



Legislation Text

File #: CB 120601, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE imposing an excise tax on the sale or exchange of certain capital assets in Seattle; adding a new Chapter 5.66 to the Seattle Municipal Code; and adding a new Section 5.45.050 to the Seattle Municipal Code.

WHEREAS, the Institute for Taxation and Economic Policy consistently ranks Washington State as one of the most unfair tax systems in the country, where lower-income residents pay a higher percentage of their household earnings for taxation; and

WHEREAS, the non-partisan Municipal Research Services Center defines a regressive tax as a tax burden (as a percent of income) that falls hardest upon low-income households, who have to spend a large portion of their income on retail goods and basic needs; and

WHEREAS, there are currently no tax rate limits prescribed by State law for water utilities operated by Seattle Public Utilities; and

WHEREAS, The City of Seattle most recently adjusted the water utility tax rate to 15.54 percent in 2011, which is in addition to the cost of providing water; and

WHEREAS, it is estimated the City will collect approximately \$38 million in regressive water utility taxes in 2024; and

WHEREAS, Chapter 196, Laws of 2021, imposed a state excise tax on capital gains in excess of \$250,000, with exemptions for retirement accounts and real estate sales; and

WHEREAS, implementing a local capital gains excise tax that conforms to state law is a more progressive method of taxation to replace revenues from regressive taxes no longer collected by The City of Seattle

including, but not limited to, the tax on water within Seattle’s geographical boundaries; NOW,
THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A new Chapter 5.66 is added to the Seattle Municipal Code as follows:

Chapter 5.66 CAPITAL GAINS EXCISE TAX

5.66.010 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 5.66 except as may be expressly stated to the contrary.

5.66.020 Definitions

The definitions contained in Chapter 5.30 shall be fully applicable to this Chapter 5.66 except as may be expressly stated to the contrary. The following additional definitions apply throughout this Chapter 5.66:

“Adjusted capital gain” means federal net long-term capital gain:

1. Plus any amount of long-term capital loss from a sale or exchange that is exempt from the tax imposed in this Chapter 5.66, to the extent such loss was included in calculating federal net long-term capital gain;
2. Plus any amount of long-term capital loss from a sale or exchange that is not allocated to Seattle under Section 5.66.090, to the extent such loss was included in calculating federal net long-term capital gain;
3. Plus any amount of loss carryforward from a sale or exchange that is not allocated to Seattle under Section 5.66.090, to the extent such loss was included in calculating federal net long-term capital gain;
4. Less any amount of long-term capital gain from a sale or exchange that is not allocated to Seattle under Section 5.66.090, to the extent such gain was included in calculating federal net long-term capital gain;
5. Less any amount of long-term capital gain from a sale or exchange that is exempt from the tax imposed in this Chapter 5.66, to the extent such gain was included in calculating federal net long-term capital gain.

“Capital asset” has the same meaning as provided by 26 United States Code (U.S.C.) Section 1221 and also includes any other property if the sale or exchange of the property results in a gain that is treated as a long-term capital gain under 26 U.S.C. Section 1231 or any other provision of the Internal Revenue Code.

“Department” means the Department of Finance and Administrative Services.

“Domiciled” means a place where a natural person has a true, fixed, and permanent home, to which the person intends to return after being away for temporary or transitory purposes, including but not limited to vacation, business assignment, educational leave, or military assignment.

“Federal net long-term capital gain” means the net long-term capital gain reportable for federal income tax purposes determined as if 26 U.S.C. Sections 55 through 59, 1400Z-1, and 1400Z-2 did not exist.

“Individual” means a natural person.

“Internal Revenue Code” means the United States Internal Revenue Code of 1986 (codified as Title 26 U.S.C.), as amended, as of the effective date of this ordinance, or such subsequent date as the Director may provide by rule consistent with the purpose of this Chapter 5.66.

“Long-term capital asset” means a capital asset that is held for more than one year.

“Long-term capital gain” means gain from the sale or exchange of a long-term capital asset.

“Long-term capital loss” means a loss from the sale or exchange of a long-term capital asset.

