ORDINANCE NO.4342

AN ORDINANCE of the City Council of the City of Kent, Washington, amending chapters 3.18, 3.21, 3.26, 3.28 and 3.29, of the Kent City Code to consolidate administrative provisions for all taxes, align the City’s B&O tax provisions with the model ordinance, and add various clarifications.

RECITALS

A. Several parts of the City’s tax code located in Title 3 of the Kent City Code, include separate administrative provisions. This administrative tax structure can make it difficult to administer the imposition and collection of taxes for staff, and difficult for taxpayers to properly remit taxes. The code amendments provided by this ordinance are meant to consolidate the separate administrative provisions into a single code section and to provide clarity for some tax provisions.

B. This ordinance also implements changes required by two bills passed by the state legislature in the 2019 session, HB 1403 regarding service apportionment rules and HB 1059 regarding annual tax filers. A work group of cities met over the past several months to update the model B&O tax ordinance, and the updates were finalized in September 2019. All B&O tax cities must adopt the changes with an effective date of January 1, 2020.

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

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
ORDINANCE

SECTION 1. – Amendment – KCC 3.18. Chapter 3.18 of the Kent City Code entitled “Utility Tax on Telephone, Gas, Electric, Solid Waste, Water, Sewer and Drainage Utilities,” is hereby amended as follows:

CHAPTER 3.18
UTILITY TAX ON TELEPHONE, GAS, ELECTRIC, SOLID WASTE, WATER, SEWER AND DRAINAGE UTILITIES

Sec. 3.18.001. Administrative provisions.
The administrative provisions contained in Chapter 3.29 KCC shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

Sec. 3.18.010. Definitions. The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Cable television business means:

1. A system providing service pursuant to a franchise issued by the city under the Cable Communications Policy Act of 1984, Public Law No. 98-549, 47 U.S.C. Section 521, as it may be amended or superseded; or

2. Any system that competes directly with such franchised system by employing antennas, microwaves, wires, wave guides, coaxial cables, or other conductors, equipment, or facilities designed, construed, or used for the purpose of:

   a. Collecting and amplifying local and distant broadcast television signals and distributing and transmitting them;

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
b. Transmitting original cable cast programming not received through television broadcast signals; or

c. Transmitting television pictures, film, and videotape programs not received through broadcast television signals, whether or not encoded or processed to permit reception by only selected receivers; provided, however, that “cable television business” shall not include entities that are subject to charges as “commercial TV stations” under 47 U.S.C. Section 158, as it may be amended or superseded.

*Cellular telephone service* means any two-way voice and/or data telephone or similar communications system based in whole or in substantial part on wireless radio communications, including cellular mobile service, and which is not subject to regulation by the Washington State Utilities and Transportation Commission that conflicts with or overrides this chapter. Cellular telephone service includes other wireless radio communications services including, without limitation, specialized mobile radio, paging services, personal communications, and data services, and any other evolving wireless radio communications technology that accomplishes a purpose substantially similar to cellular telephone service. Cellular telephone service is included within the definition of “telephone business” for the purposes of this chapter.

*Competitive telephone service* means the providing by any person, firm, or corporation 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.

*Gross income* means the value proceeding or accruing from the performance of the particular public service business involved, including
operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or 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. In addition, when determining total gross income from cellular telephone service, “gross income” shall include all income from cellular telephone service (including roaming charges incurred outside this state) provided to customers whose “place of primary use” is in the city, regardless of the location of the facilities used to provide the service. The customer’s place of primary use is, with respect to each telephone: (a) the customer’s address shown on the telephone service company’s records; or (b) the customer’s place of residence if the telephone is for personal use, and in both cases must be located within the licensed service area of the home service provider. Roaming charges and cellular telephone charges to customers whose place of primary use is outside the city of Kent will not be taxable even though those cellular services are provided within the city of Kent. There is a rebuttable presumption that the address shown on the cellular telephone service company’s records is the place of primary use and is accurate. If the cellular telephone service company knows or should have known that a customer’s place of primary use address for a telephone is within the city, then the gross income from cellular telephone service provided to that customer with respect to that telephone is to be included in the company’s gross income.

*Network telephone service* means the providing by any person, firm, or corporation of access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication, or transmission for hire via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. “Network telephone service” includes interstate service, including toll
service, originating from or received on telecommunications equipment or apparatus in this state if the charge for the service is billed to a person in this state. “Network telephone service” includes the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. “Network telephone service” does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, or the provision of internet service as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

**Solid waste** means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, infectious, hazardous, or toxic wastes, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable or reusable materials collected, in whole or in part, for recycling or salvage.

**Solid waste collection service** means receiving solid waste for transfer, storage, processing, treatment, or disposal including, but not limited to, all residential and commercial collection services, public or private solid waste disposal sites, transfer stations, and similar operations. **Solid waste collection service includes the activities of transferring, processing, treating, storing, or disposing of the solid waste collected.**

**Telephone business** means the business of providing network telephone service and cellular telephone service as those terms are defined in this section and includes cooperative or farmer line telephone companies or associations operating an exchange. “Competitive telephone service” shall not be considered “telephone business.” Telephone business shall include

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5Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
100 percent of the business and total gross income derived from calls originating and/or billed to subscribers within the city.

**Sec. 3.18.020. Certain utilities subject to tax.**

A. In addition to the other business and license fees required by the ordinances of the city, the city levies upon all persons, firms, or corporations (including the city) engaged in certain business activities a utilities tax to be collected as follows:

1. Upon every person, firm, or corporation engaging in or carrying on any telephone business within the city, an annual tax equal to six percent of the total gross income, including revenues from intrastate toll, derived from the operation of such business within the city. This six percent tax will be allocated as follows: 4.7 percent to the general fund, 0.3 percent to youth/teen programs, and one percent to street improvement programs.

2. Upon every person, firm, or corporation engaging in or carrying on a business of selling, wheeling, furnishing, distributing, or producing gas, whether manufactured or natural, for commercial or domestic use or purposes, a fee or tax equal to six percent of the total gross income from such business in the city during the tax year for which the license is required. This six percent tax will be allocated as follows: 4.7 percent to the general fund, 0.3 percent to youth/teen programs, and one percent to street improvement programs.

3. Upon every person, firm, or corporation engaged in or carrying on the business of selling, wheeling, furnishing, or distributing electricity for light and power, a fee or tax equal to six percent of the total gross income from such business in the city during the tax year for which a license is required. This six percent tax will be allocated as follows: 4.7 percent to the general fund, 0.3 percent to youth/teen programs, and one percent to street improvement programs.
4. Upon every person, firm, or corporation engaged in or carrying on the business of providing cable television services, a tax equal to six percent of the total gross income from that business in the city during the tax year for which the license is required. All revenue received from this tax must be applied only to funding the city’s information technology department operations and capital projects budgets in the proportion determined by the city council in its biennial budget, including all amendments.

5. Upon every person, firm, or corporation engaging in or carrying on a business providing solid waste collection services, a tax equal to 18.4 percent of the total gross income from such business in the city during the tax year for which the license is required. This 18.4 percent tax will be allocated as follows: 6.5 percent to the general fund, 0.3 percent to youth/teen programs, one percent to street improvement programs, and 10.6 percent to maintain and repair residential streets, including related impacts to curbs, gutters, sidewalks, and other road amenities, including crosswalks along with necessary appurtenances, and improvements related to residential traffic calming, but this 10.6 percent portion of the solid waste utility tax shall not be used to expand, extend, or widen existing residential streets or to build new residential streets. The amount used from this fund for neighborhood traffic calming devices and crosswalks shall not exceed $150,000 in any year.

