NO. 100907-1

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

SOUND INPATIENT PHYSICIANS, INC.,

Appellant,

v.

CITY OF TACOMA,

Respondent.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Sound Inpatient Physicians, Inc. (SIP) urges this Court to accept review of a Court of Appeals' decision in *Sound Inpatient Physicians, Inc. v. City of Tacoma*, -- P.3d ---, 2022 Wn. App. LEXIS 769, interpreting the plain language of a statute that has not been in effect since 2019. *See* Laws of 2019, Ch. 101, § 1. Any possible tax refund or assessment under this former law is severely reduced because of statutory time restrictions. Moreover, the Court of Appeals held that SIP's "interpretation is not consistent with the plain language of the statute, renders portions of the statute meaningless, and leads to an absurd result." *Sound Inpatient,* at 9.

This case presents nothing new for this Court to decide. SIP simply did not meet its heavy burden of showing that the City of Tacoma's tax assessment is incorrect. There is no significant constitutional question, no

conflict with another Division of the Court of Appeals, and no issue of substantial public importance.

II. ISSUES RESTATED

A. Whether the Division II Court of Appeals' decision is "consistent with" a Division I decision, as Division II held?

B. Whether SIP can prove a significant constitutional issue when SIP failed to keep adequate records?

C. Whether the decision interpreting the plain language of a statute that has not been in effect since 2019 and its application is reduced by statutory time restrictions, presents a question of substantial public importance?

III. STATEMENT OF THE CASE

A. Hundreds of SIP employees work in Tacoma.

Opening its headquarters in Tacoma in 2007, SIP is a management and administrative services company for hospitals and physician groups. Clerk's Papers (CP 415).[1] In 2013, more than half of SIP's general and administrative employees worked in Tacoma. CP 74. Currently, SIP has

[1] As SIP noted in its Petition for Review, p. 6, n. 3, the City will be citing to the record before the superior court, which does not have the "CP" at the bottom of the page.

300 general and administrative staff in Tacoma. CP 213, 354. After later expanding, SIP now has another 700 general and administrative employees scattered throughout the country. CP 354-355.

Tacoma general and administrative employees perform:

> management and administrative services related to the day to day operations of the customer's medical groups, including billing and collections, liaison between the medical groups and facilities, such as hospitals, personnel services, financial services, recruitment, planning and budgeting, insurance, compliance, legal and risk management, quality improvement, and such additional services as mutually agreed to….

CP 415.

SIP's Chief Executive Officer and founder is based in Tacoma. CP 364, 471. Four of the nine individuals on SIP's executive team work in Tacoma, including the Chief Executive Officer, Chief Financial Officer, SIP's general counsel, and the Chief "People Officer." CP 369-370.

B. Financial work performed in Tacoma.

SIP's Tacoma employees develop budgets, analyze financial indicators, and file tax reports. CP 364-365. The controller and assistant controller monitor financial accounting records, file tax returns, and maintain internal controls. CP 503-504. These Tacoma employees occasionally travel to meet other SIP employees—not to meet customers' employees—about their work. *Id*. The controller only traveled about once every month or two outside Tacoma. CP 505. More than half of SIP's accounting team work in Tacoma. *Id*. Some of the accounting team travel two times per quarter; some travel only a couple of times per year. CP 506.

C. Tacoma employees focus on human resources, training, legal, payroll, immigration, travel, and marketing.

For "people support," SIP's Tacoma employees work on performance improvement and termination issues as needed. CP 365, 381. Training and planning "generally is

based here in Tacoma." CP 365-366. A "good amount" of legal work is performed in Tacoma, as well as staffing and credentialing. CP 381. "Marketing and communications" are done in Tacoma, as is payroll, and "immigration and travel" support. CP 382, 383.

D. Some employees occasionally travel.

Only about a quarter to a third of the general administrative employees in Tacoma travel for work at least once a month. "More than half" of SIP's Tacoma employees travel "on an occasional basis." CP 371, 373.

E. Tacoma's tax assessment.

Tacoma audited SIP for the tax years 2013-2017, and determined SIP owed additional B&O taxes. CP 057-075. Over a two year period, Tacoma and SIP met numerous times to try to resolve their differences. CP 564. Recognizing that not all of SIP's service income was generated in Tacoma, Tacoma worked diligently to fairly apportion SIP's income. Tacoma's Auditor noted that she:

> "…discussed many alternative apportionment formulas with SIP and worked very hard to try to come to an agreement since the taxpayer was not able to provide correct payroll or correct services receipts based on the TMC [Tacoma Municipal Code]."

CP 565. SIP's Accountant Manager said that SIP "does not track expenses by location and therefore we do not have this information available." CP 645.

Tacoma requested records, reviewed what was provided, and determined that since SIP is not taxable in other locations, the fairest way to calculate service income in Tacoma was to use "costs of performance."

SIP argues that because it met occasionally with customers outside Tacoma for meals, between 0.0% and 0.15% of its service income over 2013-17 should be used in the apportionment formula to determine taxable income. CP 204. SIP asserts that if one SIP employee had one dinner with 11 of its customers' employees, then that counts as 11 customer contacts. CP 508-509, 512-513.

No record exists about the purpose of the meal, what work was performed during the meal, or how long it lasted. CP 515.

Because of SIP's position that virtually no service income should be apportioned to Tacoma, SIP appealed the assessment and requested a refund of $964,766 for taxes paid in 2013 through 2017. CP 412, 557.

F. SIP did not meet its burden and the Hearing Examiner affirmed Tacoma's position.

The Hearing Examiner affirmed Tacoma's position and found that it appropriately apportioned SIP's income. CP 650-665. The Hearing Examiner found that SIP did not meet its heavy burden of proving the tax assessment was incorrect. CP 663.

G. The superior court reversed but the Court of Appeals affirmed the Examiner.

The superior court reversed. CP 771-772. Tacoma appealed the superior court's decision, and the Court of Appeals reversed the superior court, agreeing with the

Hearing Examiner. *See Sound Inpatient,* -- P.3d ---, 2022 Wn. App. LEXIS 769.

IV. THIS COURT SHOULD DENY REVIEW.

Tacoma requests this Court to deny SIP's petition for review. SIP argues that review should be accepted by this Court because: (1) the decision is in conflict with a published decision of Division I, (2) a significant question of law under the United States Constitution is involved, and (3) the petition involves an issue of substantial public interest that should be determined by this Court. RAP 13.4(b). None of these apply.

A. General business and occupation tax law.

1. Business and Occupation taxes.

Business and occupation (B&O) taxes are assessed for the privilege of conducting business in a taxing jurisdiction. *Ford Motor Co. v. City of Seattle*, 160 Wn.2d 32, 44, 156 P.3d 185 (2007). Like 47 cities in Washington State, Tacoma imposes a B&O tax on those engaging in

business in Tacoma. CP 810. Tacoma Municipal Code (TMC) 6A.30.[2] For SIP, the tax is measured, or based upon, the gross income of the business. TMC 6A.30.050.A.9.