“Permanent place of abode” means a building or structure where a natural person can live that the person permanently maintains, whether the person owns it or not, and is suitable for year-round use.

“Real estate” means land and fixtures affixed to land. “Real estate” also includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.

“Resident” means an individual:

1. Who is domiciled in Seattle during the taxable year, unless the individual:
 - a. Maintained no permanent place of abode in Seattle during the entire taxable year;
 - b. Maintained a permanent place of abode outside of Seattle during the entire taxable year; and

c. Spent in the aggregate not more than 30 days of the taxable year in Seattle;

2. Who is not domiciled in Seattle during the taxable year but maintained a place of abode and was physically present in Seattle for more than 183 days during the taxable year.

For purposes of this definition, “day” means a calendar day or any portion of a calendar day. An individual who is a resident under this definition is a resident for that portion of a taxable year in which the individual was domiciled in Seattle or maintained a place of abode in Seattle.

“Seattle capital gains” means an individual’s adjusted capital gain, as modified in Section 5.66.050, for each return filed under this Chapter 5.66.

“Taxable year” means the taxpayer’s taxable year as determined under the Internal Revenue Code.

“Taxpayer” means an individual subject to tax under this Chapter 5.66.

5.66.030 Tax imposed-Rate

A. Beginning January 1, 2024, a capital gains excise tax is imposed on the sale or exchange of long-term capital assets. Only individuals are subject to payment of the tax.

B. The amount of the capital gains excise tax due shall be an individual’s Seattle capital gains, multiplied by two percent.

C. If an individual’s Seattle capital gains are less than zero for a taxable year, no tax is due under this Section 5.66.030 and no such amount is allowed as a carryover for use in the calculation of that individual’s adjusted capital gain, as defined in Section 5.66.020, for any taxable year. To the extent that a loss carryforward is included in the calculation of an individual’s federal net long-term capital gain and that loss carryforward is directly attributable to losses from sales or exchanges allocated to Seattle under Section 5.66.090, the loss carryforward is included in the calculation of that individual’s adjusted capital gain for the purposes of this Chapter 5.66. An individual may not include any losses carried back for federal income tax purposes in the calculation of that individual’s adjusted capital gain for any taxable year.

D. The tax imposed in this Section 5.66.030 applies to the sale or exchange of long-term capital assets

owned by the taxpayer, whether the taxpayer was the legal or beneficial owner of such assets at the time of the sale or exchange. The tax applies when the Seattle capital gains are recognized by the taxpayer in accordance with this Chapter 5.66.

E. For the purposes of this Chapter 5.66:

1. An individual is considered to be a beneficial owner of long-term capital assets held by an entity that is a pass-through or disregarded entity for federal tax purposes, such as a partnership, limited liability company, S corporation, or grantor trust, to the extent of the individual's ownership interest in the entity as reported for federal income tax purposes.

2. A nongrantor trust is deemed to be a grantor trust if the trust does not qualify as a grantor trust for federal tax purposes, and the grantor's transfer of assets to the trust is treated as an incomplete gift under 26 U.S.C. Section 2511 and its accompanying regulations. A grantor of such trust is considered the beneficial owner of the capital assets of the trust for purposes of the tax imposed in this Section 5.66.030 and must include any long-term capital gain or loss from the sale or exchange of a capital asset by the trust in the calculation of that individual's adjusted capital gain, if such gain or loss is allocated to Seattle under Section 5.66.090.

5.66.040 Exemptions from the capital gains excise tax

The following are exempt from the capital gains excise tax:

A. All real estate transferred by deed, real estate contract, judgment, or other lawful instruments that transfer title to real property and are filed as a public record with the counties where real property is located;

B. 1. An interest in a privately held entity only to the extent that any long-term capital gain or loss from such sale or exchange is directly attributable to the real estate owned directly by such entity;

