ORDINANCE NO. 4106

AN ORDINANCE of the City Council of the City of Kent, Washington, amending Chapter 3.28 of the Kent City Code, pertaining to the business and occupation tax, to adopt further exemptions and deductions and to clarify a portion of the square footage tax component.

RECITALS

A. On November 20, 2012, the City Council passed Ordinance No. 4054, adopting a business and occupation (B&O) tax that included both a gross receipts component and a square footage component. That ordinance went into effect beginning January 1, 2013.

B. Chapter 35.102 RCW required that the City implement its B&O tax based on a model ordinance that contained mandatory provisions applicable to all Washington cities.

C. RCW 35.102.040(3) provides that except for certain deductions and exemptions prescribed in Chapter 35.102 RCW and the model ordinance, a city may adopt its own provisions for tax credits, tax exemptions and tax deductions.

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D. The Association of Washington Cities (AWC) drafted both the model ordinance and the model ordinance guidelines, containing numerous exemptions and deductions that are optional for cities imposing a B&O tax. While not mandatory, a number of Washington cities imposing B&O taxes have all adopted several of the same optional deductions and exemptions that the city of Kent has not. The Finance Department has found that this lack of uniformity has led to confusion and incorrect reporting for some taxpayers who pay B&O tax in both Kent and in other jurisdictions.

E. One of the most important considerations in setting and implementing tax policy is to strive for fairness, consistency, equity, and efficiency.

F. Now that the City and local taxpayers have had a year’s worth of experience with the City’s B&O tax, the Finance Department recommends that the City adopt certain of the optional deductions and exemptions as set forth in the AWC model ordinance guidelines to ensure that the City’s tax is more fairly, equitably, consistently, and efficiently administered.

G. The City wishes to also amend a portion of the square footage tax component to clarify correct reporting requirements based on state law governing the taxability of certain rental income, and to include a new definition, “Artistic or cultural organization,” to support one of the recommended deductions.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

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SECTION 1. Amendment. Section 3.28.030 of the Kent City Code, is hereby amended as follows:

Sec. 3.28.030 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.

A. Advance, reimbursement.

1. 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.

2. 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.

B. Agricultural product, farmer.

1. 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, or insect, or the
substances obtained from such an animal. "Agricultural product" does not include animals intended to be pets.

2. 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 in respect to the business of taking, cultivating, or raising timber.

C. "Artistic or cultural organization". As used in this chapter:

1. The term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (10) of this section, for viewing or attendance by the general public.

2. The organization must be a not-for-profit corporation under chapter 24.03 RCW.

3. The organization must be managed by a governing board of not less than eight (8) individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW.

4. No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws.
5. Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state.

6. Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a non-profit organization, association, or corporation which also would be entitled to the exemption.

7. The corporation must be duly licensed or certified when licensing or certification is required by law or regulation.

8. The amounts received that qualify for exemption must be used for the activities for which the exemption is granted.

9. Services must be available regardless of race, color, national origin, ancestry, religion, age, sex, marital status, sexual orientation, Vietnam or disabled veteran status, or the presence of any mental or physical disability.

10. The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" is limited to:

   a. An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

   b. A musical or dramatic performance or series of performances; or

   c. An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject.
GD. 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.

DE. 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.

EE. Commercial or industrial use means the following uses of products, including byproducts, by the extractor or manufacturer thereof:

1. Any use as a consumer; and

2. The manufacturing of articles, substances, or commodities.

FG. 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 RCW Title 80 and for which a separate charge is made.

GH. Consumer means the following:

1. 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:

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

b. 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;

c. 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

d. 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;

2. Any person engaged in any business activity taxable under KCC 3.28.050(A)(7);

3. Any person who purchases, acquires, or uses any competitive telephone service as herein defined, other than for resale in the regular course of business;
4. Any person who purchases, acquires, or uses any personal, business, or professional service defined as a retail sale or retail service in this section, other than for resale in the regular course of business;

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

6. Any person engaged in the business of “public road construction” in 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;

7. 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;

8. 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;

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

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

HI. 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 (RCW Title 62A) do not determine when or where delivery of tangible personal property occurs for purposes of taxation.

I]. Director means the finance director of the city or any officer, agent or employee of the city designated to act on the director’s behalf.

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**K.** *Digital automated service, digital code, and digital goods* have the same meaning as in RCW 82.04.192.

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

**L.** *Eligible gross receipts tax.* The term “eligible gross receipts tax” means a tax which:

1. Is imposed on the act or privilege of engaging in business activities within KCC 3.28.050; and

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

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

4. 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

5. 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 nonlocal jurisdiction above the county level.