2. Tax apportionment generally.

The commerce clause of the United States Constitution requires state and local taxes to be fairly apportioned so that the tax is imposed only on the portion of income reasonably attributed to the taxpayer's in-state activities. *Goldberg v. Sweet*, 488 U.S. 252, 261, 109 S. Ct. 582, 102 L. Ed. 2d 607 (1989). The United States Supreme Court has "long held that the Constitution imposes no single [apportionment] formula on the States…" *Id*., 488 U.S. at 261. States have wide latitude in the selection of apportionment formulas. *Moorman Mfg.*

[2] The City is relying on the TMC 6A.30 in effect during the audit period. (A copy of the pertinent TMC in effect during the audit period is attached for the Court's convenience.)

Co. v. Bair, 437 U.S. 267, 274, 98 S. Ct. 2340, 57 L. Ed. 2d 197 (1978).

For example, in determining B&O tax due to the state of Washington, the state Legislature chose a "single factor" formula. That is, a taxpayer looks at one factor—the receipts factor—to determine a percentage, which is then multiplied by the taxpayer's "apportionable income." RCW 82.04.462. The result is the amount taxable by the state of Washington. *See also, Moorman Mfg.*, 437 U.S. at 276 (recognizing that some states use a three-factor formula (property, payroll and sales), but another state uses a single factor (sales) formula).

For local jurisdictions, the Washington State Legislature chose a two-factor formula. In 2003, the Legislature enacted RCW 35.102, "Municipal business and occupation tax," outlining how cities allocate and apportion

gross income for B&O tax purposes.[3] To fairly determine the amount of taxable income within a taxing jurisdiction, the state Legislature generally requires that a business' gross income apportioned by using two factors—a payroll factor plus the service-income factor, all divided by two, and then multiplied by the income to be apportioned. RCW 35.102.130(3); TMC 6A.30.077.F. Both factors look at payroll and service income in Tacoma, as compared to everywhere else. RCW 35.102.130(3)(a) and (b). The two factors work together to fairly apportion income to a city. The more service income or payroll apportioned *outside* a city, the less of a taxpayer's income is apportioned to the city, which means a lower B&O tax.

The parties do not dispute the "payroll" factor in Tacoma. Tacoma payroll factor ranges from 50.86% in

[3] A copy of RCW 35.102.130 in effect during the audit period is attached for the Court's convenience.

2013 to 26.38% in 2017, more than any other single office. CP 73.

The issue is about the numerator in “service-income” factor, which is the amount of “service income in the city.” RCW 35.102.130(3)(b) provides a list and states, “service income is in the city” if:

> (i) The customer location is in the city; or
> (ii) The income-producing activity is performed in more than one 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
> (iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(Emphasis added). "Customer location" means “the city,,, where the majority of the contacts between the taxpayer and the customer take place.” RCW 35.102.130(4)(d). The central dispute is whether subsection (i) or subsection

(ii) applies. Tacoma believes the "costs of performance" method applies to fairly apportion SIP's income.[4]

"Costs of performance" in RCW 35.102.130(3)(b)(ii) is not defined. "When a technical term is used in its technical field, the term should be given its technical meaning by using a 'technical rather than a general purpose dictionary' to resolve the term's definition." *Tingey v. Haisch*, 159 Wn.2d 652, 658, 152 P.3d 1020 (2007).

[4] In addition to the list cited above in RCW 35.102.130(3)(b), the state Legislature recognized that those provisions might not address every situation to fairly apportion income. Referred to as a "catchall" to help determine apportionment in a way that is fair. *City of Seattle v. KMS Fin. Servs., Inc.*, 12 Wn.App. 2d 491, 506-07, 459 P.3d 359 (2020) (*KMS II*). RCW 35.102.130(3)(c) continues to provide options to fairly apportion income:

> "If the allocation and apportionment provisions of this subsection 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.

According to the Multistate Tax Commission,[5] the "costs of performance" means:

> [D]irect costs determined in a manner consistent with generally accepted accounting principles in accordance with accepted conditions of practices in the trade of business of the taxpayer to perform the income producing activity which gives rise to the particular item of income.

CP 809.

SIP did not track expenses for any of its locations. CP 645. As a result, Tacoma had to determine how to calculate fairly the costs SIP paid to perform its services in Tacoma. Tacoma used four factors to calculate the costs of performance: (1) direct labor costs, (2) facility lease expense, (3) facility other expense, and (4) depreciation. CP 548-49, 563. Using the "costs of performance" method, if more income producing activity occurred in one city than

[5] The Multistate Tax Commission (MTC) is an intergovernmental state tax agency working on behalf of states and taxpayers to facilitate the equitable and efficient administration of state tax laws that apply to multistate and multinational enterprises. It created a Multistate Compact, of which Washington is a party. *See* RCW 82.56; http://www.mtc.gov/The-Commission/Member-States. The MTC is viewed as "a single, established authority" related to interstate tax issues. *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 488, 98 S. Ct. 799, 54 L. Ed. 2d 682 (1978).

any other single location (and the taxpayer is not taxable at the customer location) then the "service income factor" is 100%. The service-income factor is then used in the two-factor apportionment formula, including the payroll factor, to determine that amount of taxable income in Tacoma.[6]

"[T]here is no legitimate dispute that cost apportionment, if done properly, is a constitutional method for determining that portion of a company's income derived from in-city activities for purposes of calculating B&O taxes." *Avanade, Inc. v. City of Seattle*, 151 Wn. App. 290, 300-301, 211 P.3d 476 (2009), citing to *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 186, 115 S. Ct. 1331, 131 L. Ed. 2d 261 (1995).

[6] SIP states that the City is "double counting" payroll because the City uses "direct labor costs" in the service income calculation. Petition for Review, p. 18. If the City did not use "direct labor costs" in the service income calculation, SIP's taxable income to Tacoma would *increase* dramatically. Instead of the "costs of performance" in Tacoma ranging from 53.41% in 2013 to 27.07% in 2017, the "costs of performance" percentage in Tacoma increases to 100% in 2013, 98.6% in 2014, 77.6% in 2015, 59.0% in 2016, and 52.6% in 2017. CP 563. (To perform this calculation, the City removed any "Payroll—Business Colleagues," added the remaining categories, and divided by 3. See CP 563.)

With that general backdrop of the law, the issue before the Court of Appeals was how to determine SIP's "service-income in the city" during the tax period at issue (2013-2017).

B. There is no conflict with Division I of the Court of Appeals.

The Court of Appeals' decision specifically states that its "opinion is not inconsistent with Division One's holding" in *Wedbush Sec., Inc. v. City of Seattle*, 189 Wn. App 360, 358 P.2d 422 (2015). *Sound Inpatient,* at 12. Because Division I's case was based on totally different facts, Division II also found that the *Wedbush* decision "has limited persuasive value on the issue being decided here." *Id*. at 13.

In *Wedbush*, as the Court here noted, Division I was addressing a situation in which the "majority of contact with customers occurs through the telephone and the Internet." *Wedbush*, at 362. Division I addressed whether customer

locations were determined by physical contacts or something else. *Id.* at 364-65. Because Division I was not addressing whether isolated physical contacts prevented Tacoma from being able to apportion service income in the city, the *Wedbush* opinion not only has limited persuasive value on the issues being decided here, but is consistent with the Court's decision in this case. There is no conflict.