2. a. Except as provided in subsections 5.66.040.B.2.b and 5.66.040.B.2.c, the value of the exemption under this subsection 5.66.040.B is equal to the fair market value of the real estate owned directly by the entity less its basis, at the time that the sale or exchange of the individual's interest occurs, multiplied by the percentage of the ownership interest in the entity which is sold or exchanged by the individual;

b. If a sale or exchange of an interest in an entity results in an amount directly attributable to real property and that is considered as an amount realized from the sale or exchange of property other than a capital asset under 26 U.S.C. Section 751, such amount must not be considered in the calculation of an individual's exemption amount under subsection 5.66.040.B.2.a;

c. Real estate not owned directly by the entity in which an individual is selling or exchanging the individual's interest must not be considered in the calculation of an individual's exemption amount under this subsection 5.66.040.B;

3. Fair market value of real estate may be established by a fair market appraisal of the real estate or an allocation of assets by the seller and the buyer made under 26 U.S.C. Section 1060, as amended. However, the City is not bound by the parties' agreement as to the allocation of assets, allocation of consideration, or fair market value, if such allocations or fair market value do not reflect the fair market value of the real estate. The assessed value of the real estate for property tax purposes may be used to determine the fair market value;

4. The value of the exemption under this subsection 5.66.040.B may not exceed the individual's long-term capital gain or loss from the sale or exchange of an interest in an entity for which the individual is claiming this exemption;

C. Assets held under a retirement savings account under 26 U.S.C. Section 401(k), a tax-sheltered annuity or custodial account described in 26 U.S.C. Section 403(b), a deferred compensation plan under 26 U.S.C. Section 457(b), an individual retirement account or individual retirement annuity described in 26 U.S.C. Section 408, a Roth individual retirement account described in 26 U.S.C. Section 408A, an employee defined contribution program, an employee defined benefit plan, or a similar retirement savings vehicle;

D. Assets pursuant to, or under imminent threat of, condemnation proceedings by the United States, the state or any of its political subdivisions, or a municipal corporation;

E. Cattle, horses, or breeding livestock if for the taxable year of the sale or exchange, more than 50

percent of the taxpayer's gross income for the taxable year, including from the sale or exchange of capital assets, is from farming or ranching;

F. Property depreciable under 26 U.S.C. Section 167(a)(1), or that qualifies for expensing under 26 U.S.C. Section 179;

G. Timber, timberland, or the receipt of Seattle capital gains as dividends and distributions from real estate investment trusts derived from gains from the sale or exchange of timber and timberland. "Timber" means forest trees, standing or down, on privately or publicly owned land, and includes Christmas trees and short-rotation hardwoods. The sale or exchange of timber includes the cutting or disposal of timber qualifying for capital gains treatment under 26 U.S.C. Section 631(a) or (b);

H. Commercial fishing privileges. For the purposes of this subsection 5.66.040.H, "commercial fishing privilege" means a right, held by a seafood harvester or processor, to participate in a limited access fishery.

"Commercial fishing privilege" includes and is limited to:

1. In the case of federally managed fisheries, quota and access to fisheries assigned pursuant to individual fishing quota programs, limited entry and catch share programs, cooperative fishing management agreements, or similar arrangements; and

2. In the case of state-managed fisheries, quota and access to fisheries assigned under fishery permits, limited entry and catch share programs, or similar arrangements; and

3. In the case of state-managed fisheries, quota and access to fisheries assigned under fishery permits, limited entry and catch share programs, or similar arrangements; and

I. Goodwill received from the sale of an auto dealership licensed under chapter 46.70 of the Revised Code of Washington (RCW) whose activities are subject to chapter 46.96 RCW.