6. Upon every person (including the city) engaging in or carrying on the business of selling, furnishing, or distributing water services, a tax equal to 13 percent of the total gross income from that business in the city during the tax year; upon every person (including the city) engaging in or carrying on the business of selling, furnishing, or distributing sewer services, a tax equal to 9.5 percent of the total gross income from that business in the city during the tax year; and upon every person (including the city) engaging in or carrying on the business of selling, furnishing, or distributing drainage services, a tax equal to 19.5 percent of the total
gross income from such business in the city during the tax year. Unless otherwise directed by the city council in its budget process, the total of these tax revenues will be allocated as follows: 43.85 percent to the general fund for the use as allocated in the city’s budget; 30.77 percent to the capital resources fund, subject to the limitations provided in subsection (A)(6)(a) of this section; 15.38 percent dedicated solely to the repayment and elimination of debt in the city’s “other capital projects” fund subject to the limitations provided in subsection (A)(6)(b) of this section; 7.69 percent to street improvement programs; and 2.31 percent to youth/teen programs.

a. Unless otherwise allocated by council, these funds must be applied equally to (i) information technology capital programs directed at funding long- and short-term hardware and software replacement, and (ii) street capital programs, but further restricted to funding street maintenance, repair, and signage only.

b. The 15.38 percent internal tax allocation will be dedicated to the city’s capital resources fund for the sole purpose of retiring all debt in the city’s other capital projects fund; provided, starting January 1, 2023, or the first day of the year following the date the debt in the other capital projects fund is fully retired, whichever occurs first, this internal tax allocation will be dedicated to the general fund for use as provided for in the city’s budget.

B. In computing the tax provided in subsection (A) of this section, the taxpayer may deduct from total gross income the following items:

1. The actual amount of credit losses and uncollectible receivables sustained by the taxpayer.

2. Amounts derived from transactions in interstate and foreign commerce which the city is prohibited from taxing under the laws and Constitution of the United States.

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
Sec. 3.18.025. Reserved.

Sec. 3.18.030. Utility tax, when due.
The utility tax imposed by KCC 3.18.020 shall be due and payable in monthly installments and remittance thereof shall be made on or before the last day of the following month in which the tax accrued. On or before said due date, the taxpayer shall file with the finance department a return upon a form to be prescribed and provided by the finance department, which return shall contain a statement by the taxpayer, stating that the amount of tax for which it is liable for the preceding monthly period, that the information therein given and the amount of tax liability therein reported are full and true, and that the taxpayer knows the same to be true. This statement shall be signed by the taxpayer or its authorized agent. Taxpayers expected to owe less than one thousand dollars ($1,000) per month may submit taxes on a quarterly basis; taxes shall be due on the last day of the month following the end of the quarter in which the tax accrued. Quarterly period for the purpose of this chapter shall mean each three (3) month period of the calendar year, commencing on January 1st.

Sec. 3.18.040. Taxpayer's records:
Each taxpayer shall keep records reflecting the amount of total gross income on its business within the city, and such records shall be retained for at least six (6) years and shall be open at all reasonable times to audit by the finance director or his or her duly authorized representative for verification of said tax returns and supporting records or for the filing of a tax of a taxpayer who fails to make such a return.

Sec. 3.18.050. Tax Payment failure—Penalty—and collection:
If any person, firm, or corporation subject to this chapter fails or neglects to pay any tax required by this chapter within thirty (30) days from the
date the tax is due to the city, a penalty of ten (10) percent of the amount of that tax will be imposed. Delinquent taxes, including any penalties, are also subject to an interest charge of one (1) percent per month (twelve (12)-percent-per-annum) on any unpaid balance from the date the tax payment became due, as provided in KCC 3.18.030, until all past due taxes and penalties are paid in full. Any unpaid tax, penalty, or interest due under this chapter and unpaid shall constitute a debt to the city. The city may, pursuant to Chapter 19.16 RCW, use a collection agency to collect taxes, interest, and penalties owed or assessed, or it may seek collection by court proceedings, which remedies shall be in addition to all other remedies.

Sec. 3.18.060. Overpayment of tax.
Any money paid to the city through error, or otherwise not in payment of the tax imposed by this chapter, or in excess of such tax, shall, upon request of the taxpayer, be credited against any tax due or to become due from such taxpayer hereunder, or, upon the taxpayer ceasing to do business in the city, be refunded to the taxpayer.

Sec. 3.18.070. Appeal to hearing examiner.
Any taxpayer aggrieved by the amount of tax, interest, or penalties determined by the finance director to be due under the provisions of this chapter may appeal such determinations to the city hearing examiner in accordance with, and subject to, the provisions set forth in Chapter 2.32 KCC. Taxpayers shall be required to remit the amounts determined to be due under this chapter prior to filing an appeal.

Sec. 3.18.080. False returns.
It is unlawful for any person, firm, or corporation subject to this chapter to fail or refuse to pay the tax when due, or for any person, firm, or corporation to make any false or fraudulent application or return or any

10Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
false statement or representation in, or in connection with, such return, or
to aid or abet another in any attempt to evade payment of the tax, or any
part thereof, or to testify falsely upon any investigation of the correctness
of a return upon the hearing of an appeal or in any manner hinder or delay
the city or any of its officers in carrying out the provisions of this chapter:

Sec. 3.18.090. Noncompliance—Civil penalty.
Any person, firm, or corporation subject to this chapter, who fails or
neglects to make tax returns or who makes a false statement or
representation in or in connection with a utility tax return, or who
otherwise violates or refuses to comply with this chapter, is subject to a
cumulative penalty in the amount of one hundred dollars ($100) per day
for each violation, in addition to the nonpayment penalty imposed under
KCC 3.18.050. All penalties imposed under this chapter shall constitute a
debt to the city. The city may, at its discretion, pursuant to Chapter 19.16
RCW, use a collection agency to collect taxes, interest, and penalties owed
or assessed pursuant to this chapter, or the city may seek collection by
court proceedings, which remedies shall be in addition to all other
remedies.

SECTION 2. - Amendment - KCC 3.21. Chapter 3.21 of the Kent
City Code entitled "Gambling Tax," is hereby amended as follows:

CHAPTER 3.21
GAMBLING TAX

Sec. 3.21.010. Gambling activities and tax.
A. Tax imposed. In accordance with RCW 9.46.110, the following taxes
are levied upon all persons, associations, and organizations who have been
duly licensed by the Washington State Gambling Commission to conduct or
operate gambling activities:
1. For bingo games and raffles, a tax rate of five percent of the gross receipts received therefrom less the amount awarded as cash or merchandise prizes;

2. For amusement games, a tax rate of two percent of the gross receipts from any such amusement games less the amount awarded as prizes, which is an amount less than the actual amount of costs of enforcement by the city of the provisions of Chapter 9.46 RCW;

3. For punch boards and pull-tabs for bona fide charitable or nonprofit organizations and for commercial stimulant operators, a tax rate of 10 percent based on the gross receipts from the operation of the games less the amount awarded as cash or merchandise prizes;

4. Commencing July 1, 2013, for social card games not prohibited by subsection (D) of this section, a tax rate of seven percent of the gross revenue from those games. Beginning January 1, 2017, this tax rate will return to 11 percent of the gross revenue from those games.

B. Definitions. For the purposes of this chapter, the words and terms used herein shall have the same meaning given to each pursuant to Chapter 9.46 RCW, as same exist or may from time to time be amended; and as set forth under the rules of the Washington State Gambling Commission, WAC Title 230, as the same exists or may hereafter be amended, unless otherwise specifically provided herein.

C. Exemption from tax. No tax shall be imposed under the authority of this chapter on bingo or amusement games when such activities or any combination thereof are conducted by any bona fide charitable or nonprofit organization as defined in Chapter 9.46 RCW, which organization has no paid operating or management personnel and has gross receipts from bingo or amusement games, or any combination thereof, not exceeding $5,000 per year less the amount awarded as cash or merchandise prizes. For raffles conducted by bona fide charitable or nonprofit organizations, no
tax shall be imposed under this chapter on the first $10,000 per year of gross receipts, less the amount awarded as cash or merchandise for prizes.

D. **House-banked card rooms.** Pursuant to RCW 9.46.295 and to the city’s police power and legislative authority, the operation or conduct of house-banked card rooms by any person, association, or organization as a commercial stimulant, as defined in Chapter 9.46 RCW, is allowed within the city of Kent pursuant to KCC Title 15. It is further provided that bona fide charitable or nonprofit organizations, as defined in Chapter 9.46 RCW, may operate or conduct social card games if said social card games have been duly licensed by the Washington State Gambling Commission and if they are otherwise operated or conducted in compliance with the provisions of this chapter. A violation of this section shall not be subject to KCC 1.01.140.

