38.050 Exemptions from the employee hours tax

A. The following are exempt from the employee hour tax:

1. Any business having annual gross income subject to tax under Chapter 5.45 of \$5,000,000 or less.
2. 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 subdivisions.

3. Volunteers and persons providing services in return for only aid or sustenance from religious or charitable organizations.

4. Non-profit organizations as defined in Section 5.30.040.

5.38.060 Tax in addition to other license fees or taxes

The tax imposed herein shall be in addition to any license fee or tax imposed or levied under any other law, statute, or ordinance whether imposed or levied by the City, State, or other governmental entity or political subdivision.

Section 2. Section 5.30.010 of the Seattle Municipal Code, last amended by Ordinance 125324, is amended as follows:

5.30.010 Definition provisions

The definitions contained in this Chapter 5.30 shall apply to the following chapters of the Seattle Municipal Code: Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), 5.38 (Employee Hours Tax), 5.40 (Admission Tax), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Business Tax-Utilities), 5.50 (Firearms and Ammunition Tax), 5.52 (Gambling Tax), 5.53 (Sweetened Beverage Tax), and 5.55 (General Administrative Provisions) unless expressly provided for otherwise therein, and shall also apply to other chapters and sections of the Seattle Municipal Code in the manner and to the extent expressly indicated in each chapter or section. Words in the singular number shall include the plural and the plural shall include the singular. Words in one gender shall include the other genders.

Section 3. Section 5.55.010 of the Seattle Municipal Code, which was last amended by Ordinance 125324, is amended as follows:

5.55.010 Application of chapter stated

Unless expressly stated to the contrary in each chapter, the provisions of this Chapter 5.55 shall apply with respect to the licenses and taxes imposed under this Chapter 5.55 and Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), ~~((5.37))~~ 5.38 (Employee Hours Tax~~((es)))~~), 5.40 (Admission Tax), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Business Tax-Utilities), 5.50 (Firearms and Ammunition Tax), 5.52 (Gambling Tax), 5.53 (Sweetened Beverage Tax), and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter, or section.

Section 4. Subsection 5.55.040.A of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.040 When due and payable-Reporting periods-Monthly, quarterly, and annual returns-Threshold provisions-Computing time periods-Failure to file returns

A. Other than any annual license fee or registration fee assessed under this Chapter 5.55, the tax imposed by Chapters 5.32 (Amusement Devices), 5.35 (Commercial Parking Tax), 5.40 (Admission Tax), 5.45 (Business License Tax), 5.46 (Square Footage Tax), 5.48 (Business Tax-Utilities), 5.50 (Firearms and Ammunition Tax), 5.52 (Gambling Tax), and 5.53 (Sweetened Beverage Tax) shall be due and payable in quarterly installments. The Director may use discretion to assign businesses to a monthly or annual reporting period depending on the tax amount owing or type of tax. Taxes imposed by subsections 5.52.030.A.2 and 5.52.030.B.2 for punchboards and pulltabs shall be due and payable in monthly installments. The Employee Hours Tax imposed by Chapter 5.38 shall be reported and paid on an annual calendar year basis, at the same time as the fourth quarter or annual tax return is due in accordance with this Section 5.55.040. Tax returns and 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.

* * *

Section 5. Subsection 5.55.060.A of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.060 Records to be preserved-Examination-Inspection-Search warrants-Estoppel to question assessment

A. Every person liable for any fee or tax imposed by this Chapter 5.55 and Chapters 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53 shall keep and preserve, for a period of five 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, ticket stubs, vendor lists, gambling games, and payout information, inventories, stocks of merchandise, and other data, including federal income tax and state tax returns, and reports needed to determine the accuracy of any taxes due, shall be open for inspection or 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. For the purposes of this Section 5.55.060, for the tax imposed by Chapter 5.53, "business premises" means wherever the person's business records and tax documents are maintained and does not mean every site owned or operated by the person.

* * *

Section 6. Subsection 5.55.150.E of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.150 Appeal to the Hearing Examiner

* * *

E. The Hearing Examiner shall ascertain the correct amount of the tax, fee, interest, or penalty due either by affirming, reversing, or modifying an action of the Director. Reversal or modification is proper if the Director's assessment or refund denial violates the terms of this Chapter 5.55, or Chapters 5.30, 5.32, 5.35, ((5.37;)) 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53.

* * *

Section 7. Section 5.55.165 of the Seattle Municipal Code, last amended by Ordinance 125324, is

amended as follows:

5.55.165 Director of Finance and Administrative Services to make rules

The Director of Finance and Administrative Services shall have the power and it shall be the Director's duty, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this Chapter 5.55, Chapters 5.30, 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53, or with law for the purpose of carrying out the provisions of such chapters, and it shall be unlawful to violate or fail to comply with any such rule or regulation.