**M.** *Engaging in business.*
1. 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.

2. 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 (M)(N)(1) of this section. 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.

3. Without being all inclusive, any one (1) 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:

   a. 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.

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

   c. Soliciting sales.
d. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.

e. 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.

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

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

h. Collecting current or delinquent accounts.

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

j. 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.

k. 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.

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

m. 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.

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

o. 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.

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

q. Accepting or executing a contract with the city, irrespective of whether goods or services are delivered within or without the city, or whether the person’s office or place of business is within or without the city.

4. If a person, or its 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:

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

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

c. Attending meetings, such as board meetings, retreats, seminars, and 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.

d. Renting tangible or intangible property as a customer when the property is not used in the city.

e. 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.

f. Conducting advertising through the mail.

g. Soliciting sales by phone from a location outside the city.

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5. A seller located outside the city merely delivering goods into the city by means of 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 (M)(N)(4) of this section.

6. The city expressly intends that engaging in business includes 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.

NO. Extracting is the activity engaged in by an extractor and is reportable under the extracting classification.

QP. 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 falls, cuts, or takes timber, Christmas trees, other than plantation Christmas trees, or other natural products; or takes fish, 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.”

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

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QR. *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.

RS. *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.

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

TU. *Manufacturer, to manufacture.*

1. *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 the customer prior to manufacture,
materials or ingredients equal to less than twenty (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 this city that is the owner of materials or ingredients processed for it in this city by a processor for hire shall be deemed to be engaged in business as a manufacturer in this city.

2. 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:

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

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

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

   d. 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.

\[\text{V Y} \text{. } \text{Newspaper} \text{ means a publication offered for sale regularly at stated intervals at least once a week and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind.}\]

\[\text{V Y} \text{. } \text{Magazine or periodical} \text{ means any printed publication, other than a newspaper, issued and offered for sale regularly at stated intervals at least once every three (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.}\]

\[\text{V Y} \text{. } \text{Nonprofit corporation or nonprofit organization} \text{ means a corporation or organization in which no part of the income can be distributed to its members, directors, or officers and that holds a current tax exempt status as provided under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, or is specifically exempted from the requirement to apply for its tax exempt status under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended. Where the term “nonprofit organization” is used, it is meant to include a nonprofit corporation.}\]
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:

1. Whose address the person uses as its business mailing address;

2. 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;

3. Where the person holds itself out to the general public as conducting its regular business through signage or other means; and

4. Where the person is required to obtain any appropriate state and local business license or registration unless they are 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.

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XY. Person means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, 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.

YZ. 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 the customer prior to manufacture, materials or ingredients equal to twenty (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.

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

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.

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

BBCC. 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:

1. Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, swimming, bungee jumping, ski lifts and tows, basketball, racquet ball, handball, squash, tennis, batting cages, day trips for sightseeing purposes, and others, when provided to consumers. “Amusement and recreation services” also includes 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;

2. Abstract, title insurance, and escrow services;

3. Credit bureau services;

4. Automobile parking and storage garage services;

5. Landscape maintenance and horticultural services but excluding (a) horticultural services provided to farmers and (b) 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;

6. Service charges associated with tickets to professional sporting events; and

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

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

**EGDD. Sale, casual or isolated sale.**

1. *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.

2. *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.

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DEFE. Sale at retail, retail sale.

1. 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:

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

   b. 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

   c. 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

   d. 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

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to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

e. 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 subsection (D)(EE)(1)(a), (b), (c), (d), or (e) of this section following such use; or

f. Purchases for the purpose of satisfying the person’s obligations under an extended warranty as defined in subsection (D)(EE)(7) 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.

2. “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 KCC 3.28.050(A)(7).

3. “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 in respect to the following:

a. 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 in 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 in respect to live animals, birds, and insects;

b. 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;

c. The charge for labor and services rendered in 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;

d. The sale of or charge made for labor and services rendered in 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;

e. The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under Chapter 82.16 RCW;

f. 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 (1) 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 (1) month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

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

h. The sale of or charge made for tangible personal property, labor, and services to persons taxable under subsections (a), (b), (c), (d), (e), (f), and (g) of this section 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 (DD)(EE)(1) of this section and nothing contained in subsection (DD)(EE)(1) of this section shall be construed to modify this subsection.

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

5.a. "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 (DD)(EE)(5)(a) the sale of 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:

i. Custom software; or

ii. The customization of prewritten software.

b.i. 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.

