

Updates to city Business & Occupation (B&O) Tax – Must be adopted by 40 B&O tax cities by January 1, 2013

What is changing?

In 2003, the Legislature enacted RCW Chapter 35.102, which required cities with local B&O taxes to implement a modified B&O tax model ordinance with certain mandatory provisions. Changes to the model ordinance mandatory provisions must be adopted by cities with the same effective date: January 1, 2013.

A city workgroup met over the summer to revise the model to include changes to RCW 35.102 and other changes in state law since the model was last updated to implement allocation and apportionment provisions in 2008.

There are six changes to the model ordinance and administrative provisions:

- Digital Goods Definitions & Apportionment** – Adopt changes required by HB 2620, which amended apportionment in RCW 35.102.130; mirrors changes made to state law in 2009 with adoption of HB 2075 Digital Goods legislation required by Streamlined Sales Tax changes separating digital books, music, and videos from their tangible equivalents.
 - .030 Definitions added for digital automated service and digital products
 - .030 Added digital goods references to other mandatory definitions: gross proceeds of sales, manufacture, retail sale, wholesale sale
 - .077 Updates apportionment for digital goods as a separate classification to mirror treatment under state law – 5 steps in order of priority to determine where delivery to buyer occurs
- Board of Director licensing and tax** – (.030) engaging in business definitions clarification: board meeting nexus exclusion applies to the corporation, not the individual board members or consultants attending meetings.
- “Super Nexus”** provision repeal – (.060) reflects requirements that allocation and apportionment provisions in RCW 35.102.130 (.077 of model ordinance) should be used for contracts with the city executed after January 1, 2008.
- Insurance business preemption** – (.090) moves exemption from Guidelines to Model Ordinance and updates language to reflect preemption of taxation of insurers/appointed insurance producers in RCW 48.14.020(4) and repeal of RCW 48.17.010-020.
 - RCW 48.14.020(4): The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their appointed insurance producers, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or these insurance producers.
- First mortgage deduction** – (.100) updates language to refer to state required tax treatment in RCW 82.14A and moves provision from Guidelines to Model Ordinance.
- Confidentiality** – (Administrative Provisions .200) Adopts language of state confidentiality provision RCW 82.32.330, reflecting option that cities may adopt under RCW 35.102.145.

Background on the B&O Tax Model Ordinance

There are currently 40 cities that levy a B&O tax on businesses, which is measured by a percentage of the firm's gross receipts.

2000: A group of cities drafted a model ordinance to make local B&O tax provisions more uniform.

2003: The Legislature enacted RCW Chapter 35.102, which required cities with local B&O taxes to:

- Implement a modified B&O tax model ordinance with certain mandatory provisions by December 31, 2004.
 - \$20,000 minimum threshold
 - Specific definitions
 - Penalty and interest provisions
 - Payment periods
- Ensure that double taxation could not occur by implementing mandatory credits; and
- Adopt specific allocation and apportionment of revenues, based on the classification of the activity, effective January 1, 2008.
- Limit updates to the model to every four years, except to comply with state law changes.

2008: The model ordinance was last updated.

- Adopting specific allocation and apportionment of revenues, based on the classification of the activity (RCW35.102.130)
- Exempting newspaper and publishing businesses from apportionment requirements. (RCW 35.102.150)
- Updates to penalties and interest provisions in administrative provisions -- linked to RCW to accommodate any future changes.

For more information

AWC's website:

www.awcnet.org/LegislativeAdvocacy/LegislativeBulletin/MunicipalFinance/MunicipalBO.aspx

AWC is interested in keeping this model ordinance current and relevant, so it provides good guidance for cities. Your comments and feedback are welcome.

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