**Sec. 3.21.020. Administration and collection.**
The administrative provisions contained in Chapter 3.29 KCC shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein. The administration and collection of the tax imposed by this chapter shall be by the finance director, pursuant to the rules and regulations of the State Gambling Commission. The finance director or council—shall adopt and publish such rules and regulations as may be reasonably necessary to enable the collection of the tax imposed herein.

**Sec. 3.21.030. Filing declaration of intent.**
For the purpose of identifying who shall be subject to the tax imposed by this chapter, any person, association, or organization intending to conduct or operate any gambling activity authorized by RCW 9.46.010 et seq. shall, prior to commencement of any such activity, file with the finance director a sworn declaration of intent to conduct or operate such activity, together with a copy of the license issued in accordance with RCW 9.46.010 et seq.
Thereafter, for any period covered by such state license or any renewal thereof, any person, association, or organization shall, on or before the fifteenth day of the month following the end of the quarterly period in which the tax accrued, file with the finance director a sworn statement on a form to be provided and prescribed by the city council for the purpose of ascertaining the tax due for the preceding quarterly period.

**Sec. 3.21.040. Tax due.**

A. *Quarterly tax reporting and payment.* Except as provided in subsection (B) of this section for taxes due in excess of $50,000 annually, the tax imposed by this chapter shall be due and payable in quarterly installments and remittance therefor, together with the return forms, shall be made on or before the final day of the month immediately after the quarterly period in which the tax accrued. Such payments shall be due on January 31st, April 30th, July 31st, and October 31st of each respective year.

B. *Monthly tax reporting and payment.* The tax imposed by this chapter shall be due and payable in monthly installments when the gambling taxes due in the previous calendar year were in excess of $50,000. In that event, the tax remittance, together with the return forms, shall be made on or before the final day of the month immediately after the month in which the tax accrued.

1. Whenever any person, association, or organization taxed under this chapter quits business, sells out, or otherwise disposes of its business, or terminates the business, any tax due shall become due and payable immediately, and such taxpayer shall, within 10 days after the last date the establishment is open for business, file a return and pay the tax due.

2. Whenever it appears to the finance director that the collection of taxes from any person, association, or organization may be in jeopardy,
the finance director, after not less than 10 days' notice to the taxpayer, is authorized to require that the taxpayer remit taxes due and returns at such shorter intervals than otherwise provided, as the finance director deems appropriate under the circumstances.

B. **Monthly tax reporting and payment.** The tax imposed by this chapter shall be due and payable in monthly installments when the gambling taxes due in the previous calendar year were in excess of $50,000. In that event, the tax remittance, together with the return forms, shall be made on or before the final day of the month immediately after the month in which the tax accrued.

1. Whenever any person, association, or organization taxed under this chapter quits business, sells out, or otherwise disposes of its business, or terminates the business, any tax due shall become due and payable immediately, and such taxpayer shall, within 10 days after the last date the establishment is open for business, file a return and pay the tax due.

2. Whenever it appears to the finance director that the collection of taxes from any person, association, or organization may be in jeopardy, the finance director, after not less than 10 days' notice to the taxpayer, is authorized to require that the taxpayer remit taxes due and returns at such shorter intervals than otherwise provided, as the finance director deems appropriate under the circumstances.

**Sec. 3.21.641. Administration and collection of tax.**

A. Administration and collection of the various taxes imposed by this chapter shall be the responsibility of the finance director. Remittance of the amount due shall be accompanied by a completed return form prescribed and provided by the finance director. The taxpayer shall be required to swear and affirm that the information given in the return is true, accurate, and complete.

15Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 Re: Tax Codes
B. The finance director is authorized, but not required, to mail to taxpayers forms for returns. Failure of the taxpayer to receive such a form shall not excuse the taxpayer from making the return and timely paying all taxes due. The finance director shall have forms available to the public in reasonable numbers at the city hall customer services department during regular business hours.

C. In addition to the return form, a copy of the taxpayer’s quarterly report to the Washington State Gambling Commission required by Chapter 230-08 WAC for the period in which the tax accrued shall accompany remittance of the tax amount due.

Sec. 3.21.042. Method of payment.
Taxes payable hereunder shall be remitted to the finance director on or before the time required by bank draft, certified check, cashier’s check, personal check, money order, credit card, or cash. If payment is made by draft, credit card, or check, the tax shall not be deemed paid until the draft, credit card, or check is honored in the usual course of business, nor shall the acceptance of any sum by the finance director be an acquittance or discharge of the tax unless the amount paid is the full amount due. The return and copy of the quarterly report to the Washington State Gambling Commission shall be filed in the office of the finance director after notation by the finance director upon the return of the amount actually received from the taxpayer.

Sec. 3.21.043. Failure to make timely payment of tax or fee.
A. Penalty. For each payment due, if such payment is not made by the due date thereof, there shall be added a penalty as follows:

\[ \text{Penalty} = \begin{cases} \text{Amount Due} & \text{if payment is made after the due date} \\ 0 & \text{if payment is made on or before the due date} \end{cases} \]
1. If not paid on or before the first day of the second month next succeeding the quarterly period in which the tax accrued, 10 percent of the total tax due with a minimum penalty of $5.

2. If not paid on or before the first day of the third month next succeeding the quarterly period in which the tax accrued, 15 percent of the total tax due with a minimum penalty of $10.

3. If not paid on or before the first day of the fourth month next succeeding the quarterly period in which the tax accrued, 20 percent of the total tax due with a minimum penalty of $20.

4. Failure to make full payment of all taxes and penalties due by the final day of the third month next succeeding the quarterly period in which the tax accrued shall be deemed to be both a criminal and civil violation of this chapter.

B. Service charge. In addition to the penalties imposed under subsection (A) of this section, a service charge of one percent of the amount of the unpaid balance or $2.00, whichever amount is greater, will be imposed one month from the date payment was due, and at the end of each succeeding monthly period, until all past due amounts are paid in full.

Sec. 3.21.050. Records required.
A. Each person, association, or organization engaging in an activity taxable under this chapter shall maintain records respecting that activity which truly, completely, and accurately disclose all information necessary to determine the taxpayer’s tax liability hereunder during each base tax period. Such records shall be kept and maintained for a period of not less than three years. In addition, all information and items required by the Washington State Gambling Commission under Chapter 230-08 WAC, and the United States Internal Revenue Service, respecting taxation, shall be kept and maintained for the periods required by those agencies.
B. All books, records, and other items required to be kept and maintained under this section shall be subject to and immediately made available for inspection and audit at any time, with or without notice, at the place where such records are kept upon the demand of the finance director or his designee for the purpose of enforcing the provisions of this chapter.

C. Where the taxpayer does not keep all of the books, records, or items required to be kept or maintained under this section within the jurisdiction of the city so that the auditor may examine them conveniently, the taxpayer shall either:

1. Produce and make available for inspection in this jurisdiction all of the required books, records, or other items within 10 days following a request by the auditor that he do so;

2. Bear the actual cost of inspection by the auditor or his designee at the location of which books, records or items are located; provided, that a taxpayer choosing to bear these costs shall pay in advance to the finance director the estimated costs thereof, including, but not limited to, round trip fare by the most rapid means, lodging, meals, and incidental expenses. The actual amounts due or to be refunded for expenses shall be determined following the examination of the records.

D. A taxpayer who fails, neglects, or refuses to produce such books and records either within or without this jurisdiction, in addition to being subject to other civil and criminal penalties provided by this chapter, shall be subject to a jeopardy fee or tax assessment by the auditor which penalty fee or jeopardy assessment shall be deemed prima facie correct and shall be the amount of the fee or tax owing by the taxpayer unless he can prove otherwise. The taxpayer shall be notified by the finance director by posting in the mails of the United States, addressed to the taxpayer to the last address on file with the finance department, a statement of the
amount of tax so determined by jeopardy assessment, together with any penalty and/or interest, and the total of such amounts shall thereupon become immediately due and payable.