5.66.050 Deductions from the capital gains excise tax

In computing tax for a taxable year, a taxpayer may deduct from their Seattle capital gains:

A. A standard deduction of \$250,000, plus 100 percent of the applicable adjustment calculated pursuant

to RCW 82.87.150, as published on the website of the Washington State Department of Revenue on or before December 31, 2023, per individual, or in the case of spouses or domestic partners, their combined standard deduction is limited to \$250,000, regardless of whether they file joint or separate returns. The amount of the standard deduction shall be adjusted pursuant to Section 5.66.120;

B. Amounts that the City is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

C. The amount of adjusted capital gain derived from the sale or transfer of the taxpayer's interest in a qualified family-owned small business pursuant to Section 5.66.060; and

D. Charitable donations deductible under Section 5.66.070.

5.66.060 Qualifying family-owned small business deduction

In computing tax under this Chapter 5.66 for a taxable year, a taxpayer may deduct from their Seattle capital gains the amount of adjusted capital gain derived in the taxable year from the sale of substantially all of the fair market value of the assets of, or the transfer of substantially all of the taxpayer's interest in, a qualified family-owned small business, to the extent that such adjusted capital gain would otherwise be included in the taxpayer's Seattle capital gains. For purposes of this Section 5.66.060:

A. "Assets" means real property and personal property, including tangible personal property and intangible property.

B. "Family" means the same as "member of the family" in RCW 83.100.046.

C. "Materially participated" means an individual was involved in the operation of a business on a basis that is regular, continuous, and substantial. "Materially participated" shall be interpreted consistently with the applicable Treasury regulations for 26 U.S.C. Section 469, to the extent that such interpretation does not conflict with any provision of this Section 5.66.060.

D. "Qualified family-owned small business" means a business:

1. In which the taxpayer held a qualifying interest for at least five years immediately preceding

the sale or transfer described in this Section 5.66.060;

2. In which either the taxpayer or members of the taxpayer's family, or both, materially participated in operating the business for at least five of the ten years immediately preceding the sale or transfer described in this Section 5.66.060, unless such sale or transfer was to a qualified heir; and

3. That had worldwide gross revenue of \$10,000,000, plus 100 percent of the applicable adjustment calculated pursuant to RCW 82.87.150, as published on the website of the Washington State Department of Revenue on or before December 31, 2023, or less in the 12-month period immediately preceding the sale or transfer described in this Section 5.66.060. The worldwide gross revenue amount under this subsection 5.66.060.D.3 shall be adjusted annually as provided in Section 5.66.120.

E. "Qualified heir" means a member of the taxpayer's family.

F. "Qualifying interest" means:

1. An interest as a proprietor in a business carried on as a sole proprietorship; or

2. An interest in a business if at least:

a. Fifty percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both;

b. Thirty percent of the business is owned, directly or indirectly, by any combination of the taxpayer or members of the taxpayer's family, or both, and at least:

1) Seventy percent of the business is owned, directly or indirectly, by members of two families; or

2) Ninety percent of the business is owned, directly or indirectly, by members of three families.

G. "Substantially all" means at least 90 percent.

5.66.070 Additional deduction for charitable donations

A. In computing tax under this Chapter 5.66 for a taxable year, a taxpayer may deduct from their Seattle

capital gains the amount donated by the taxpayer to one or more qualified organizations during the same taxable year in excess of the minimum qualifying charitable donation amount. For the purposes of this Section 5.66.070, the minimum qualifying charitable donation amount equals \$250,000, plus 100 percent of the applicable adjustment calculated pursuant to RCW 82.87.150, as published on the website of the Washington State Department of Revenue on or before December 31, 2023. The minimum qualifying charitable donation amount under this subsection 5.66.070.A shall be adjusted pursuant to Section 5.66.120.

B. The deduction authorized under subsection 5.66.070.A may not exceed \$100,000, plus 100 percent of the applicable adjustment calculated pursuant to RCW 82.87.150, as published on the website of the Washington State Department of Revenue on or before December 31, 2023, for the taxable year. The maximum amount of the available deduction under this subsection 5.66.070.B shall be adjusted pursuant to Section 5.66.120.

C. The deduction authorized under subsection 5.66.070.A may not be carried forward or backward to another tax reporting period.

D. For the purposes of this Section 5.66.070:

1. “Nonprofit organization” means an organization exempt from tax under 26 U.S.C. Section 501(c)(3).
2. “Qualified organization” means a nonprofit organization, or any other organization, that is:
 - a. Eligible to receive a charitable deduction as defined in 26 U.S.C. Section 170(c); and
 - b. Principally directed or managed within Seattle.