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ii. (A) The service described in subsection (DD)(EE)(5)(b)(i) of this section includes the right to access and use prewritten software to perform data processing.

(B) For purposes of this subsection (DD)(EE)(5)(b)(ii) 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.

6. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in 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, 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.

7. "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.

8. "Sale at retail" or "retail sale" shall also include the sale of or charge made for labor and services rendered in 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 Chapter 35.82 RCW, 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.

9. "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.

10. "Sale at retail" or "retail sale" shall not include the sale of or charge made for labor and services rendered for environmental remedial action.

11. "Sale at retail" or "retail sale" shall also include the following sales to consumers of digital goods, digital codes, and digital automated services:
a. Sales in which the seller has granted the purchaser the right of permanent use;

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

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

d. 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 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.

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

EEFF. 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 subsection (EE)(5)(b)(i) of this section 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.

**FFGG. Services** includes those activities that do not fall within one of the other tax classifications used by the city.

**GGHH. Software, prewritten software, custom software, customization of canned software, master copies, retained rights.**

1. **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 (2) 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 such person 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

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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.

2. Custom software means software created for a single person.

3. 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.

4. 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.

5. 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.

6. Software means any information, program, or routine, or any set of one (1) or more programs, routines, or collections of information,
used, or intended for use, to convey information that causes one (1) 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 describe the code and its use, operation, and maintenance and that typically are delivered with the code to the consumer. All software is classified as either canned or custom.

HIII. Taxpayer means any “person,” as herein defined, required to have a business license under this chapter or liable for the collection of any tax or fee under this chapter, or who engages in any business or who performs any act for which a tax or fee is imposed by this chapter.

HII. 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 Chapter 28B.90 RCW, 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.

KK. **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.

LL. **Value of products.**

1. The value of products, including byproducts, 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 byproducts by the seller.

2. Where such products, including byproducts, are extracted or manufactured for commercial or industrial use; and where such products, including byproducts, 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.

3. Notwithstanding subsection (a)(2) of this section, 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:

   a. The retail selling price of such new or improved product when first offered for sale; or
   
   b. 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.

**SECTION 2. Amendment.** Section 3.28.050 of the Kent City Code, is hereby amended as follows:

**Sec. 3.28.050. Imposition of the tax – Tax or fee levied.** Except as provided in subsection (C) 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 the gross proceeds of sale, gross income of business, or value of products, including byproducts, and by application of rates against the square footage of business office or facility space within the city, as the case may be, as follows:

A. **Gross receipts tax.**

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 byproducts, extracted within the city for sale or for commercial or industrial use, multiplied by the rate of 0.152 hundredths of one percent (0.00152). The measure of the tax is the value of the products, including byproducts, 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 byproducts, manufactured within the city, multiplied by the rate of 0.046 hundredths of one percent (0.00046). The measure of the tax is the value of the products, including byproducts, 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, 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 without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of 0.152 hundredths of one percent (0.00152).

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, without regard to the place of delivery of articles, commodities or merchandise sold, multiplied by the rate of 0.046 hundredths of one percent (0.00046).

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 0.046 hundredths of one percent (0.00046).

6. 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 0.152 hundredths of one percent (0.00152).

7. 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 0.152 hundredths of one percent (0.00152). 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.

B. **Square footage tax.** Upon every person who leases, owns, occupies, or otherwise maintains an office, warehouse, or other place of business within the city for purposes of engaging in business activities in the city, the tax shall be measured by the number of square feet of warehouse business floor space or other business floor space for each office, warehouse, or other place of business leased, owned, occupied, or otherwise maintained within the city during the reporting period, calculated to the nearest square foot.

1. Subject to the reductions established in subsection (B)(6) of this section, the amount of the tax due shall be equal to the sum of the number of square feet of business warehouse floor space for each business warehouse leased, owned, occupied, or otherwise maintained within the city multiplied by the rate of three cents ($0.03) quarterly for each calendar year, and the number of square feet of other business floor space for each office or other place of business leased, owned, occupied, or otherwise maintained within the city multiplied by the rate of one cent ($0.01) quarterly for each calendar year.

2. For purposes of this section, *business warehouse* means a building or structure, or any part thereof, in which goods, wares, merchandise, or commodities are received or stored, whether or not for compensation, in furtherance of engaging in business.

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3. For purposes of this section, other business floor space means the floor space of an office or place of business, other than a business warehouse.