**Sec. 3.21.051. Overpayment or underpayment of tax.**

If, upon application by a taxpayer for a refund or for an audit of his records, or upon any examination of the returns or records of any taxpayer, it is determined by the finance director that within three years immediately preceding receipt by the finance director of the application by the taxpayer for a refund or an audit, or in the absence of such an application, within three years immediately preceding the commencement by the finance director of such examination:

1. A tax or other fee has been paid in excess of that properly due, the total excess paid over all amounts due to the city within such period of three years shall be credited to the taxpayer's account or shall be credited to the taxpayer at the taxpayer's option. No refund or credit shall be allowed for any excess paid more than three years before the date of such application or examination.

2. A tax or other fee has been paid which is less than that properly due, or no tax or other fee has been paid, the finance director shall mail a statement to the taxpayer, showing the balance due, including the tax amount or penalty assessments and fees, and it shall be a separate, additional violation of this chapter, both civil and criminal, if the taxpayer fails to make payment in full within 10 calendar days of such mailing.

**Sec. 3.21.052. Failure to make return.**

If any taxpayer fails, neglects, or refuses to make and file his return as and when required under this chapter, the finance director is authorized to determine the amount of tax payable, together with any penalty and/or
interest assessed under the provisions of this chapter and by mail to notify such taxpayer of the amount so determined, which amount shall thereupon become the tax and penalty and/or interest and shall become immediately due and payable.

Sec. 3.21.053. Tax additional to others.
The taxes levied herein shall be additional to any license fee or tax imposed or levied under any law or other ordinance of the city except as otherwise herein expressly provided.

Sec. 3.21.054. Finance director to make rules.
The finance director shall have the power, and it shall be his or her duty, from time to time, to adopt, publish and enforce rules and regulations not inconsistent with this chapter or other applicable laws for the purpose of carrying out the provisions hereof, and it is unlawful to violate or fail to comply with any such rule or regulation.

Sec. 3.21.055. Taxes, penalties, service charges, and fees constitute debt to municipality.
Any tax due and unpaid under this chapter and all penalties, service charges, or fees shall constitute a debt to the city. The city may, pursuant to Chapter 19.16 RCW, use a collection agency to collect outstanding debts, or it may seek collection by court proceedings, which remedies shall be in addition to all other existing remedies. Further, as provided for in RCW 9.46.110(4), as now enacted or hereafter amended, taxes and associated penalties and charges imposed under this chapter shall become a lien upon personal and real property used in the gambling activity in the same manner as provided for under RCW 84.60.010 for property taxes. The lien shall attach on the date the tax becomes due and shall relate back and have priority against real and personal property to the same extent as ad valorem taxes.
Sec. 3.21.060. Penalties.
Any person who shall fail or refuse to pay the tax as required in this chapter, or who shall willfully disobey any rule or regulation promulgated by the city council under this chapter, shall be guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not more than 90 days or by a fine of not more than $250 or by both such fine and imprisonment. Any such fine shall be in addition to the tax required. Officers, directors, and managers of any organization conducting gambling activities shall be jointly and severally liable for the payment of the tax and for the payment of any fine imposed under this chapter.

SECTION 3. – Amendment – KCC 3.26. Chapter 3.26 of the Kent City Code entitled “Admissions Tax,” is hereby amended as follows:

CHAPTER 3.26
ADMISSIONS TAX

Sec. 3.26.010. Exercise of revenue license power
Admissions tax imposed.
The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the city code.

Sec. 3.26.015. General administrative provisions apply.
The administrative provisions contained in Chapter 3.29 KCC shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.
Sec. 3.26.020. Definitions.
The following definitions shall apply throughout this chapter:
A. Admission charge, in addition to its usual and ordinary meaning, means a monetary charge for an event open to the public including, but not limited to, the following:
   1. A charge made for season tickets or subscriptions;
   2. A cover charge or a charge made for use of seats and tables, reserved or otherwise, and similar accommodations;
   3. A charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided;
   4. If a general admission fee is charged for entry onto the premises where a rental occurs and if the rental of equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge; provided, however, that a general admission fee must be charged for entry onto the premises where a rental occurs before the rental can be taxed under this chapter;
   5. If a general admission fee is charged for entry onto the premises where an activity occurs (such as, and without limitation, a bowling alley or ice skating rink) and if the activity charge is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge; provided, however, that a general admission fee must be charged for entry onto the premises where an activity occurs before the activity charge can be taxed under this chapter;
   6. Automobile parking charges if the amount of the charge is determined according to the number of passengers in the automobile;
   7. If the ticket price is accompanied by a service charge, mailing fee, or other ancillary payment, per ticket and/or per order, whether or not they are printed on the ticket, the admission tax shall be based upon the total sum of the admission price plus any such surcharge(s).

22Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29
Re: Tax Codes
8. Any other charge for entrance and observation.

B. Collecting entity means any person, business, association, organization, or other entity entrusted with the collection and remittance of admission taxes under this section.

C. Governmental entity means any federal, state, or local government, or branch thereof, and also includes any public facility or any public facility, service, or utility district that is exempt from federal income taxation pursuant to Section 501(c)(1) or (3) of the Internal Revenue Code, as it may be amended from time to time.

D. Nonprofit tax-exempt organization means an organization, corporation, or association organized and operated for the advancement, appreciation, public exhibition, or performance, preservation, study, and/or teaching of the performing arts, visual arts, history, science, or a public charity providing human services, or a public education entity, which is currently exempt from federal income taxation pursuant to Section 501(c)(1) or (3) of the Internal Revenue Code, as it may be amended from time to time.

E. Secondary or elementary school means any public or private primary school, middle school, junior high school, high school, or any accredited college, junior college, university, or the recognized student body association thereof.

F. By way of illustration only, this tax applies to any nonexempt admission charge, as defined in this section, collected for admission to any theater, cinema, dance hall, cabaret, adult entertainment cabaret, circus, side show, outdoor amusement park, dinner theatre, music concerts, radio shows, and television shows.
G. Chapter shall mean Chapter 3.26 KCC, as it may be amended or replaced from time to time.

Sec. 3.26.025. Tax imposed.
A. Tax imposed. In accordance with RCW 35.21.280, there is levied and shall be collected a tax from every person, without regard to age, who pays an admission charge to any place within the city limits. The tax shall be measured by applying the rate set forth in this chapter to the admission charge. The tax shall be held in trust by the business, association, organization, or other entity charging and collecting admission taxes until the taxes are remitted to the finance director under KCC 3.26.030. No tax shall be levied on any person who is admitted free of charge and the tax on reduced admission charges shall be calculated on the reduced charge and not on the regular admission charge.

B. Definitions. The following definitions shall apply throughout this chapter:

1. Admission charge, in addition to its usual and ordinary meaning, means a monetary charge for an event open to the public including, but not limited to, the following:
   a. A charge made for season tickets or subscriptions;
   b. A cover charge or a charge made for use of seats and tables, reserved or otherwise, and similar accommodations;
   c. A charge made for food and refreshments in any place where any free entertainment, recreation, or amusement is provided;
   d. If a general admission fee is charged for entry onto the premises where a rental occurs and if the rental of equipment or facilities is necessary to the enjoyment of a privilege for which a general admission is charged, the combined charges shall be considered as the admission charge; provided, however, that a general admission fee must be charged
for entry onto the premises where a rental occurs before the rental can be
taxed under this chapter;

e. If a general admission fee is charged for entry onto the
premises where an activity occurs (such as, and without limitation, a
bowling alley or ice skating rink) and if the activity charge is necessary to
the enjoyment of a privilege for which a general admission is charged, the
combined charges shall be considered as the admission charge; provided,
however, that a general admission fee must be charged for entry onto the
premises where an activity occurs before the activity charge can be taxed
under this chapter;

f. Automobile parking charges if the amount of the charge
is determined according to the number of passengers in the automobile;

g. Any other charge for entrance and observation.

2. Collecting entity means any person, business, association,
organization, or other entity entrusted with the collection and remittance
of admission taxes under this section.