Tacoma's Hearing Examiner agreed:

> SIP takes the *Wedbush* court's emphasis on physical contacts and conflates it into more than it was intended to be creating almost the reverse situation analyzed in *Wedbush*. SIP contends that if there are physical contacts, and those physical contacts are outside the city, then *de facto,* no income is attributable to the city. This is neither what the statute actually says, nor is it what *Wedbush* holds… That approach would also render clauses (b)(ii) and (b)(iii) meaningless or superfluous, violating the cardinal rule of statutory construction that requires the construction of the enactment as a whole, giving effect to *all* language used.

CP 661.

The decisions in *Wedbush* and *Sound Inpatient* are not in conflict; they merely apply the apportionment

formulas in a fair way under different facts. As this Court has noted: "Where the literal words of a court opinion appear to control an issue, but where the court did not in fact address or consider the issue, the ruling is not dispositive and may be reexamined…. 'An opinion is not authority for what is not mentioned therein and what does not appear to have been suggested to the court by which the opinion was rendered.'" *In re Pers, Restraint of Stockwell*, 179 Wn.2d 588, 600, 316 P.3d 1007 (2014) citing to *Etco, Inc. v. Dep't. of Labor & Indus.*, 66 Wn. App. 302, 307, 831 P.2d 1133 (1992). As a result, the decision in this case does not conflict with *Wedbush*.

C. Because SIP did not maintain adequate records, it cannot prove this case presents a significant question of constitutional law.

SIP's hyperbole (of a "233% percent increase") to argue that a significant constitutional question arises in this case is unpersuasive. Without adequate records, SIP cannot show that Tacoma's apportionment analysis "leads

to a grossly distorted result" by "clear and convincing evidence." *Moorman Mfg.*, 437 U.S. at 274 (internal citations omitted).

The Court recognized SIP's failure to maintain appropriate records to *prove* a constitutional violation:

> The City calculated the cost of performance based on information that SIP provided and reached its 100 percent determination primarily based on SIP's failure to track expenses by location. Because SIP has failed to produce evidence showing that its costs of performance and resulting income-producing activity are performed in a greater proportion outside of the city, it cannot meet its burden to show that the city's tax apportionment is externally inconsistent as applied to its business.

Sound Inpatient, n. 6. As a result, Tacoma's assessment is rational and SIP could not meet its burden of proving a constitutional violation. *See Woods v. Seattle's Union Gospel Mission*, 197 Wn.2d 231, 239 (2021) (holding that the party challenging constitutionality bears the burden of proving a statute, as applied, is unconstitutional).[7]

[7] SIP has the burden to show that the B&O tax assessment is incorrect. *Ford*, 160 Wn.2d at 41. Moreover, this Court has opined that, when construing a tax

Even if it did have adequate records, there is still no significant question of constitutional law. One factor courts consider when analyzing whether a tax statute is in accordance with the federal Commerce Clause is whether the tax is "externally consistent."[8] External consistency looks to the economic justification for the value taxed, to discover whether a tax reaches beyond that portion of value fairly attributable to economic activity within its jurisdiction. *Gen. Motors Corp. v. City of Seattle*, 107 Wn. App. 42, 58, 25 P.3d 1022 (2001) (quoting *Okla. Tax Comm'n,* 514 U.S. at 185 (1995)). "There must be a 'rational relationship between the income attributed to the state and the intrastate value' of the business being taxed." *KMS Fin. Servs., Inc. v. City of Seattle, 135 Wn. App. 489,*

ordinance, a "court gives considerable deference to the construction of" the challenged ordinance "by those officials charged with its enforcement." *Ford*, 160 Wn.2d at 42. Additionally, "issues such as which accounting standard is more accurate are more properly the province of the tax authority than of the courts." *Avanade,* 151 Wn. App. at 299.

[8] SIP appears to have abandoned its "internal consistency" argument since it did not argue it in its Petition for Review.

504-5, 146 P.3d 1195 (2006) (citations omitted). The external consistency test focuses on the "real possibility of multiple taxation." *Gen. Motors Corp.*, 107 Wn. App. at 61.

There is no possibility of multiple taxation. SIP does not pay gross receipts taxes anywhere other than in Tacoma and to the state of Washington. CP 95.

The Court of Appeals found that Tacoma's cost apportionment method is rational and fair because Tacoma used four factors—direct labor costs, facility lease expenses, facility other expenses, and depreciation—to figure out how much it cost SIP to perform its services in Tacoma. The Court said:

> "These four factors reflect a reasonable sense of how SIP's income is generated because it is reasonable to determine that the cost of performance is directly correlated with the amount of income generated by a company."

Sound Inpatient, at 16.

SIP exaggerates numbers to argue Tacoma's approved cost of performance method is flawed. Its efforts fail because it distorts the record.[9] SIP claims that minimal revenue is "in Tacoma." Petition for Review, p. 15. This refers *only* to income related to the customers *in* Tacoma. CP 725. That is how they come up with the "233% increase" argument—by ignoring the work and income earned in Tacoma. Its analysis does not reflect the hundreds of full-time employees working in Tacoma and servicing clients all around the country. As the Court of Appeals noted: "SIP's service income is primarily derived from services that do not require physical contact with customers." *Sound Inpatient*, p. 12.

Moreover, the cases upon which SIP relies do not apply because those taxpayers maintained records to

[9] SIP baldly claims that the "Supreme Court has prescribed how to determine the distortive effect of a single factor in a multi-factor apportionment formula: by 'comparing the percentage differences between the application of different methodologies.'" Petition for Review, pp. 13-14. Instead of citing to any "Supreme Court" authority for that proposition, SIP cites to a treatise.

show where the work was performed and income earned, and because those cases are “one factor” apportionment cases. In *Hans Rees' Sons, Inc. v. North Carolina*, 283 U.S. 123, 136, 51 S. Ct. 385, 75 L. Ed. 879 (1931), a state unfairly attempted to tax approximately 80% of a taxpayer’s income, using a one-factor formula, when the taxpayer could *prove* that it earned 17% of all of its income in the state. In *Norfolk & W. R. Co. v. Missouri State Tax Comm'n*, 390 U.S. 317, 88 S. Ct. 995, 19 L. Ed. 2d 1201 (1968), another one-factor case, a state unlawfully attempted to impose a tax on 8.2824% of the railroad’s rolling stock, because the taxpayer could *prove* that the value of its stock in Missouri was only 2.71% of all of its stock nationwide, a “206% difference.” CP 716. Since SIP did not maintain records to show what work was done in

Tacoma to earn service income, its reliance on *Hans Rees' Sons* and *Norfolk* is unconvincing.[10]

Additionally, because *Hans Rees' Sons* and *Norfolk* are one-factor cases, there was no means to balance other factors to reach a fair apportionment. In contrast, RCW 35.102.130(3)(b) authorizes a two-factor apportionment. The Legislature did this to find a fair balance between payroll and service income to fairly apportion a taxpayer's income.