4. For purposes of this section, the square footage shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building. Square footage shall not include stairs, elevator shafts, flues, pipe shafts, vertical ducts, heating or ventilation shafts, janitor closets, and electrical or utility closets.

5. Persons with more than one (1) office, warehouse, or other place of business within the city must include all business warehouse floor space and other business floor space for all locations within the city. When a person rents space to another person, the person occupying the rental space is responsible for the square footage business tax on that rental space only if the renter has exclusive right of possession in the space as against the landlord. Space rented for the storage of goods in a warehouse where no walls separate the goods, and where the exclusive right of possession in the space is not held by the person to whom the space is rented, and space rented out in "self storage" facilities whereby customers have direct access to individual storage areas by separate entrances, shall be included in the warehouse business floor space of the person that operates the warehouse business, and not by the person renting the warehouse space.

6. If the square footage tax imposed in this subsection (B) is less than or equal to the gross receipts tax imposed in subsection (A) of this section, no square footage tax will be due; if the square footage tax
imposed in this subsection (B) exceeds the gross receipts tax imposed in subsection (A) of this section, the taxpayer shall also remit the excess over the gross receipts tax payable under subsection (A) of this section.

C.  **Gross receipts exemption/square footage threshold.**

1. Any person whose gross proceeds of sales, gross income of the business, and value of products, including byproducts, as the case may be, from all activities conducted within the city during any quarter is equal to or less than sixty-two thousand five hundred dollars ($62,500) during that quarter shall be exempt from the gross receipts tax imposed in this chapter. The applicable tax rates shall only apply to amounts in excess of sixty-two thousand five hundred dollars ($62,500) during any quarter.

2. The square footage tax imposed in subsection (B) of this section shall not apply to any person unless that person’s total floor area of business space within the city exceeds the following threshold:

   a. Four thousand (4,000) taxable square feet of business warehouse space; or

   b. Twelve thousand (12,000) taxable square feet of other business floor space.

This is a threshold and not an exemption. If the square footage tax applies, it applies to all business space leased, owned, occupied, or otherwise maintained by the taxpayer during the applicable reporting period.
D.  *Rules.* The director may promulgate rules and regulations regarding the manner, means, and method of calculating any tax imposed under this section.

**SECTION 3.** – *Amendment.* Section 3.28.090 of the Kent City Code, is hereby amended as follows:

**Sec. 3.28.090. Exemptions.**

A.  *Nonprofit corporations or nonprofit organizations.* This chapter shall not apply to nonprofit organizations exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, as hereafter amended, except with respect to retail sales of such persons.

B.  *Certain fraternal and beneficiary organizations.* This chapter shall not apply to fraternal benefit societies or fraternal fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. This exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations.

C.  *Certain corporations furnishing aid and relief.* This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of the congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in
mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

D. **Operation of sheltered workshops.** This chapter shall not apply to income received from the Department of Social and Health Services for the cost of care, maintenance, support, and training of persons with developmental disabilities at non-profit group training homes as defined by chapter 71A.22 RCW or to the business activities of non-profit organizations from the operation of sheltered workshops. For the purposes of this subsection, “the operation of sheltered workshops” means performance of business activities of any kind on or off the premises of such non-profit organizations which are performed for the primary purpose of:

1. providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or
2. providing evaluation and work adjustment services for handicapped individuals.

E. **Credit unions.** This chapter shall not apply to the gross income of credit unions organized under the laws of the state, any other state, or the United States.

B.E. **Health maintenance organization, health care service contractor, certified health plan.** This chapter does not apply to any health maintenance organization, health care service contractor, or certified

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health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201.

GG. Public utilities. This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the utility tax provisions of Chapter 3.18 KCC.

DH. Investments – Dividends from subsidiary corporations. This chapter shall not apply to amounts derived by persons, other than those engaging in banking, loan, security, or other financial businesses, from investments or the use of money as such, and also amounts derived as dividends by a parent from its subsidiary corporations.

EI. International banking facilities. This chapter shall not apply to the gross receipts of an international banking facility. As used in this subsection, an international banking facility means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 U.S.C. Sections 611 through 631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 U.S.C. Sections 601 through 604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and
international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D).

FI. *Insurance business.* This chapter shall not apply to amounts received by any person who is an insurer, or their appointed insurance producer, upon which a tax based on gross premiums is paid to the state pursuant to RCW 48.14.020; and provided further, that the provisions of this subsection shall not exempt any bonding company from tax with respect to gross income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor.