3. Governmental entity means any federal, state, or local
government, or branch thereof, and also includes any public facility or any
public facility, service, or utility district that is exempt from federal income
taxation pursuant to Section 501(c)(1) or (3) of the Internal Revenue
Code, as it may be amended from time to time.

4. Nonprofit tax-exempt organization means an organization;
corporation, or association organized and operated for the advancement;
appreciation, public exhibition, or performance, preservation, study, and/or
teaching of the performing arts, visual arts, history, science, or a public
charity providing human services, or a public education entity, which is
currently exempt from federal income taxation pursuant to Section
501(c)(1) or (3) of the Internal Revenue Code, as it may be amended from
time to time.

5. Secondary or elementary school means any public or private
primary school, middle school, junior high school, high school, or any
accredited college, junior college, university, or the recognized student body association thereof.

C.—Exemptions from tax. No tax shall be imposed under the authority of this chapter on the following:

1. Admission charges for any activity of any elementary or secondary school, any governmental entity, or any nonprofit tax-exempt organization. However, governmental activities operated in the manner of a separate business enterprise shall not be exempt from this tax. By way of example and not limitation, a business enterprise subject to the admissions tax levy could include an event center or golf course, if operated as a business activity in a separate fund.

2. Events sponsored by nonprofit tax-exempt organizations if the nonprofit tax-exempt organization publicly sponsors and promotes the event and the nonprofit tax-exempt organization receives the use and benefit of the admission charges collected.

D.—General application. By way of illustration only, this tax applies to any nonexempt admission charge, as defined in this section, collected for admission to any theater, cinema, dance hall, cabaret, adult entertainment cabaret, circus, side show, outdoor amusement park, dinner theatre, music concerts, radio shows, and television shows.

Sec. 3.26.0320. Tax rate.
The amount of the tax charged on admission charges shall be equal to the admission charge multiplied by the rate of five (5) percent.

Sec. 3.26.035. Exemptions.
No tax shall be imposed under the authority of this chapter on the following:
A. Admission charges for any activity of any elementary or secondary school, any governmental entity, or any nonprofit tax-exempt organization. However, governmental activities operated in the manner of a separate business enterprise shall not be exempt from this tax. By way of example and not limitation, a business enterprise subject to the admissions tax levy could include an event center or golf course, if operated as a business activity in a separate fund.

B. Events sponsored by nonprofit tax-exempt organizations if the nonprofit tax-exempt organization publicly sponsors and promotes the event and the nonprofit tax-exempt organization receives the use and benefit of the admission charges collected.

**Sec. 3.26.036. Deductions.**

In computing the tax imposed by this chapter, the following amounts may be deducted from the measure of the tax: Amounts derived from business which the city is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States.

**Sec. 3.26.030. Administration and collection.**

A. Administration and collection of the various taxes imposed by this chapter shall be the responsibility of the finance director. Remittance of the amount due shall be accompanied by a completed return form prescribed and provided by the finance director. The collecting entity shall be required to swear and affirm that the information given in the return is true, accurate, and complete.

B. The finance director is authorized, but not required, to mail to the collecting entity forms for returns. Failure of the collecting entity to receive such a form shall not excuse the collecting entity from making the return and timely paying all taxes due. The finance director shall have forms
available to the public in reasonable numbers at its customer services department during regular business hours.

Sec. 3.26.040. Tax due.
A. The tax imposed by this chapter shall be due and payable in quarterly installments, and remittance therefor, together with the return forms, shall be made on or before the final day of the month immediately succeeding the quarterly period in which the tax accrued. Such payments shall be due on or before January 31st, April 30th, July 31st, and October 31st of each respective year.

1. Whenever any collecting entity quits business, sells out, or otherwise disposes of its business, or terminates the business, any tax due shall become due and payable immediately, and the collecting entity shall, within ten (10) days thereafter, submit a return form and pay the tax due.

2. Whenever it appears to the finance director that the collection of taxes from any collecting entity may be in jeopardy, the finance director, after not less than ten (10) days’ prior written notice to the collecting entity, is authorized to require that the collecting entity remit taxes due and deliver returns at shorter intervals than otherwise provided, as the finance director deems it appropriate under the circumstances.

Sec. 3.26.050. Method of payment.
Taxes payable hereunder shall be remitted to the finance director on or before the time required by bank draft, cashier’s check, personal check, money order, credit card, or cash. If payment is made by draft, credit card, or check, the tax shall not be deemed paid until the draft, credit card, or check is honored in the usual course of business, nor shall the acceptance of any sum by the finance director be an acquittance or discharge of the tax, unless the amount paid is the full amount due.
Sec. 3.26.060. Failure to make timely payment of tax or fee—Penalties:

A. **Delinquent accounts.** Except to the extent modified by this section, the city will treat all unpaid or uncollected admissions taxes as delinquent accounts under Ch. 3.10 KCC.

B. **Late charge assessed.** If any collecting entity fails or neglects to pay any admission tax within thirty (30) days from the quarterly due date, a charge of one (1) percent of the amount of the unpaid tax or five dollars ($5), whichever is the greater amount, will be imposed one (1) month from the date payment was due, and at the end of each succeeding monthly period, until all past due amounts are paid in full.

C. **Collection agency.** Any tax, invoice, or service charge due under this chapter and unpaid or uncollected shall constitute a debt to the city. The city may, pursuant to Ch. 19.16 RCW, use a collection agency to collect outstanding debts, or it may seek collection by court proceedings, which remedies shall be in addition to all other remedies.

D. **Criminal penalties.** Any collecting entity that violates or fails to comply with any of the provisions of this chapter or other lawful rule or ordinance adopted by the city shall be guilty of a misdemeanor and shall be subject to the penalty set forth in KCC 9.02.410(2), as it may be amended from time to time.

Sec. 3.26.070. Records required:

A. Each collecting entity shall maintain records respecting that activity which truly, completely, and accurately disclose all information necessary to determine the collecting entity’s tax liability during each base tax period. Such records shall be kept and maintained for a period of not less than three (3) years.
B. All books, records, and other items required to be kept and maintained under this section shall be subject to, and immediately made available, for inspection and audit at any time, with or without notice, at the place where such records are kept upon the demand of the finance director, or his or her designee, for the purpose of enforcing the provisions of this chapter.

C. Where the collecting entity does not keep all of the books, records, or items required to be kept or maintained under this section within the jurisdiction of the city so that the auditor may examine them conveniently, the collecting entity shall either:

1. Produce and make available for inspection in this jurisdiction all of the required books, records, or other items within ten (10) days following a request by the auditor that the collecting entity do so; or

2. Bear the actual cost of inspection by the auditor or the auditor's designee at the location where the books, records, or items are located. In addition, the collecting entity shall pay in advance to the finance director the estimated costs thereof, including, but not limited to, round-trip fare by the most rapid means, lodging, meals, and incidental expenses. The actual amounts due or to be refunded for expenses shall be determined following the examination of the records.

D. A collecting entity who fails, neglects, or refuses to produce these books and records, either within or outside this jurisdiction, in addition to being subject to other civil and criminal penalties provided by this chapter, shall be subject to a penalty in the amount of one hundred dollars ($100) per day for each day of noncompliance.
Sec. 3.26.080. Overpayment or underpayment of tax.

If, upon application by a collecting entity for a refund, or upon any examination of the returns or records of any collecting entity, the finance director determines that within three (3) years immediately preceding receipt by the finance director of the application by the collecting entity for a refund or an audit, or in the absence of such an application, within three (3) years immediately preceding the commencement by the finance director of the examination:

A. A tax or other fee has been paid in excess of that properly due, the total excess paid over all amounts due to the city within three (3) years of such period shall be credited to the collecting entity’s account or shall be credited to the collecting entity at the collecting entity’s option. No refund or credit shall be allowed for any excess paid more than three (3) years before the date of the application or examination.

B. A tax or other fee has been paid which is less than that properly due, or no tax or other fee has been paid, the finance director shall mail a statement to the collecting entity, showing the balance due, including the tax amount or penalty assessments and fees. It shall be a separate, additional violation of this chapter, both civil and criminal, if the collecting entity fails to make payment in full within ten (10) calendar days of that mailing.