Based on these cases, SIP argues that Tacoma is attempting to tax "233%" more of SIP's income than SIP believes is fair. CP 717. Since SIP is calculating this "233% difference" based on customer location and not where actual income is earned, it exaggerates the numbers

[10] SIP's reliance on a payroll factor case is misplaced. Petition for Review, p. 17. In *KMS II*, 12 Wn.App. 2d 491, Division I dealt with only the "payroll factor." In that case, Seattle attempted to *exclude* all payroll paid to out-of-city independent contractors. Here, Tacoma recognizes that a great deal of SIP's payroll is outside Tacoma. That recognition mitigates the service-income factor. Division I did not analyze "percentages" as a means to invalidate Seattle's position in that case.

to make it stand out. SIP does not track what its employees in Tacoma earn for SIP. CP 645. It does not track what its finance managers, accountants, Chief Operating Officers, attorneys, human resource staff, and more, earn for SIP in Tacoma. Because it does not track it, but simply says its staff meet customers for meals outside Tacoma, it says no service-income should be included in the service-income factor in the two-factor apportionment method. SIP is asking the courts to believe that while it has more than 300 employees in Tacoma, and perhaps one customer, that virtually no service income should be included in the calculation. SIP's position is unfair and not persuasive. As a result of the rational and plain language application of RCW 35.102.130, as well as SIP's failure to maintain adequate records, this case presents no question of constitutional law for this Court to review.[11]

[11] SIP appears to argue that "cost of performance" is unconstitutional on its face. Petition for Review, pp. 19-20. SIP never raised this before, with respect to "external consistency." It cannot now raise it. RAP 2.5.

D. This case does not present an issue of substantial public importance because the statute is outdated.

Former RCW 35.102.130(3)(b) regarding how to apportion service income has not been in effect since 2019. *See* Laws of 2019, Ch. 101, § 1 (substantively amending how service income is apportioned beginning January 1, 2020). As a result, the opportunity for taxpayers to rely on this law is a narrow one. In other words, the time in which taxpayers may seek refunds is strictly limited by law. *See* RCW 35.102.110; RCW 82.32. RCW 82.32.060 limits a taxpayer's refund to the last four years plus the current year (which means if a taxpayer files a refund *this year* under former RCW 35.102.130(3), it could only seek a refund for 2018 and 2019). As a result, any decision by this Court in this matter would have very limited impact or benefit to anyone.

Moreover, the Court of Appeals simply interpreted the plain language of RCW 35.102.130(3)(b). There is

nothing significant about this. Many times, the Court of Appeals acknowledged that the plain language supports Tacoma's position:

- "[F]ormer subsection (b)(ii) and former subsection (b)(iii) contain plain language that specifically accounts for the customer location being outside of the city." *Sound Inpatient*, at 10;
- "The plain language of former RCW 35.102.130(3)(b) simply does not support SIP's interpretation…" *Id*, at 9;
- "The plain language of the two former subsections establishes a basis for the factor even when there is a customer location and that customer location is outside of the city." *Id*, at 10; and
- SIP's "interpretation is not consistent with the plain language of the statute, renders portions of the statute meaningless, and leads to an absurd result." *Id*, at 9.

SIP argues that the Court of Appeals' goal for "fair" apportionment in RCW 35.102.130 "lacks textual basis," "provides no guidance or guardrails," is "rudderless" and "untethered to the text." Petition for Review, pp. 27, 30. This is a curious complaint when the Washington State Legislature specifically enacted apportionment provisions to "*fairly* represent the extent of the taxpayer's business activities in the city…" RCW 35.102.130(3)(c) (former) (emphasis added). In fact, the 2003 Final Bill report for RCW 35.102.130 describes the legislation as "Changing requirements regarding state and local tax to provide for municipal business and occupation tax uniformity and *fairness*." (Emphasis added). The entire goal of tax apportionment is fairness.

Though SIP argues otherwise, Tacoma advocates for what the Court held and the state Legislature enacted—to "fairly apportion" income. City of Tacoma's Opening Brief, p. 18 (stating, "Taxpayers and cities must use this list

to determine which specific provision fairly fits a given situation"); see also pages 1, 6, 10, 11, 12, 13, 14, 16, 20, 24, 27, 28, 30, 31, 32, 33, 35, 36, 40, 41, 42. For SIP to argue this issue was not briefed, and is unsupported by case law or statute, is incorrect.

SIP is correct that taxpayers generally file their tax returns voluntarily. *See* Petition for Review, p. 29. It has always been incumbent upon the taxpayer to determine how to fairly apportion their income. The Legislature recognized this reality when it stated a "taxpayer may petition for" an alternative apportionment method if one method does "not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business." RCW 35.102.130(3)(c). There is nothing new about this. As a result, this case does not present an issue of significant public importance.

V. CONCLUSION

Since the law in this case has not been in effect for years, and any reliance on it by taxpayers is limited by state restrictions, any decision by this Court will have a very narrow impact. For the foregoing reasons, the City of Tacoma respectfully requests that SIP's petition for review be denied.

This document contains 4,911 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 27th day of May, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of May, 2022, I filed, through my staff, the foregoing with the Clerk of the court for the Supreme Court of the State of Washington via electronic filing, through which a copy will also be electronically delivered to:

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EXECUTED this 27th day of May, 2022, at Tacoma, WA.

/s/ *Debra E. Casparian*
DEBRA E. CASPARIAN

Chapter 6A.30

BUSINESS AND OCCUPATION TAX

Sections:

6A.30.010 Purpose.

This section implements Washington Constitution Article XI, Section 12 and RCW 35.22.280(32) (first class cities), which give municipalities the authority to license for revenue. In the absence of a legal or constitutional prohibition, municipalities have the power to define taxation categories as they see fit in order to respond to the unique concerns and responsibilities of local government. It is intended that this chapter be as uniform as possible among the various municipalities. Uniformity with provisions of state tax laws should not be presumed, and references in this section to statutory or administrative rule changes do not mean state tax statutes or rules promulgated by the Department of Revenue.

(Ord. 27297 § 1; passed Nov. 23, 2004)

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6A.30.030 Definitions.

In construing the provisions of this chapter, the following definitions shall be applied. Words in the singular number shall include the plural, and the plural shall include the singular.

"Advance," "reimbursement."

A. "Advance" means money or credits received by a taxpayer from a customer or client with which the taxpayer is to pay costs or fees on behalf of the customer or client.

B. "Reimbursement" means money or credits received from a customer or client to repay the taxpayer for money or credits expended by the taxpayer in payment of costs or fees of the customer or client.

"Agricultural product," "farmer."

A. "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: a product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture, as defined in RCW 15.85.020; plantation Christmas

trees; turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product, as defined in RCW 15.85.020, or a bird, insect, or the substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets and does not include marijuana as defined by RCW 69.50.101(t).

B. "Farmer" means any person engaged in the business of growing or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product whatsoever for sale. "Farmer" does not include a person using such products as ingredients in a manufacturing process, or a person growing or producing such products for the person's own consumption. "Farmer" does not include a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house. "Farmer" does not include any person with respect to the business of taking, cultivating, or raising timber.

"Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly.

"Business and occupation tax" or "gross receipts tax" means a tax imposed on or measured by the value of products, the gross income of the business, or the gross proceeds of sales, as the case may be, and that is the legal liability of the business.

"City" means the City of Tacoma.