Section 8. Subsections 5.55.220.A and 5.55.220.B of the Seattle Municipal Code, which section was last amended by Ordinance 125324, are amended as follows:

5.55.220 Unlawful actions-Violation-Penalties

A. It shall be unlawful for any person subject to the provisions of this Chapter 5.55 or Chapters 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53:

1. To violate or fail to comply with any of the provisions of this Chapter 5.55, or Chapters 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53, or any lawful rule or regulation adopted by the Director;
2. To make or manufacture any license required by this Chapter 5.55 except upon authority of the Director;
3. To make any false statement on any license, application, or tax return;
4. To aid or abet any person in any attempt to evade payment of a license fee or tax;
5. To refuse admission to the Director to inspect the premises and/or records as required by this Chapter 5.55, or to otherwise interfere with the Director in the performance of duties imposed by Chapters 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53;
6. To fail to appear or testify in response to a subpoena issued pursuant to Section 3.02.120 in any proceeding to determine compliance with this Chapter 5.55 and Chapters 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53;

7. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this Chapter 5.55;

8. To continue to engage in any business activity, profession, trade, or occupation after the revocation of or during a period of suspension of a business license tax certificate issued under Section 5.55.030; or

9. In any manner, to hinder or delay the City or any of its officers in carrying out the provisions of this Chapter 5.55 or Chapters 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, and 5.53.

B. Each violation of or failure to comply with the provisions of this Chapter 5.55, or Chapters 5.32, 5.35, 5.37, (~~5.37~~) 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53 shall constitute a separate offense. Except as provided in subsection 5.55.220.C, any person who commits an act defined in subsection 5.55.220.A is guilty of a gross misdemeanor, punishable in accordance with Section 12A.02.070. The provisions of Chapters 12A.02 and 12A.04 apply to the offenses defined in subsection 5.55.220.A, except that liability is absolute and none of the mental states described in Section 12A.04.030 need be proved.

* * *

Section 9. Subsection 5.55.230.A of the Seattle Municipal Code, which section was last amended by Ordinance 125324, is amended as follows:

5.55.230 Denial, revocation of, or refusal to renew business license tax certificate

A. The Director, or the Director's designee, has the power and authority to deny, revoke, or refuse to renew any business license tax certificate or amusement device license issued under the provisions of this Chapter 5.55. The Director, or the Director's designee, shall notify such applicant or licensee in writing by mail in accordance with Section 5.55.180 of the denial, revocation of, or refusal to renew the license and on what grounds such a decision was based. The Director may deny, revoke, or refuse to renew any business license tax certificate or other license issued under this Chapter 5.55 on one or more of the following grounds:

1. The license was procured by fraud or false representation of fact.

2. The licensee has failed to comply with any provisions of this Chapter 5.55.
3. The licensee has failed to comply with any provisions of Chapters 5.32, 5.35, 5.38, 5.40, 5.45, 5.46, 5.48, 5.50, 5.52, or 5.53.
4. The licensee is in default in any payment of any license fee or tax under Title 5 or Title 6.

* * *

Section 10. Severability. If any part, provision, or section of this ordinance is held to be void or unconstitutional, all other parts, provisions, and sections of this ordinance not expressly so held to be void or unconstitutional shall continue in full force and effect.

Section 11. Pursuant to RCW 35.21.706, this ordinance is subject to the referendum procedure specified in that state law. A referendum petition may be filed within seven days of the passage of the ordinance with the filing officer of the City, which is hereby designated to be the City Clerk, located on the third floor of City Hall, 600 Fourth Avenue, Seattle, Washington. Within ten days of filing the petition, the City Clerk shall confer with the petitioner concerning the form and style of the petition, issue the petition an identification number, and secure an accurate, concise, and positive ballot title from the City Attorney. The petitioner shall then have thirty days in which to secure the signatures of not less than fifteen percent of the registered voters of the City, as of the last municipal general election, upon petition forms which contain the ballot title and the full text of the measure to be referred. Signed petition forms that are timely submitted to the City Clerk shall be transmitted to the King County Director of Records and Elections who shall verify the sufficiency of the signatures on the petition and report to the City Clerk. If sufficient valid signatures are properly submitted, the City Clerk shall so inform the City Council, which shall submit the referendum measure to the voters at a special election to be held on the next City election date, as provided in RCW 29A.04.330, that occurs not less than forty-five days after the county's report of sufficiency is received by the City Clerk, unless a general election will occur within

ninety days of receipt of that report, in which event the proposed ordinance will be submitted at the general election. State law, RCW 35.21.706, provides that the referendum procedure in this section is exclusive and that this ordinance is not subject to any other referendum or initiative process.

Section 12. Sections 1 through 9 of this ordinance shall take effect on January 1, 2019.

Section 13. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the _____ day of _____, 2017, and signed by me in open session in authentication of its passage this _____ day of _____, 2017.

President _____ of the City Council

Approved by me this _____ day of _____, 2017.

_____, Mayor

Filed by me this _____ day of _____, 2017.

Monica Martinez Simmons, City Clerk

(Seal)