Sec. 3.26.090. Failure to make return.

If any collecting entity fails, neglects, or refuses to make and file its return when required under this chapter, the finance director is authorized to determine the amount of tax payable, together with any penalty and/or interest assessed under the provisions of this chapter, and to mail notification to the collecting entity of the amount so determined, which
amount shall thereupon become the tax and penalty and/or interest and shall become immediately due and payable.

Sec. 3.26.100. Tax additional to others.
The taxes levied herein shall be additional to any license fee or tax imposed or levied under any law or other ordinance of the city, except as otherwise expressly provided herein.

Sec. 3.26.110. Finance director to make rules.
The finance director shall have the power, and it shall be his or her duty, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this chapter or other applicable laws for the purpose of carrying out these provisions, and it is unlawful to violate or fail to comply with those rules or regulations.

SECTION 4. Amendment – KCC 3.28. Chapter 3.28 of the Kent City Code entitled "Business and Occupation Tax – Gross Receipts," is hereby amended as follows:

CHAPTER 3.28
BUSINESS AND OCCUPATION TAX – GROSS RECEIPTS

Sec. 3.28.010. Purpose.
This chapter implements Washington Constitution Article XI, Section 12 and RCW 35A.82.020 and 35A.11.020, 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. The city of Kent has developed over the last half century into a major manufacturing/warehousing hub. However, due to recent changes in sales tax and property tax laws, the city no longer
receives sufficient revenue from warehousing activities to support the transportation infrastructure needed to serve warehouse activities. As a result, the city no longer generates sufficient revenue to maintain the level of general city services that supports this business base, and to maintain and operate its considerable past investment in local streets and arterial infrastructure. This chapter, then, is intended to generate additional revenue to maintain, repair, and operate the city’s existing transportation network in order to fairly allocate the cost to provide those services and to maintain that infrastructure to those business entities that contribute most to the use and degradation of city streets.

Sec. 3.28.020. Exercise of revenue license power.
The provisions of this chapter shall be deemed an exercise of the power of the city to license for revenue. The provisions of this chapter are subject to periodic statutory or administrative rule changes or judicial interpretations of the ordinances or rules. The responsibility rests with the licensee or taxpayer to reconfirm tax computation procedures and remain in compliance with the city code.

Sec. 3.28.028. Administrative provisions.
The administrative provisions contained in Chapter 3.29 KCC shall be fully applicable to the provisions of this chapter except as expressly stated to the contrary herein.

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

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Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29

Re: Tax Codes
cultural or art education programs, as defined in subsection (C)(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 nonprofit 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.

D. 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.

E. 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.

F. 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.

G. 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.

H. Consumer means the following:

36 Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
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.

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

I. 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.

J. **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.

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

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

M. **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.

N. 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 (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.

1. 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

42Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
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.

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 (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.

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

P. 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, 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.”

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

R. *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.

S. *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.

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

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
U. **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.

V.  *Newspaper* 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.

*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 (3) months, including any supplement or special edition of the publication. Any publication meeting this definition qualifies regardless of its content.

W.  *Nonprofit corporation* or *nonprofit organization* 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.

X.  *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
consducted 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.

Y. 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.
Z. *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.

AA. *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.

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

CC. *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.

DD. 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.

EE. *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 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 (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 (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 (EE)(3)(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 (EE)(1) of this section and nothing contained in subsection (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 (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.

53 Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
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.

ii.(A) The service described in subsection (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 (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 (EE)(11) 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.

FF. 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

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

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

HH. 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 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.

II. **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.
JJ. _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 (LL)(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.

MM. Wholesaling means engaging in the activity of making sales at wholesale, and is reported under the wholesaling classification.
Sec. 3.28.040. Agency – Sales and services by agent, consignee, bailee, factor or auctioneer.

A. Sales in own name – Sales or purchases as agent. Every person, including agents, consignees, bailees, factors, or auctioneers, having either actual or constructive possession of tangible personal property or having possession of the documents of title thereto, with power to sell such tangible personal property in the person's own name and actually so selling, shall be deemed the seller of such tangible personal property within the meaning of this chapter.

The burden shall be upon the taxpayer in every case to establish the fact that such taxpayer is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales or making purchases for a principal. Such claim will be recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the broker or agent show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.

2. The books and records show the amount of the principal's gross sales, the amount of commissions, and any other incidental income derived by the broker or agent from such sales. The principal's gross sales must not be reflected as the agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

3. No ownership rights may be conferred to the agent unless the principal refuses to pay, or refuses to abide by the agency agreement.
Sales or purchases of any goods by a person who has any ownership rights in such goods shall be taxed as retail or wholesale sales.

4. Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

B. If the above requirements are not met the consignor, bailor, principal, or other shall be deemed a seller of such property to the agent, consignee, bailee, factor, or auctioneer.

C. Services in own name – Procuring services as agent. For purposes of this subsection, an agent is a person who acts under the direction and control of the principal in procuring services on behalf of the principal that the person could not itself render or supply. Amounts received by an agent for the account of its principal as advances or reimbursements are exempted from the measure of the tax only when the agent is not primarily or secondarily liable to pay for the services procured.

Any person who claims to be acting merely as agent in obtaining services for a principal will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:

1. The books and records of the agent show that the services were obtained in the name and for the account of the principal, and show the actual principal for whom the purchase was made.

2. The books and records show the amount of the service that was obtained for the principal, the amount of commissions, and any other income derived by the agent for acting as such. Amounts received from the principal as advances and reimbursements must not be reflected as the

62Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29

Re: Tax Codes
agent's income on any of the agent's books and records. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.

**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) through December 31, 2021, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2022. 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) through December 31, 2021, and
multiplied by the rate of 0.100 hundredths of one percent (0.001) effective January 1, 2022. 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) through December 31, 2019, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2020.

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) through December 31, 2021, and multiplied by the rate of 0.100 hundredths of one percent (0.001) effective January 1, 2022.

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) through December 31, 2021, and multiplied by the rate of 0.100 hundredths of one percent (0.001) effective January 1, 2022.

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) through December 31, 2021, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2022.

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) through December 31, 2021, and multiplied by the rate of 0.200 hundredths of one percent (0.002) effective January 1, 2022. 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 for each calendar year listed below, 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 for each calendar year listed below.

<table>
<thead>
<tr>
<th>Effective Date</th>
<th>Business Warehouse Floor Space</th>
<th>Other Business Floor Space</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/2019</td>
<td>0.06 quarterly rate 0.24 annual rate</td>
<td>0.02 quarterly rate 0.08 annual rate</td>
</tr>
<tr>
<td>1/1/2020</td>
<td>0.09 quarterly rate 0.36 annual rate</td>
<td>0.02 quarterly rate 0.08 annual rate</td>
</tr>
<tr>
<td>1/1/2025</td>
<td>0.12 quarterly rate 0.48 annual rate</td>
<td>0.02 quarterly rate 0.08 annual rate</td>
</tr>
<tr>
<td>1/1/2028</td>
<td>0.15 quarterly rate 0.60 annual rate</td>
<td>0.03 quarterly rate 0.12 annual rate</td>
</tr>
</tbody>
</table>

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.

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.

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
5. Persons with more than one 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, 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 and square footage threshold.

1. Gross receipts threshold. The gross receipts tax imposed in subsection (A) of this section shall not apply to any person engaging in any one or more business activities which are otherwise taxable pursuant to this section, whose value of products, including byproducts, gross proceeds of sales, and gross income of the business, as the case may be, from all activities conducted within the city during any calendar year does not exceed the threshold amount of $250,000.

2. Square footage threshold. 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 taxable square feet of business warehouse space; or
b. Twelve thousand taxable square feet of other business floor space.

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. Gross receipts maximum - Retailing activities. Effective January 1, 2022, the gross receipts tax imposed in subsection (A) of this section shall not apply to retailing activities exceeding $20,000,000 in any calendar year which are otherwise taxable pursuant to this section.

E. Rules. The director may promulgate rules and regulations regarding the manner, means, and method of calculating any tax imposed under this section.