"Commercial or industrial use" means the following uses of products, including by-products, by the extractor or manufacturer thereof:

A. Any use as a consumer;

B. Any use in the manufacturing of products including articles, substances or commodities.

"Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

"Consumer" means the following:

A. Any person who purchases, acquires, owns, holds, or uses any tangible or intangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for a consumer other than for the purpose of:

1. Resale as tangible or intangible personal property in the regular course of business;

2. Incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers;

3. Incorporating such property as an ingredient or component of a new product or as a chemical used in processing a new product when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new product; or

4. Consuming the property in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

B. Any person engaged in any business activity taxable under Section 6A.30.050.A.9;

C. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;

D. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in Section 6A.30.030, other than for resale in the regular course of business;

E. Any person who is an end user of software;

F. Any person engaged in the business of "public road construction" with respect to tangible personal property when that person incorporates the tangible personal property as an ingredient or component of a publicly-owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing, or spreading the property in or upon the right-of-way of a publicly-owned street, place, road, highway, easement, bridge, tunnel, or trestle, or in or upon the site of a publicly-owned mass public transportation terminal or parking facility;

G. Any person who is an owner, lessee, or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business;

H. Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

I. Any person engaged in "government contracting." Any such person shall be a consumer within the meaning of this subsection with respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer."

"Delivery" means the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative. It is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

"Digital automated service," "digital code," 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)(b).

"Director" means the Director of the Finance Department of the City or any officer, agent, or employee of the City designated to act on the Director's behalf.

"Eligible gross receipts tax" means a tax which:

A. Is imposed on the act or privilege of engaging in business activities within Section 6A.30.050; and

B. Is measured by the gross volume of business, in terms of gross receipts and is not an income tax or value added tax; and

C. Is not, pursuant to law or custom, separately stated from the sales price; and

D. Is not a sales or use tax, business license fee, franchise fee, royalty, or severance tax measured by volume or weight, or concession charge, or payment for the use and enjoyment of property, property right, or a privilege; and

E. Is a tax imposed by a local jurisdiction, whether within or without the state of Washington, and not by a country, state, province, or any other non-local jurisdiction above the county level.

"Engaging in business."

A. The term "engaging in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

B. This section sets forth examples of activities that constitute engaging in business in the City, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimis business activities in the City without having to register and obtain a business license or pay City business and occupation taxes. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" in subsection A above. If an activity is not listed, whether it constitutes engaging in business in the City shall be determined by considering all the facts and circumstances and applicable law.

C. Without being all inclusive, any one of the following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker, or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

1. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City.

2. Owning, renting, leasing, using, or maintaining an office, place of business, or other establishment in the City.

3. Soliciting sales.

4. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

5. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.

6. Installing, constructing, or supervising installation or construction of, real or tangible personal property.

7. Soliciting, negotiating, or approving franchise, license, or other similar agreements.

8. Collecting current or delinquent accounts.

9. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.

10. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.

11. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs, and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, and veterinarians.

12. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.

13. Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers.

14. Investigating, resolving, or otherwise assisting in resolving customer complaints.

15. In-store stocking or manipulating products or goods sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

16. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

D. If a person, or an employee, agent, representative, independent contractor, broker, or another acting on the person's behalf, engages in no other activities in or with the City but the following, it need not register and obtain a business license and pay tax.

1. Meeting with suppliers of goods and services as a customer.

2. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

3. Attending meetings such as board meetings, retreats, seminars, conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

4. Renting tangible or intangible property as a customer when the property is not used in the City.

5. Attending, but not participating in, a "trade show" or "multiple vendor events." Persons participating at a trade show shall review the City's trade show or multiple vendor event ordinances.

6. Conducting advertising through the mail.

7. Soliciting sales by phone from a location outside the City.

E. A seller located outside the City merely delivering goods into the City by means of a common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the City. Such activities do not include those in subsection (D).

The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the state of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.

"Extracting" is the activity engaged in by an extractor and is reportable under the extracting classification.

"Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for

commercial or industrial use, mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral, or other natural resource product; or fells, cuts or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, or takes, cultivates, or raises shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer.

"Extractor for hire" means a person who performs under contract necessary labor or mechanical services for an extractor.

"Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property, digital goods, digital codes, digital automated services or for other services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

"In this City" or "within this City" includes all federal areas lying within the corporate city limits of the City.

"Investment management services."

A. "Investment management services" includes investment research, investment consulting, fund administration, fund distribution, investment transactions, or related investment services to persons or for or on behalf of a collective investment fund. A person is considered to be engaged in providing international investment management services if such person is providing investment management services and/or is a member of an affiliated group (a group of corporations under common ownership or control) primarily in the business of providing investment management services to collective investment funds, and at least 15 percent of the gross income of the person and/or affiliated group is derived from providing investment management services to any of the following:

1. Persons or collective investment funds residing outside the United States; or

2. Collective investment funds with at least 50 percent of their investment assets located or issued outside the United States.

B. For the purpose of this section, "collective investment fund" includes:

1. A mutual fund or other regulated investment company as defined in Section 851(a) of the Internal Revenue Code of 1986, as amended;

2. An investment company, as that term is used in Section 3(a) of the Investment Company Act of 1940, as well as any entity that would be an investment company for this purpose but for the exemptions contained in Section 3(c)(1) or (11) of the aforesaid 1940 Act;

3. An employee benefit plan, which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in Sections 125, 401, 403, 408, 457, and 501(c)(9), and (17) through (23) of the Internal Revenue Code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;

4. A fund maintained by a tax-exempt organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for operating, quasi-endowment, or endowment purposes;

5. Funds that are established for the benefit of such tax exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or

6. Collective investment funds similar to those described in subsections (B)(1) through (5) of this section created under the laws of a foreign jurisdiction.

"Manufacturer," "to manufacture."

A. "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from the person's own materials or ingredients any products. When the owner of equipment or facilities furnishes or sells to a customer, prior to manufacture, materials or ingredients equal to less than 20 percent of the total value of all materials or ingredients that become a part of the finished product, the owner of the equipment or facilities will be deemed to be a processor for hire and not a manufacturer. A business

not located in the City that is the owner of materials or ingredients processed for it in the City by a processor for hire shall be deemed to be engaged in business as a manufacturer in the City.

B. "To manufacture" means all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials or ingredients so that as a result thereof a new, different or useful product is produced for sale or commercial or industrial use, and shall include:

1. The production of special made or custom made articles;

2. The production of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician;

3. Crushing and/or blending of rock, sand, stone, gravel, or ore, and

4. The producing of articles for sale, or for commercial or industrial use, from raw materials or prepared materials by giving such materials, articles, and substances of trade or commerce new forms, qualities, properties, or combinations, including, but not limited to, such activities as making, fabricating, processing, refining, mixing, slaughtering, packing, aging, curing, mild curing, preserving, canning, and the preparing and freezing of fresh fruits and vegetables.

"To manufacture" shall not include the production of digital goods or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

"Manufacturing" means the activity conducted by a manufacturer and is reported under the manufacturing classification.

"Newspaper," "magazine," "periodical."

A. "Newspaper" means a publication offered for sale regularly at stated intervals at least once per week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.

B. "Magazine" or "periodical" means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

"Office" or "place of business" means a fixed location or permanent facility where the regular business of the person is conducted and which is either owned by the person or over which the person exercises legal dominion and control. The regular business of the person is presumed conducted at a location:

A. Whose address the person uses as his or her business mailing address; and

B. Where the place of primary use is shown on a telephone billing or a location containing a telephone line, listed in a public telephone directory or other similar publication, under the business name; and

C. Where the person holds him- or herself out to the general public as conducting his or her regular business through signage or other means; and

D. Where the person is required to obtain any appropriate state and local business license or registration unless he or she is exempted by law from such requirement.