5.66.080 Tax in addition to other license fees or taxes

The tax imposed by this Chapter 5.66 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, the State, or other governmental entity or political subdivision.

5.66.090 Allocations of gains and losses

A. For purposes of the tax imposed under this Chapter 5.66, long-term capital gains and losses are allocated to Seattle as follows:

1. Long-term capital gains or losses from the sale or exchange of tangible personal property are allocated to Seattle if the property was located in Seattle at the time of the sale or exchange. Long-term capital gains or losses from the sale or exchange of tangible personal property are also allocated to Seattle even though the property was not located in Seattle at the time of the sale or exchange if:

- a. The property was located in Seattle at any time during the taxable year in which the sale or exchange occurred or the immediately preceding taxable year;
- b. The taxpayer was a resident at the time the sale or exchange occurred; and
- c. The taxpayer is not subject to the payment of an income or excise tax legally imposed on the long-term capital gains or losses by another taxing jurisdiction.

2. Long-term capital gains or losses derived from intangible personal property are allocated to Seattle if the taxpayer was domiciled in Seattle at the time the sale or exchange occurred.

B. 1. A credit is allowed against the tax imposed in Section 5.66.030 equal to the amount of any legally imposed income or excise tax paid by the taxpayer to another taxing jurisdiction on capital gains derived from capital assets within the other taxing jurisdiction to the extent such capital gains are included in the taxpayer's Seattle capital gains. The amount of credit under this subsection 5.66.090.B may not exceed the total amount of tax due under this Chapter 5.66, and there is no carryback or carryforward of any unused credits.

2. As used in this Section 5.66.090, "taxing jurisdiction" means a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any foreign country, or a political subdivision of the State of Washington, a state of the United States other than the state of Washington, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, or a foreign country.

5.66.100 Filing of returns

A. Except as otherwise provided in this Section 5.66.100 or RCW 82.32.080, taxpayers owing tax under this Chapter 5.66 must file, on forms prescribed by the Director, a return with the Department on or before the date the taxpayer's state capital gains excise tax return for the taxable year is required to be filed.

B. In addition to the Seattle return required to be filed under subsection 5.66.100.A, taxpayers owing tax under this Chapter 5.66 must file with the Department on or before the date the federal return is required to be filed a copy of the Washington State capital gains excise tax return along with all schedules and supporting documentation.

C. Each taxpayer required to file a return under this Section 5.66.100 must, without assessment, notice, or demand, pay any tax due thereon to the Department on or before the date fixed for the filing of the return, regardless of any filing extension. The tax must be paid by forms as may be prescribed by the Director. If any tax due under this Chapter 5.66 is not paid by the due date, interest and penalties as provided in Section 5.66.150 apply to the deficiency.

D. 1. In addition to the Seattle return required to be filed under subsection 5.66.100.A, an individual claiming an exemption under Section 5.66.040 must file documentation substantiating the following:

- a. The fair market value and basis of the real estate held directly by the entity in which the interest was sold or exchanged;
- b. The percentage of the ownership interest sold or exchanged in the entity owning real estate; and
- c. The methodology, if any, established by the entity in which the interest was sold or exchanged, for allocating gains or losses to the owners, partners, or shareholders of the entity from the sale of real estate.

2. The Director may by rule prescribe additional filing requirements to substantiate an individual's claim for an exemption under Section 5.66.040.

E. If a taxpayer has obtained an extension of time for filing the federal income tax return for the taxable

year, the taxpayer is entitled to the same extension of time for filing the return required under this Section 5.66.100 if the taxpayer provides the Department, before the due date provided in subsection 5.66.100.A, the extension confirmation number or other evidence satisfactory to the Department confirming the federal extension. An extension under this subsection 5.66.100.E for the filing of a return under this Chapter 5.66 is not an extension of time to pay the tax due under this Chapter 5.66.