Sec. 3.28.070. Multiple activities credit when activities take place in one (1) or more cities with eligible gross receipt taxes.

A. Persons who engage in business activities that are within the purview of two (2) or more subsections of KCC 3.28.050 shall be taxable under each applicable subsection.

B. Notwithstanding anything to the contrary herein, if imposition of the city's tax would place an undue burden upon interstate commerce or violate constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the city's tax, and still apply the city tax to as much of the taxpayer's activities as may be subject to the city's taxing authority.
C. To take the credit authorized by this section, a taxpayer must be able to document that the amount of tax sought to be credited was paid upon the same gross receipts used in computing the tax against which the credit is applied and that the taxpayer paid the amount of tax sought to be credited.

D. *Credit for persons that sell in the city products that they extract or manufacture.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid (1) with respect to the manufacturing of the products sold in the city, and (2) with respect to the extracting of the products, or the ingredients used in the products, sold in the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

E. *Credit for persons that manufacture products in the city using ingredients they extract.* Persons taxable under the manufacturing classification with respect to manufacturing products in this city shall be allowed a credit against those taxes for any eligible gross receipts tax paid with respect to extracting the ingredients of the products manufactured in the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

F. *Credit for persons that sell within the city products that they print, or publish and print.* Persons taxable under the retailing or wholesaling classification with respect to selling products in this city shall be allowed a credit against those taxes for any eligible gross receipts taxes paid with respect to the printing, or the printing and publishing, of the products sold.
within the city. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

Sec. 3.28.071 Tax credit.
Persons with taxable gross receipts in excess of $62,500 who engage in business activities that are within the subsections of KCC 3.28.050(A) shall be taxable under each applicable subsection during a quarter in the city and shall be allowed a credit against the gross receipts taxes paid to the city on $62,500 under this chapter during the quarter. The amount of the credit shall not exceed the gross receipts tax liability arising under this chapter.

Sec. 3.28.075. Deductions to prevent multiple taxation of certain manufacturing activities involving more than one (1) city with an eligible gross receipts tax.
A person manufacturing products within the city using products manufactured by the same person outside the city may deduct from the measure of the manufacturing tax the value of products manufactured outside the city and included in the measure of an eligible gross receipts tax paid to the other jurisdiction with respect to manufacturing such products.

Sec. 3.28.076. Assignment of gross income derived from intangibles.
Gross income derived from the sale of intangibles such as royalties, trademarks, patents, or goodwill shall be assigned to the jurisdiction where the person is domiciled (its headquarters is located).
Sec. 3.28.077. Allocation and apportionment of income when activities take place in more than one (1) jurisdiction.

Gross income, other than for 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 KCC 3.28.050(A)(7) 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 71one, designated as such by the purchaser, receives the digital product, including the location indicated by instructions for delivery to the purchaser or 71one, known to the seller;
3. If the location where the purchaser or the purchaser’s 71one 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

71Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
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 (C) of this section 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 (C)(1) through (5) of this section, 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. The city may employ an alternative method for allocating the income from the sale of digital products if the methods provided in subsections (C)(1) through (5) of this section 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 (C)(1) through (5) of this section, the following definitions apply:

1. "Digital automated services," "digital codes," and "digital goods" have the same meaning as in RCW 82.04.192;
2. "Digital products" means digital goods, digital codes, digital automated services, and the services described in RCW 282.04.050 (2)(g) and (6)(c); and
3. "Receive" has the same meaning as in RCW 82.32.730.
Effective January 1, 2020, gross income derived from activities taxed as services and other activities taxed under KCC 3.28.050(A)(7) 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 (2).

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 (50) 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 (50) 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.

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

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

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

3:4. 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 (1) of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:

a. Separate accounting;

b. The exclusion of any one or more use of a single factors;

c. The inclusion of one (1) or more additional factors that will fairly represent the taxpayer’s business activity in the city; or

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

5. The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer’s income pursuant to subsection (4) of this subsection (F) must prove by a preponderance of the evidence:
(a) That the allocation and apportionment provisions of this subsection (F) do not fairly represent the extent of the taxpayer's business activity in the city; and

(b) That the alternative to such provisions is reasonable.

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

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

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

G. The definitions in this subsection apply throughout this section.

1. **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.

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

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

4. Customer means a person or entity to whom the taxpayer makes a sale or renders services or from whom the taxpayer otherwise receives gross income on the business.

5. Customer location means the following:

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

(ii) For a customer not engaged in business, if the service does not require the customer to be physically present:

(A) The customer’s residence; or

(B) If the customer’s residence is not known, the customer’s billing/mailing address.

(iii) For a customer engaged in business:

(A) Where the services are ordered from;

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

(C) At the customer’s commercial domicile if none of the above are known.

6.3. Individual means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
4. **Customer location** means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.

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

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

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

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

H. 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.

Sec. 3.28.078. **Allocation and apportionment of printing and publishing income when activities take place in more than one (1) jurisdiction.**

Notwithstanding RCW 35.102.130, gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, shall be allocated to the principal place in this state from which the taxpayer’s

77Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines, have the same meanings as attributed to those terms in RCW 82.04.280(1) by the Department of Revenue.

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 RCW Title 48; nor to beneficiary corporations or societies organized under and existing by virtue of RCW Title 24, 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 nonprofit 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.

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

G. *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.
H. **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.

I. **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).

J. **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.

K.  *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.

L.  *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.

M.  *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.

N.  *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.

O.  *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.
P. *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.

Q. *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.

R. *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 in RCW 82.386.010 and exempt under RCW 82.386.44280; 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.

S. *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.

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

V. 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.

W. 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.

X. 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.
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 nonprofit youth organization.** For purposes of this subsection, “nonprofit youth organization” means a nonprofit 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 nonprofit 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. **Initiation fees, dues, and certain charges received by non-profit organization.** In computing tax, a non-profit organization 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 nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public;

84Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
7. Charges made for operation of non-profit 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 not be deductible.

F. **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.
G. 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.

H. 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.

I. 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.

J. 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.
K. *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.

L. *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

88Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
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 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 represents 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.

O. 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.

P. 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.

Q. 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.

Sec. 3.28.120. Tax part of overhead.
It is not the intention of this chapter that the taxes or fees herein levied upon persons engaging in business be construed as taxes or fees upon the
purchasers or customer, but that such taxes or fees shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the cost of doing business of such persons.

**Sec. 3.28.130. Limitation of revenue received.**
Revenue received from the taxes imposed by this chapter shall be dedicated to the general operations of the city subject to the following two exceptions:

A. Revenues equivalent to the original gross receipts and square footage rates in effect from 2013 through 2018 shall first be applied to the actual cost to staff and operate the business and occupation tax division, but not to exceed the amount budgeted for that division by the city council. Remaining revenue shall be allocated to the design, construction, maintenance, improvement, operation, and repair of the city’s transportation infrastructure and appurtenant improvements including, without limitation, streets, curbs, gutters, sidewalks, bicycle and pedestrian lanes and paths, street trees, drainage, lighting, and signalization.

B. Square footage revenues equivalent to 0.03 quarterly on business warehouse floor space and 0.01 quarterly on other business floor space shall be allocated to the city’s capital resource fund.

**Sec. 3.28.140. Severability clause.**
If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances shall not be affected.
SECTION 5. – Amendment – KCC 3.29. Chapter 3.29 of the Kent City Code entitled “Business and Occupation Tax – Administrative Provisions,” is hereby amended as follows:

CHAPTER 3.29
BUSINESS-AND-OCCUPATION-TAX – ADMINISTRATIVE PROVISIONS

Sec. 3.29.010. Purpose.
The purpose of this chapter is to provide administrative guidelines and provisions to implement, administer, and enforce the city’s business and occupation tax – codesordinance, Chapter 3.28 KCC.

Sec. 3.29.015. Application of chapter stated.
The provisions of this chapter shall apply with respect to the taxes imposed under Chapter 3.28–3.18 KCC Utility Tax, 3.21 KCC Gambling Tax, 3.26 KCC Admissions Tax and 3.28 KCC Business and Occupation Tax and under other titles, chapters, and sections in such manner and to such extent as expressly indicated in each such title, chapter, or section.