A vehicle such as a pick-up, van, truck, boat or other motor vehicle is not an office or place of business. A post office box is not an office or place of business.

If a person has an office or place of business, the person's home is not an office or place of business unless it meets the criteria for office or place of business above. If a person has no office or place of business, the person's home or apartment within the City will be deemed the place of business.

"Option to purchase" shall mean a continuing offer or contract by which owner stipulates with another that the latter shall have the right to buy property at a fixed dollar price within a certain time. An agreement is only an option when no obligation rests on the potential buyer to make any payment except such as may be agreed upon by the parties as consideration to support the option until the potential buyer has made up his or her mind within a time specified to complete the purchase. The use of the term "fair market value" or any other like term shall not be substituted for a fixed dollar price in determining if an "option to purchase" exists.

"Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof.

"Precious metal bullion" or "monetized bullion."

A. “Precious metal bullion” means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form.

B. “Monetized bullion,” for purposes of this section, means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art.

“Processing for hire” means the performance of labor and mechanical services upon materials or ingredients belonging to others so that as a result a new, different, or useful product is produced for sale or commercial or industrial use. A processor for hire is any person who would be a manufacturer if that person were performing the labor and mechanical services upon that person’s own materials or ingredients. If a person furnishes or sells to a customer, prior to manufacture, materials or ingredients equal to 20 percent or more of the total value of all materials or ingredients that become a part of the finished product the person will be deemed to be a manufacturer and not a processor for hire.

“Product” or “byproduct.”

A. “Product” means tangible personal property, including articles, substances, or commodities created, brought forth, extracted, or manufactured by human or mechanical effort.

B. “Byproduct” means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities.

“Retailing” means the activity of engaging in making sales at retail and is reported under the retailing classification.

“Retail service” shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

A. Amusement and recreation services including, but not limited to, golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquetball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. “Amusement and recreation services” also include the provision of related facilities such as basketball courts, tennis courts, handball courts, swimming pools, and charges made for providing the opportunity to dance. The term “amusement and recreation services” does not include instructional lessons to learn a particular activity such as tennis lessons, swimming lessons, or archery lessons.

B. Abstract, title insurance, and escrow services;

C. Credit bureau services;

D. Automobile parking and storage garage services;

E. Landscape maintenance and horticultural services, but excluding (1) horticultural services provided to farmers, and (2) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

F. Service charges associated with tickets to professional sporting events;

G. The following personal services: physical fitness services, tanning salon services, tattoo parlor services, steam bath services, Turkish bath services, escort services, and dating services.

H. The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

“Royalties” means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items.

“Sale,” “casual or isolated sale.”

A. “Sale” means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a “sale at retail,” “retail sale,” or “retail service.” It includes renting or leasing, conditional sale contracts, leases with option to purchase, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation, whether consumed upon the premises or not.

B. “Casual or isolated sale” means a sale made by a person who is not engaged in the business of selling the type of property involved on a routine or continuous basis.

"Sale at retail," "retail sale."

A. "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers, other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

1. Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

2. Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

3. Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

4. Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

5. Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (1), (2), (3), (4), or (5) of this subsection following such use.

6. Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (F) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

B. "Sale at retail" or "retail sale" also means every sale of tangible personal property to persons engaged in any business activity which is taxable under Sections 6A.30.050.A.7 or .9.

C. "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered with respect to the following:

1. The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities with respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered with respect to live animals, birds and insects;

2. The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

3. The charge for labor and services rendered with respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

4. The sale of or charge made for labor and services rendered with respect to the cleaning, fumigating, razing, or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section, the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal, or sandblasting. Prior to 2003, fumigating, razing, or moving of buildings would be taxable under the service classification;

5. The sale of or charge made for labor and services rendered with respect to automobile towing and similar automotive transportation services, but not with respect to those required to report and pay taxes under RCW 82.16. Prior to 2003, this activity would be taxable under the service classification;

6. The sale of and charge made for the furnishing of lodging and all other services, except telephone business and cable service, by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease real property and not a mere license to enjoy the same;

7. The installing, repairing, altering, or improving of digital goods for consumers;

8. The sale of or charge made for tangible personal property, labor and services to persons taxable under (1), (2), (3), (4), (5), (6), and (7) of this subsection when such sales or charges are for property, labor, and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor, and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection A of this section and nothing contained in subsection A of this section shall be construed to modify this subsection.

D. "Sale at retail" or "retail sale" shall also include the providing of competitive telephone service to consumers.

E. 1. "Sale at retail" or "retail sale" shall also include the sale of prewritten software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user. For purposes of this subsection E(1) the sale of the prewritten computer software includes the sale of or charge made for a key or an enabling or activation code, where the key or code is required to activate prewritten computer software and put the software into use. There is no separate sale of the key or code from the prewritten computer software, regardless of how the sale may be characterized by the vendor or by the purchaser.

The term "sale at retail" or "retail sale" does not include the sale of or charge made for:

a. Custom software or;

b. The customization of prewritten software.

2. a. The term also includes the charge made to consumers for the right to access and use prewritten computer software, where possession of the software is maintained by the seller or a third party, regardless of whether the charge for the service is on a per use, per user, per license, subscription, or some other basis.

b. i. The service described in 2.a. of this subsection E includes the right to access and use prewritten software to perform data processing.

ii. For purposes of this subsection 2.b., "data processing" means the systematic performance of operations on data to extract the required information in an appropriate form or to convert the data to usable information. Data processing includes check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities.

F. "Sale at retail" or "retail sale" shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement.

G. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered with respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States, and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind (Public road construction).

H. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered with respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to RCW 35.82, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation (government contracting).

I. "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste,

and other byproducts of weapons production and nuclear research and development. (This should be reported under the service and other classification.)

J. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action. (This should be reported under the service and other classification.)

K. "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:

1. Sales in which the seller has granted the purchaser the right of permanent use;

2. Sales in which the seller has granted the purchaser a right of use that is less than permanent;

3. Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

4. Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

A retail sale of digital goods, digital codes, or digital automated services under this subsection K includes any services provided by the seller exclusively in connection with the digital goods, digital codes, or digital automated services, whether or not a separate charge is made for such services.

For purposes of this subsection, "permanent" means perpetual or for an indefinite or unspecified length of time. A right of permanent use is presumed to have been granted unless the agreement between the seller and the purchaser specifies or the circumstances surrounding the transaction suggest or indicate that the right to use terminates on the occurrence of a condition subsequent.

L. "Sale at retail" or "retail sale" shall also include the installing, repairing, altering, or improving of digital goods for consumers.

"Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer software, or services described in section E.2.a which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

"Services" means any activity that does not fall within one of the other tax classifications of the City.

"Software," "prewritten software," "custom software," "customization of canned software," "master copies," or "retained rights."

A. "Prewritten software" or "canned software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which said person(s) is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however, where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

B. "Custom software" means software created for a single person.

C. "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned software to specific individualized requirements of a single person. Customization of canned software includes individualized configuration of software to work with other software and computer hardware, but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

D. "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license. The software encoded on a master copy and the media upon which the software resides are both ingredients of the master copy.

E. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

F. "Software" means any information, program, or routine, or any set of one or more programs, routines, or collections of information, used or intended for use to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes the associated documentation, materials, or ingredients, regardless of the media upon which that documentation is provided, that describes the code and its use, operation, and maintenance and that typically is delivered with the code to the consumer. All software is classified as either canned or custom.

"Taxpayer" means any person as herein defined required to have a registration under this Subtitle 6A or liable for the collection of any tax under this subtitle, or who engages in any business or who performs any act for which a tax is imposed by this subtitle.

"Trauma-related patient care" is care required by a patient who meets the clinical protocols established in accordance with RCW 70.168 and WAC 246-976, as adopted by the Department of Health.

"Tuition fee" includes library, laboratory, health service, and other special fees and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a nonprofit organization, as defined by the Internal Revenue Code Section 501(c)(3), as hereafter amended, if such educational institution grants college credit for coursework successfully completed through the educational program or an approved branch campus of a foreign degree-granting institution, in compliance with RCW 28B.90 and in accordance with RCW 82.04.4332; or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States Secretary of Education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions.

"Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, a person is entitled to receive or which is actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer.

"Value of products."

A. The value of products, including by-products, extracted or manufactured shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or by-products by the seller.

B. Where such products, including by-products, are extracted or manufactured for commercial or industrial use; and where such products, including by-products, are shipped, transported, or transferred out of the City or to another person without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale; the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products. In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs. The Director may prescribe rules for the purpose of ascertaining such values.

C. Notwithstanding subsection B above, the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond to (1) the retail selling price of such new or improved product when first offered for sale; or (2) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

"Wholesaling" means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.

(Ord. 28539 Ex. B; passed Nov. 6, 2018: Ord. 28106 Ex. A; passed Nov. 27, 2012: Ord. 28008 Ex A; passed Jul. 26, 2011: Ord. 27676 Ex A; passed Dec. 18, 2007: Ord. 27297 § 1; passed Nov. 23, 2004)

6A.30.050 Imposition of the tax – Tax levied.

Tax Classification	2012	2011	2010	2009
Buying and Wholesaling Wheat, Oats, Corn, Barley	0.0001	0.0001	0.0001	0.0001
Extracting	0.0011	0.0011	0.0011	0.0011
International Investment Management Services	0.00055	0.0011	0.00165	0.0022
Manufacturing	0.0011	0.0011	0.0011	0.0011
Printing & Publishing Newspaper	0.00153	0.00153	0.00153	0.00153
Public Road Construction	0.0011	0.0011	0.0011	0.0011
Retail Services	0.004	0.004	0.004	0.004
Retailing	0.00153	0.00153	0.00153	0.00153
Service & Other	0.004	0.004	0.004	0.004
Wholesaling	0.00102	0.00102	0.00102	0.00102

Tax Classification	2005 through 2008	2004	2003	2002	2001	2000
Buying and Wholesaling Wheat, Oats, Corn, Barley	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001
Extracting	0.0011	0.0011	0.0011	0.0011	0.0011	0.0011
International Investment Management Services	0.00275	0.00275	0.00275	0.00275	0.00275	0.00275
Manufacturing	0.0011	0.0011	0.0011	0.0011	0.0011	0.0011
Printing & Publishing Newspaper	0.00153	0.00153	0.00153	0.00153	0.00153	0.00153
Public Road Construction	0.0011	0.0011	0.0011	0.0011	0.0011	0.0011
Retail Services	0.004	0.004	0.004	0.004	0.004	0.0042
Retailing	0.00153	0.00153	0.00153	0.00153	0.00153	0.00153
Service & Other	0.004	0.004	0.004	0.004	0.004	0.0042
Wholesaling	0.00102	0.00102	0.00102	0.00102	0.00102	0.00102

Tax Classification	1999	1998	1997	1996	1995	1994
Buying and Wholesaling Wheat, Oats, Corn, Barley	0.0001	0.0001	0.0001	0.0001	0.0001	0.0001
Extracting	0.0011	0.0011	0.0011	0.0011	0.0011	0.0011
International Investment Management Services	0.00275	0.00275	0.00275	0.00275	0.0048	0.0048
Manufacturing	0.0011	0.0011	0.0011	0.0011	0.0011	0.0011
Printing & Publishing Newspaper	0.002	0.002	0.002	0.002	0.002	0.002
Public Road Construction	0.0011	0.0011	0.0011	0.0011	0.0011	0.0011
Retail Services	0.0044	0.0046	0.0048	0.0048	0.0048	0.0048
Retailing	0.00153	0.00153	0.00153	0.00153	0.00153	0.00153
Service & Other	0.0044	0.0046	0.0048	0.0048	0.0048	0.0048
Wholesaling	0.00102	0.00102	0.00102	0.00102	0.00102	0.00102

Tax Classification	1993	1992	1991	1990	1989 and prior years
Buying & Wholesaling Wheat, Oats, Corn, Barley	0.0001	0.0001	0.0001	0.0001	0.0001
Extracting	0.0011	0.0011	0.0011	0.0011	0.0011
International Investment Management Services	0.0048	0.0048	0.005	0.005	0.005
Manufacturing	0.0011	0.0011	0.0011	0.0011	0.0011
Printing & Publishing Newspaper	0.002	0.002	0.002	0.002	0.002
Public Road Construction	0.0011	0.0011	0.0011	0.0011	0.0011
Retail Services	0.0048	0.0048	0.005	0.005	0.005
Retailing	0.00153	0.00153	0.00153	0.00153	0.0015
Service & Other	0.0048	0.0048	0.005	0.005	0.005
Wholesaling	0.00102	0.00102	0.00102	0.00102	0.001

A. Except as provided in Subsection B of this section, there is hereby levied upon and shall be collected from every person a tax for the act or privilege of engaging in business activities within the City, whether the person's office or place of business be within or without the City. The tax shall be in amounts to be determined by application of rates against gross proceeds of sale, gross income of business, or value of products, including by-products, as the case may be, as follows:

1. Upon every person engaging within the City in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, extracted within the City for sale or for commercial or industrial use, multiplied by the rate of eleven one-hundredths of 1 percent (0.0011). The measure of the tax is the value of the products, including by-products, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

2. Upon every person engaging within the City in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by-products, manufactured within the City, multiplied by the rate of eleven one-hundredths of 1 percent (0.0011). The measure of the tax is the value of the products, including by-products, so manufactured, regardless of the place of sale or the fact that deliveries may be made to points outside the City.

3. Upon every person engaging within the City in the business of making sales at wholesale, except persons taxable under subsection (6) of this section; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business multiplied by the rate of one hundred two one-thousandths of 1 percent (0.00102).

4. Upon every person engaging within the City in the business of making sales at retail; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of such sales of the business multiplied by the rate of one hundred fifty-three one-thousandths of 1 percent (0.00153), except the activity of public road construction, defined as a sale at retail or retail sale under Section 6A.30.030, the amount of tax shall be equal to the gross proceeds of such activity multiplied by the rate set forth in Section 6A.30.050.A.2.

5. Upon every person engaging within the City in the business of (a) printing, (b) both printing and publishing newspapers, magazines, periodicals, books, music, and other printed items, (c) publishing newspapers, magazines, and periodicals, (d) extracting for hire, and (e) processing for hire; as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of one hundred fifty-three one-thousandths of 1 percent (0.00153).