F. 1. If any return due under subsection 5.66.100.A, along with a copy of the state capital gains excise tax return, is not filed with the Department by the due date or any extension granted by the Director, the Department must assess a penalty in the amount of five percent of the tax due for the taxable year covered by the return for each month or portion of a month that the return remains unfiled. The total penalty assessed under this subsection 5.66.100.F may not exceed 25 percent of the tax due for the taxable year covered by the delinquent return. The penalty under this subsection 5.66.100.F is in addition to any penalties assessed for the late payment of any tax due on the return.

2. The Director may waive or cancel the penalty imposed under this subsection 5.66.100.F if:

- a. The Director is persuaded that the taxpayer's failure to file the return by the due date was due to circumstances beyond the taxpayer's control; or
- b. The taxpayer has not been delinquent in filing any return due under this Section 5.66.100 during the preceding five calendar years.

5.66.110 Joint filers

A. If the federal income tax liabilities of both spouses are determined on a joint federal return for the taxable year, they must file a joint return under this Chapter 5.66.

B. Except as otherwise provided in this Section 5.66.110, if the federal income tax liability of either spouse is determined on a separate federal return for the taxable year, they must file separate returns under this Chapter 5.66. State registered domestic partners may file a joint return under this Chapter 5.66 even if they filed separate federal returns for the taxable year.

C. The liability for tax due under this Chapter 5.66 of each spouse or state registered domestic partner is joint and several, unless:

1. The spouse is relieved of liability for federal tax purposes as provided under 26 U.S.C.

Section 6015; or

2. The Director determines that the domestic partner qualifies for relief as provided by rule of the Director. Such rule, to the extent possible without being inconsistent with this Chapter 5.66, must follow 26 U.S.C. Section 6015.

5.66.120 Adjustments for inflation

Beginning December 2024 and each December thereafter, the Director must adjust the applicable amounts by multiplying the current applicable amounts by one plus the percentage by which the most current consumer price index available on December 1 of the current year exceeds the consumer price index for the prior 12-month period, and rounding the result to the nearest \$1,000. If an adjustment under this Section 5.66.120 would reduce the applicable amounts, the Director must not adjust the applicable amounts for use in the following year. The Director must publish the adjusted applicable amounts on its public website by December 31. The adjusted applicable amounts calculated under this Section 5.66.120 take effect for taxes due and distributions made, as the case may be, in the following calendar year.

A. For purposes of this Section 5.66.120, the following definitions apply:

1. “Applicable amounts” means:

- a. The standard deduction amount in Section 5.66.020 and subsection 5.66.050.A.1;
- b. The worldwide gross revenue amount under subsection 5.66.060.D;
- c. The minimum qualifying charitable donation amount under subsection 5.66.070.A;

and

- d. The maximum qualifying charitable donation amount under subsection 5.66.070.B.

2. “Consumer price index” means the consumer price index for all urban consumers, all items,

for the Seattle area as calculated by the United States Bureau of Labor Statistics or its successor agency.

3. “Seattle area” means the geographic area sample that includes Seattle and surrounding areas.

5.66.130 Rules and regulations

The Director shall adopt, publish, and enforce rules and regulations not inconsistent with this Chapter 5.66 for the purpose of carrying out the provisions of this Chapter 5.66.

5.66.140 Ancillary authority of Director

The Director is authorized to enter into agreements with any other taxing jurisdiction, including the Internal Revenue Service of the United States and state and other local jurisdictions that impose taxes on capital gains:

A. To acquire such taxpayer information necessary to most effectively collect the taxes imposed by this Chapter 5.66, determine whether taxpayers are or are not required to file a return for taxes under this Chapter 5.66, determine the amount of taxes due under this Chapter 5.66, conduct audits, and otherwise enact the provisions of this Chapter 5.66; or

B. To conduct an audit or a joint audit of a taxpayer by using an auditor employed by The City of Seattle, another public entity, or a contract auditor; provided that such contract auditor’s pay is not in any manner based upon the amount of tax assessed.