GK. *Farmers – Agriculture.* This chapter shall not apply to any farmer in respect to amounts received from selling fruits, vegetables, berries, butter, eggs, fish, milk, poultry, meats, or any other agricultural product that is raised, caught, produced, or manufactured by such persons.

HL. *Athletic exhibitions.* This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the State Boxing Commission.

IM. *Racing.* This chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the Washington State Horse Racing Commission.

IN. *Ride sharing.* This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010.
Employees.

1. This chapter shall not apply to any person in respect to the person’s employment in the capacity as an employee or servant as distinguished from that of an independent contractor. For the purposes of this subsection, the definition of “employee” shall include those persons that are defined in the Internal Revenue Code, as hereafter amended.

2. A booth renter is an independent contractor for purposes of this chapter.

Amounts derived from sale of real estate. This chapter shall not apply to gross proceeds derived from the sale of real estate. This, however, shall not be construed to allow an exemption of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest, or similar financial charges resulting from, or relating to, real estate transactions. This chapter shall also not apply to amounts received for the rental of real estate if the rental income is derived from a contract to rent for a continuous period of thirty (30) days or longer.

Mortgage brokers’ third-party provider services trust accounts. This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

Amounts derived from manufacturing, selling, or distributing motor vehicle fuel. This chapter shall not apply to the manufacturing, selling, or distributing motor vehicle fuel, as the term “motor vehicle fuel” is defined.

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in RCW 82.36.010 and exempt under RCW 82.36.440; provided, that any fuel not subjected to the state fuel excise tax, or any other applicable deduction or exemption, will be taxable under this chapter.

QS. **Amounts derived from liquor, and the sale or distribution of liquor.** This chapter shall not apply to liquor as defined in RCW 66.04.010 and exempt in RCW 66.08.120.

PT. **Casual and isolated sales.** This chapter shall not apply to the gross proceeds derived from casual or isolated sales.

QU. **Accommodation sales.** This chapter shall not apply to sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to the vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

RV. **Taxes collected as trust funds.** This chapter shall not apply to amounts collected by the taxpayer from third parties to satisfy third party obligations to pay taxes such as the retail sales tax, use tax, and admission tax.

SW. **United States, Washington State governmental entities.** This chapter shall not apply to gross income received by the United States or any instrumentality thereof and by the state of Washington or any municipal subdivision thereof.
FX. Research and development under federal contracts. This chapter shall not apply to amounts received for research and development activities performed on behalf of, under contract to, or in partnership with the United States government. For purposes of this section, research and development activities means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software, the application of which is intended to be useful in the development of a new or improved federal project or component thereof.

SECTION 4. - Amendment. Section 3.28.100 of the Kent City Code, is hereby amended as follows:

Sec. 3.28.100. Deductions. In computing the license fee or tax, there may be deducted from the measure of tax the following items:

A. Membership fees and certain service fees by non-profit youth organization. For purposes of this subsection, “non-profit youth organization” means a non-profit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a non-profit youth organization:

1. As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization’s facilities; or
2. From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

B. Fees, dues, charges. In computing tax, there may be deducted from the measure of tax amounts derived from bona fide:

1. initiation fees;
2. dues;
3. contributions;
4. donations;
5. tuition fees;
6. charges made by a non-profit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the non-profit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public;
7. charges made for operation of privately operated kindergartens; and
8. endowment funds.

This subsection shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this subsection.
C. **Artistic and cultural organizations – income from business activities.** In computing tax, there may be deducted from the measure of tax those amounts received by artistic or cultural organizations, as defined in this chapter, which represent:

1. income derived from business activities conducted by the organization, provided that this deduction does not apply to retail sales made by artistic and cultural organizations;

2. amounts received from the United States or any instrumentality thereof or from the State of Washington or any municipal corporation or subdivision thereof as compensation for, or to support, artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public; or

3. amounts received as tuition charges collected for the privilege of attending artistic or cultural education programs.

D. **Artistic or cultural organization – deduction for tax under the manufacturing classification – value of articles for use in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs.** In computing tax, there may be deducted from the measure of tax by persons subject to payment of the tax under the manufacturing classification, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization, as defined in this chapter, solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public.

E. **Day care activities.** In computing tax, there may be deducted from the measure of tax amounts derived from day care activities by any
organization organized and operated for charitable, educational, or other purposes which is exempt from taxation pursuant to Section 501 (c)(3) of the Internal Revenue Code, as hereafter amended; provided, however, that amounts derived from selling, altering or repairing tangible personal property shall be deductible.

