



Legislation Text

File #: CB 119682, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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

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

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

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 Section 5.45.080 of the Seattle Municipal Code, last amended by Ordinance 125211, is repealed:

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

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

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

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

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

~~1. Shall be taxable on that portion of gross income or gross proceeds of sales, or value of products, that is derived from business activity rendered by, generated from, or attributable to the office or place of business located within the City, unless specific deductions or exemptions apply; and~~

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

for the goods or services sold, and:

- a. Delivery of product or the performance of services occurs in Seattle; or
- b. The customer is located in Seattle.

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

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

~~E. This section does not apply to allocate gross income of motor carriers included in the measure of the tax pursuant to subsection 5.45.050.E of the Seattle Municipal Code. This section may apply to allocate gross receipts of motor carriers included in the measure of the tax pursuant to any other subsection of Section 5.45.050.))~~

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

5.45.081 Assignment of revenues

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

- A. Gross income derived from all activities other than those taxed under subsections 5.45.050.E and

5.45.050.F shall be assigned to the location where the activity takes place.

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

C. In the case of sales of digital products, the activity takes place where delivery to the buyer occurs.

The delivery of digital products will be deemed to occur at:

1. The seller's place of business if the purchaser receives the digital product at the seller's place of business;
2. If not received at the seller's place of business, the location where the purchaser or the purchaser's donee, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;
3. If the location where the purchaser or the purchaser's donee receives the digital product is not known, the purchaser's address maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;
4. If no address for the purchaser is maintained in the ordinary course of the seller's business, the purchaser's address obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith; and
5. If no address for the purchaser is obtained during the consummation of the sale, the address where the digital good or digital code is first made available for transmission by the seller or the address from which the digital automated service or service described in RCW 82.04.050 (2)(g) or (6)((b))(c) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

D. If none of the methods in subsection 5.45.081.C for determining where the delivery of digital products occurs are available after a good faith effort by the taxpayer to apply the methods provided in subsections 5.45.081.C.1 through 5.45.081.C.5, then the city and the taxpayer may mutually agree to employ any other method to effectuate an equitable allocation of income from the sale of digital products. The taxpayer will be responsible for petitioning the city to use an alternative method under this subsection 5.45.081.D. The

city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections 5.45.081.C.1 through 5.45.081.C.5 are not available and the taxpayer and the city are unable to mutually agree on an alternative method to effectuate an equitable allocation of income from the sale of digital products.

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

F. ~~((Gross))~~ Effective January 1, 2008 through December 31, 2019, gross income derived ~~((from international investment management services taxed under subsection 5.45.050.F and))~~ from service and other business activity taxed under subsection ~~((5.45.050.G))~~ 5.45.050.F shall be apportioned to the City by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service and other business activity income factor and the denominator of which is two.

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

- a. The individual ~~((or employee))~~ is primarily assigned within the city;
- b. The individual is not primarily assigned to any place of business for the tax period and the employee performs ~~((fifty))~~ 50 percent ~~((50%))~~ or more of ~~((his or her))~~ the employee’s service for the tax period in the city; or
- c. The individual is not primarily assigned to any place of business for the tax period, the individual does not perform ~~((fifty))~~ 50 percent ~~((50%))~~ or more of ~~((his or her))~~ the employee’s service in any city, and the employee resides in the city.

2. The service and other business activity income factor is a fraction, the numerator of which is the total service and other business activity income of the taxpayer in the city during the tax period, and the denominator of which is the total service and other business activity income of the taxpayer everywhere during

the tax period. Service and other business activity income is in the city if:

a. The customer location is in the city; or

b. The income-producing activity is performed in more than one ~~((1))~~ location and a greater proportion of the service income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

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

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

a. Separate accounting;

b. The use of a single factor;

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

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

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

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

a. The individual is primarily assigned within the city;

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

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

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

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

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

a. Separate accounting; or

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

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

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

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

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

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

6. If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection 5.45.081.G.

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

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

~~((I.))~~ "Apportionable income" means the gross income of the business taxable under the service

and other business activity classification, including income received from activities outside the city if the income would be taxable under the service and other business activity classification if received from activities within the city, less any exemptions or deductions available.

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

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

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

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

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

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

1) The customer’s residence; or

2) If the customer’s residence is not known, the customer’s billing/ mailing

address.

c. For a customer engaged in business:

1) Where the services are ordered from;

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

3) At the customer's commercial domicile if none of the above are known;

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

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

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

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

~~((5-))~~ "Primarily assigned" means the business location of the taxpayer where the individual performs ~~((his or her))~~ duties.

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

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

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

~~((H.))~~ I. Assignment or apportionment of revenue under this ~~((section))~~ Section 5.45.081 shall be made in accordance with and in full compliance with the provisions of the Interstate Commerce Clause of the United States Constitution where applicable.

~~((I.))~~ J. This ~~((section))~~ Section 5.45.081 does not apply to allocate gross income of motor carriers included in the measure of the tax pursuant to subsection 5.45.050.E ~~((of the Seattle Municipal Code))~~. However, this ~~((section))~~ Section 5.45.081 does apply to allocate gross receipts of motor carriers included in the measure of the tax pursuant to any other subsection of Section 5.45.050.

Section 3. Section 5.45.082 of the Seattle Municipal Code, last amended by Ordinance 125211, is amended as follows:

5.45.082 Ancillary activities of motor carriers and freight brokers

* * *

C. Gross receipts from the activities contained in subsections 5.45.082.A and 5.45.082.B ~~((above))~~ are subject to the apportionment provisions contained in Section ~~((5.45.080))~~ 5.45.081.

Section 4. Section 5.45.090 of the Seattle Municipal Code, last amended by Ordinance 124089, is amended as follows:

5.45.090 Exemptions~~((r))~~

* * *

I. Investments-Dividends ~~((From Subsidiary Corporations))~~ from subsidiary corporations. This ~~((chapter))~~ Chapter 5.45 shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations ~~((, provided that, dividends subject to tax pursuant to SMC 5.45.085 will not be exempt))~~.

* * *

V. Amounts Derived From Manufacturing, Selling, or Distributing Motor Vehicle Fuel. This ~~((chapter))~~

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

* * *

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

Section 6. 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 _____, 2019, and signed by me in open session in authentication of its passage this _____ day of _____, 2019.

President _____ of the City Council

Approved by me this _____ day of _____, 2019.

Jenny A. Durkan, Mayor

Filed by me this _____ day of _____, 2019.

Monica Martinez Simmons, City Clerk

(Seal)