5.66.150 Monetary penalties

A. A taxpayer who fails to pay tax owed under this Chapter 5.66 when due is liable, in addition to interest, to a penalty of one percent of the amount of the unpaid tax for each month or fraction of a month, not to exceed a total penalty of 25 percent of the unpaid tax. If any part of any underpayment of tax owed under this Chapter 5.66 is due to intentional disregard of this Chapter 5.66 or rules or regulations adopted by the Director under Section 5.66.130, but without intent to defraud, an additional penalty of \$10 or ten percent of the total amount of the deficiency in the tax, whichever is greater, shall be added. If any part of the underpayment is due to fraudulent intent to evade the tax imposed under this Chapter 5.66, an additional penalty of 100 percent of the deficiency shall be added.

B. Any taxpayer who fails to file a return with the Director on or before the due date, who fails to include all of the information required to be shown on the return, or who includes incorrect information on a return shall pay a penalty of \$250 for each return with respect to which such a failure occurs; provided, however, the penalty shall be waived if the failure to include all of the information required or the inclusion of incorrect information is corrected by the taxpayer within 30 days of written notice from the Director as provided for under subsection 5.66.150.D. If the act or omission is due to intentional disregard of this Chapter 5.66 or rules or regulations adopted by the Director under Section 5.66.130, but without intent to defraud, an additional penalty of \$500 shall be added. If the act or omission is due to fraudulent intent to evade the tax imposed under this Chapter 5.66, an additional penalty of \$1,000 shall be added.

C. If a claim for refund or credit under this Chapter 5.66 is made for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the taxpayer making such claim shall be liable for a penalty in an amount equal to 20 percent of the excessive amount. For purposes of this Section 5.66.150, the term “excessive amount” means, in the case of any taxpayer, the amount of the claim for refund or credit for any tax year exceeds by at least 50 percent the amount of such claim allowable under this Chapter 5.66 for such tax year.

D. The Director shall notify a taxpayer by mail of any penalties, 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.

E. Upon demonstration to the Director that a penalty has been imposed on an innocent spouse, the Director is authorized to cancel such penalty with respect to the innocent spouse.

5.66.170 Cancellation of penalties

A. The Director may cancel any penalties assessed under subsection 5.66.150.A or 5.66.150.B if the taxpayer shows that the act or omission giving rise to the penalty was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that they exercised ordinary care and prudence in making arrangements to complete and file an accurate return and pay the tax owed by the due date but,

nevertheless, failed to do so due to circumstances beyond their control.

B. A request for cancellation of penalties must be received by the Director within 30 days after the date the Director mails the notice that the penalties are due. 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.

5.66.180 Amnesty

The Director may from time to time declare periods of amnesty in which penalties assessed under subsections 5.66.150.A, 5.66.150.B, or 5.66.150.C, or any combination thereof, may be waived. Such periods of amnesty and the terms thereof may be established upon a finding by the Director that they are likely to have the effect of increasing revenues to the City.

Section 2. A new Section 5.45.060 is added to the Seattle Municipal Code as follows:

5.45.060 Capital gains excise tax credit

A. To avoid taxing the same sale or exchange under both the business and occupation tax and capital gains tax, a credit is allowed against taxes due under this Chapter 5.45 on a sale or exchange that is also subject to the tax imposed under Chapter 5.66. The credit is equal to the amount of tax imposed under Chapter 5.66 on such sale or exchange.

B. The credit may be used against any tax due under Section 5.45.050.

C. The credit under this Section 5.45.060 is earned in regards to a sale or exchange, and may be claimed against taxes due under this Chapter 5.45, for the tax reporting period in which the sale or exchange occurred. The credit claimed for a tax reporting period may not exceed the tax otherwise due under Section 5.45.050 for that tax reporting period. Unused credit may not be carried forward or backward to another tax reporting period. No refunds may be granted for unused credit under this Section 5.45.060.

Section 3. The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance, or the invalidity of its

application to any person or circumstance, does not affect the validity of the remainder of this ordinance or the validity of its application to other persons or circumstances.

Section 4. Sections 1 and 2 of this ordinance shall take effect on January 1, 2024.

Section 5. 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 _____, 2023, and signed by me in open session in authentication of its passage this _____ day of _____, 2023.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2023.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2023.

Scheereen Dedman, City Clerk

(Seal)