AE. Compensation from public entities for health or social welfare services – Exception. In computing tax, there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization (as defined in RCW 82.04.431) or by a municipal corporation or political subdivision, except deductions are not allowed under this subsection for amounts that are received under an employee benefit plan. For purposes of this subsection, “employee benefit plan” includes the military benefits program authorized in 10 U.S.C. Section 1071 et seq., as amended, or amounts payable pursuant thereto.

BG. Interest on investments or loans secured by mortgages or deeds of trust. In computing tax, to the extent permitted by Chapter 82.14A RCW, there may be deducted from the measure of tax by those engaged in banking, loan, security, or other financial businesses amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties.

GH. Interest on obligations of the state, its political subdivisions, and municipal corporations. In computing tax, there may be deducted from the measure of tax by those engaged in banking, loan, security, or other financial businesses amounts derived from interest paid on all obligations.
of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof.

ΒΙ.  *Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives.* In computing tax, there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities.

ΕΙ.  *Receipts from tangible personal property delivered outside the state.* In computing tax, there may be deducted from the measure of tax under retailing or wholesaling amounts derived from the sale of tangible personal property that is delivered by the seller to the buyer or the buyer’s representative at a location outside the state of Washington.

FK.  *Cash discount taken by purchaser.* In computing tax, there may be deducted from the measure of tax the cash discount amounts actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extracting or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this tax, have been computed according to the “value of product” provisions.
GL. Credit losses of accrual basis taxpayers. In computing tax, there may be deducted from the measure of tax the amount of credit losses actually sustained by taxpayers whose regular books of account are kept upon an accrual basis.

M. Repair, maintenance, replacement, etc., of residential structures and commonly held property – eligible organizations.
   1. In computing tax, there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:
      a. A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;
      b. An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010, or
      c. An association of owners of residential property from a person who is a member of the association. “Association of owners of residential property” means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

   2. For the purposes of this subsection “commonly held property” includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to

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include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

3. To qualify for the deductions under this subsection:
   a. The salary or compensation paid to officers, managers, or employees must be only for actual services rendered and at levels comparable to the salary or compensation of like positions within the country wherein the property is located;
   b. Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;
   c. Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members.

N. Radio and television broadcasting – advertising agency fees – national, regional, and network advertising – interstate allocations. In computing tax, there may be deducted from the measure of tax by radio and television broadcasters amounts representing the following:
   1. Advertising agencies’ fees when such fees or allowances are shown as discount or price reduction in the billing or that the billing is on a net basis, i.e., less the discount;
   2. Actual gross receipts from national network, and regional advertising or a “standard deduction” as provided by RCW 82.04.280; and
   3. Local advertising revenue that represent advertising which is intended to reach potential customers of the advertiser who are located outside the State of Washington. The Director may issue a rule that provides detailed guidance as to how these deductions are to be calculated.
HO. Constitutional prohibitions. In computing tax, there may be deducted from the measure of the tax amounts derived from business which the city is prohibited from taxing under the Constitution of the state of Washington or the Constitution of the United States.

JP. Receipts from the sale of tangible personal property and retail services delivered outside the city but within Washington. Amounts included in the gross receipts reported on the tax return derived from the sale of tangible personal property delivered to the buyer or the buyer’s representative outside the city but within the state of Washington may be deducted from the measure of tax under the retailing, retail services, or wholesaling classification.

JO. Professional employer services. In computing the tax, a professional employer organization may deduct from the calculation of gross income the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers’ compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

SECTION 5. – Retroactivity. This ordinance shall be effective and apply retroactively to all reporting periods that began on or after January 1, 2014.

SECTION 6. – Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering;
or references to other local, state or federal laws, codes, rules, or regulations.

**SECTION 7. - Severability.** If any one or more section, subsection, or sentence of this ordinance is held to be unconstitutional or invalid, that decision shall not affect the validity of the remaining portion of this ordinance and that remaining portion shall maintain its full force and effect.

**SECTION 8. - Effective Date.** This ordinance shall take effect and be in force five (5) days from and after its passage and publication, as provided by law.

ATTEST:

Suzette Cooke, Mayor

Ronald F. Moore, City Clerk

Approved as to form:

Arthur "Pat" Fitzpatrick, Acting City Attorney

Passed: 4th day of March, 2014.

Approved: 4th day of March, 2014.

Published: 7th day of March, 2014.
I hereby certify that this is a true copy of Ordinance No. 4106 passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

(SEAL)

RONALD F. MOORE, CITY CLERK

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