6. Upon every person engaging within the City in the business of buying wheat, oats, corn, barley, and rye, but not including any manufactured or processed products thereof, and selling the same at wholesale, the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of one one-hundredths of 1 percent (0.0001).

7. Upon every person engaging within the City in the business of making sales of retail services; as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales multiplied by the rate of four-tenths of 1 percent (0.004). For years prior to 2002, the rates are as follows: (a) 1998 and years prior thereto would be forty-eight one-hundredths of 1 percent (0.0048); (b) 1999 would be forty-six one-hundredths of 1 percent (0.0046); (c) 2000 would be forty-four one-hundredths of 1 percent (0.0044); and (d) 2001 would be forty-two one-hundredths of 1 percent (0.0042).

8. Upon every person engaging in the business of providing international investment management services within the City; as to such persons, the amount of tax shall be equal to the gross income of the business multiplied by a rate of two hundred

seventy-five one-thousandths of 1 percent (0.00275). Commencing January 1, 2009, the City shall decrease the rate from two hundred seventy-five one-thousandths of 1 percent (0.00275) to a rate of twenty-two one-hundredths of 1 percent (.0022). Commencing on January 1, 2010, the City shall decrease this rate to a rate of one hundred sixty-five one-thousandths of 1 percent (.00165). Commencing on January 1, 2011, the City shall decrease this rate to a rate of eleven one-hundredths of 1 percent (.0011). Commencing on January 1, 2012, the City shall decrease this rate to a rate of fifty-five one-thousandths of 1 percent (.00055).

9. Upon every other person engaging within the City in any business activity other than or in addition to those enumerated in the above subsections; as to such persons, the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of four-tenths of 1 percent (0.004). This subsection includes, among others, and without limiting the scope hereof (whether or not title to material used in the performance of such business passes to another by accession, merger, or other than by outright sale), persons engaged in the business of developing or producing custom software or of customizing canned software, producing royalties or commissions, and persons engaged in the business of rendering any type of service which does not constitute a sale at retail, a sale at wholesale, or a retail service. For years prior to 2002, the rates are as follows: (a) 1998 and years prior thereto would be forty-eight one-hundredths of 1 percent (0.0048); (b) 1999 would be forty-six one-hundredths of 1 percent (0.0046); (c) 2000 would be forty-four one-hundredths of 1 percent (0.0044); and (d) 2001 would be forty-two one-hundredths of 1 percent (0.0042).

B. Beginning on or after January 1, 2003, the gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City during any calendar year is less than $20,000.

(Ord. 28539 Ex. B; passed Nov. 6, 2018: Ord. 28008 Ex. A; passed Jul. 26, 2011: Ord. 27726 Ex. A; passed Jun. 24, 2008: Ord. 27676 Ex. A; passed Dec. 18, 2007: Ord. 27297 § 1; passed Nov. 23, 2004)

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6A.30.077 Allocation and apportionment of income when activities take place in more than one jurisdiction.

For tax reporting periods beginning January 1, 2008, gross income, other than persons subject to the provisions of chapter 82.14A RCW, shall be allocated and apportioned as follows:

A. Gross income derived from all activities other than those taxed as service or royalties under 6A.30.050(A)(9) shall be allocated to the location where the activity takes place.

B. In the case of 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) 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 6A.30.077.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 6A.30.077.C.1 through 6A.30.077.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 6A.30.077.D. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections 6A.30.077.C.1 through 6A.30.077.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 subsections 6A.30.077.C.1 through 6A.30.077.C.5, "Receive" has the same meaning as in RCW 82.32.730.

F. Gross income derived from activities taxed as services and other activities taxed under 6A.30.050(A)(9) 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 fifty percent or more of his or her 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 percent or more of his or her 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:

a. The customer location is in the city; or

b. The income-producing activity is performed in more than one 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-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 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. The definitions in this subsection apply throughout this section.

"Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

"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.

"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.

"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.

"Primarily assigned" means the business location of the taxpayer where the individual performs his or her duties.

"Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

"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.

"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. Assignment or apportionment of revenue under this Section 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.

(Ord. 28106 Ex. A; passed Nov. 27, 2012: Ord. 27676 Ex. A; passed Dec. 18, 2007)

RCW 35.102.130

Allocation and apportionment of income. *(Effective until January 1, 2020.)*

A city that imposes a business and occupation tax must provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter **82.14A** RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties must be allocated to the location where the activity takes place.

(a) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(b)(i) 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:

(A) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

(B) 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;

(C) 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;

(D) 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

(E) 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)(c) was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(ii) If none of the methods in (b)(i) of this subsection (1) 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 (b)(i)(A) through (E) of this subsection (1), 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 (1)(b)(ii). The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in (b)(i)(A) through (E) of this subsection (1) 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.

(iii) For purposes of this subsection (1)(b), the following definitions apply:

(A) "Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW **82.04.192**;

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

(C) "Receive" has the same meaning as in RCW **82.32.730**.

(c) If a business activity allocated under this subsection (1) takes place in more than one

city and all cities impose a gross receipts tax, a credit must be allowed as provided in RCW **35.102.060**; if not all of the cities impose a gross receipts tax, the affected cities must allow another credit or allocation system as they and the taxpayer agree.

(2) Gross income derived as royalties from the granting of intangible rights must be allocated to the commercial domicile of the taxpayer.

(3) Gross income derived from activities taxed as services shall be apportioned to a 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.

(a) 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:

(i) The individual is primarily assigned within the city;

(ii) The individual is not primarily assigned to any place of business for the tax period and the employee performs fifty percent or more of his or her service for the tax period in the city; or

(iii) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform fifty percent or more of his or her service in any city, and the employee resides in the city.

(b) 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:

(i) The customer location is in the city; or

(ii) The income-producing activity is performed in more than one 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

(iii) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.

(c) If the allocation and apportionment provisions of this subsection 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:

(i) Separate accounting;

(ii) The use of a single factor;

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

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

(4) The definitions in this subsection apply throughout this section.

(a) "Apportionable income" means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) "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.

(c) "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.

(d) "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.

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

(f) "Service-taxable income" or "service income" means gross income of the business subject to tax under either the service or royalty classification.

(g) "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.

(h) "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.

[2017 c 323 § 511; 2010 c 111 § 305; 2003 c 79 § 13.]

NOTES:

Tax preference performance statement exemption—Automatic expiration date exemption—2017 c 323: See note following RCW **82.04.040**.

Purpose—Retroactive application—Effective date—2010 c 111: See notes following RCW **82.04.050**.

Effective date—2003 c 79 § 13: "Section 13 of this act takes effect January 1, 2008." **[2003 c 79 § 19.]**

RCW 35.102.130

Allocation and apportionment of income. *(Effective January 1, 2020.)*

A city that imposes a business and occupation tax must provide for the allocation and apportionment of a person's gross income, other than persons subject to the provisions of chapter **82.14A** RCW, as follows:

(1) Gross income derived from all activities other than those taxed as service or royalties must be allocated to the location where the activity takes place.

(a) In the case of sales of tangible personal property, the activity takes place where delivery to the buyer occurs.

(b)(i) 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:

(A) The seller's place of business if the purchaser receives the digital product at the seller's place of business;

(B) 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

TACOMA CITY ATTORNEY'S OFFICE

May 27, 2022 - 10:37 AM

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