Sec. 3.29.020. Definitions.
For purposes of this chapter, the definitions contained in Chapter 3.18 KCC Utility Tax, 3.21 KCC Gambling Tax, 3.26 KCC Admissions Tax and 3.28 KCC Business and Occupation Tax shall apply equally to the provisions of this chapter unless the term is defined otherwise in this chapter. In addition, the following definitions will apply:

A. Reporting period means:
   1. A one (1) month period beginning the first day of each calendar month (monthly); or
2. A three (3) month period beginning the first day of January, April, July, or October of each year (quarterly); or
3. A twelve (12) month period beginning the first day of January of each year (annual).

B. *Return* means any document a person is required by the city to file to satisfy or establish a tax or fee obligation that is administered or collected by the city and that has a statutorily defined due date.

C. *Successor* means any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer’s business, any part of the materials, supplies, merchandise, inventory, fixtures, or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

D. *Tax year or taxable year* means the calendar year.

**Sec. 3.29.021. Definitions – References to Chapter 82.32 RCW.**
Where provisions of Chapter 82.32 RCW are incorporated in KCC 3.29.090, “department” as used in the RCW shall refer to the “director” as defined in KCC 3.28.030 and “warrant” as used in the RCW shall mean “citation or criminal complaint.”

**Sec. 3.29.025. Registration requirements.**
A. Except as provided in subsection (B) of this section, any person who engages in any business or performs any act that is subject to the provisions of KCC Title 5 or Chapter 3.18 KCC, relating to utility business...
taxes, Chapter 3.20 KCC, relating to natural or manufactured gas line use
taxes, Chapter 3.21 KCC, relating to gambling taxes, Chapter 3.23 KCC,
relating to lodging taxes, Chapter 3.26 KCC, relating to admissions taxes,
and Chapter 3.28 KCC, relating to business and occupation taxes, even if
that person is not subject to any tax imposed thereby, shall apply under
the rules and regulations as the department may prescribe and, upon
approval, receive from the department a registration certificate applicable
to all such business engaged in or activity performed.

Except as provided in subsection (B) of this section, no person shall
engage in any business without being registered in compliance with the
provisions of this section, and any person who is so registered must also
comply with Chapter 5.01 KCC.

B. Nonregistration status. Any person whose worldwide gross proceeds
of sale, gross income of business, or value of products, including
byproducts, as the case may be, from all activities during any calendar
year are $12,000 or less and 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 foot, is less than 550 square feet is not required to obtain a
registration certificate.

Sec. 3.29.030. Registration certificates.
The city will issue a registration certificate, free of charge, acknowledging
registration. The registration certificate shall be personal and
nontransferable and shall be valid as long as the taxpayer continues in that
business and pays any tax imposed by the city.
In the event business is transacted at two (2) or more separate places by one (1) taxpayer, a separate registration certificate for each place at which business is transacted shall be required. These additional certificates shall be issued at no additional fee. Where a taxpayer changes the nature of business conducted or conducts additional activities upon which a tax is imposed by KCC Title 5 or Chapter 3.18 KCC, relating to utility business taxes, Chapter 3.20 KCC, relating to natural or manufactured gas line use taxes, Chapter 3.21 KCC, relating to gambling taxes, Chapter 3.23 KCC, relating to lodging taxes, Chapter 3.26 KCC, relating to admissions taxes, and Chapter 3.28 KCC, relating to business and occupation taxes, that taxpayer shall apply for and receive a new registration certificate at no additional fee.

Each registration certificate shall be numbered and shall show the name, business location, mailing address, and any other information that the director deems necessary. The certificate of registration shall be posted in a conspicuous place at the place of business for which it is issued.

Where a place of business of the taxpayer is changed, the taxpayer shall notify the department and, upon approval, the department will issue a new certificate at no additional fee.

Sec. 3.29.040. When due and payable – Reporting periods – Monthly, quarterly, and annual returns – Threshold provisions or relief from filing requirements – Computing time periods – Failure to file returns.
A. The tax imposed by this chapter shall be due and payable in quarterly installments. At the director’s discretion, businesses may be assigned to a monthly, annual or nonreporting period depending on the tax amount owing or type of tax. Until December 31, 2020, tax payments are due on or before the last day of the next month following the end of the

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
assigned reporting period covered by the return. Effective January 1, 2021, tax payments are due on or before the time as provided in RCW 82.32.045 (1), (2), and (3).

B. Taxes shall be paid as provided in this chapter and accompanied by a return on forms as prescribed by the director. The return shall be signed by the taxpayer personally or by a responsible officer or agent of the taxpayer. The individual signing the return shall swear or affirm that the information in the return is complete and true.

C. Tax returns must be filed and returned by the due date whether or not any tax is owed, unless the taxpayer is in active nonreporting status.

D. Nonreporting status.
   1. Notwithstanding subsection (A) of this section, the director may relieve any person of the requirement to file returns if the person meets exemption criteria under subsection (D)(2) of this section.
   2. For purposes of the tax imposed by Chapter 3.28 KCC, any person whose annual worldwide value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is more than $12,000 but less than or equal to $250,000 and whose combined taxable business warehouse square footage within the city is 4,000 square feet or less, and whose combined taxable other business floor space is 12,000 square feet or less, need not file and submit a return to the director. Persons whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is greater than the above thresholds shall file and submit a return to the director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.

96Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
E. A taxpayer that commences to engage in business activity shall file a return and pay the tax or fee for the portion of the reporting period during which the taxpayer is engaged in business activity subject to the conditions set forth in subsection (D) of this section.

F. Except as otherwise specifically provided by any other provision of this chapter, in computing any period of days prescribed by this chapter the day of the act or event from which the designated period of time runs shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or city or federal legal holiday, in which case the last day of such period shall be the next succeeding day which is neither a Saturday, Sunday, nor city or federal legal holiday.

G. If any taxpayer fails, neglects, or refuses to make a return as and when required in this chapter, the director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the director’s estimate of the tax or fees due. Such assessment shall be deemed prima facie correct and shall be the amount of tax owed to the city by the taxpayer. The director shall notify the taxpayer by mail of the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Sec. 3.29.050. Payment methods – Mailing returns or remittances – Time extension – Deposits – Recording payments – Payment must accompany return – NSF checks.
A. Taxes shall be paid to the director in United States currency by bank draft, certified check, cashier’s check, personal check, money order, cash, or by wire transfer or electronic payment if such wire transfer or electronic payment is authorized by the director. If payment so received is not paid by the bank on which it is drawn, the taxpayer, by whom such payment is

97Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such payment had not been tendered. Acceptance of any sum by the director shall not discharge the tax or fee due unless the amount paid is the full amount due.

B. A return or remittance that is transmitted to the city by United States mail shall be deemed filed or received on the date shown by the cancellation mark stamped by the Post Office upon the envelope containing it. The director may allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the city electronically shall be deemed filed or received according to procedures set forth by the director.

C. If a written request is received prior to the due date, the director, for good cause, may grant, in writing, additional time within which to make and file returns.

D. The director shall keep full and accurate records of all funds received or refunded. The director shall apply payments first against all penalties and interest owing, and then upon the tax, without regard to any direction of the taxpayer.

E. For any return not accompanied by a remittance of the tax shown to be due thereon, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the penalties and interest provided in this chapter.

F. Any payment made that is returned for lack of sufficient funds or for any other reason will not be considered received until payment by certified check, money order, or cash of the original amount due, plus a
“nonsufficient funds” (NSF) charge of twenty-five dollars ($25), is received by the director.

G. The director is authorized, but not required, to mail tax return forms to taxpayers, but failure of the taxpayer to receive any such forms shall not excuse the taxpayer from filing returns and making payment of the taxes or fees, when and as due under this chapter.

H. For gambling tax, in addition to the tax return, a copy of the taxpayer’s quarterly report to the Washington State Gambling Commission required by Chapter 230-08 WAC for the period in which the tax accrued shall accompany remittance of the tax amount due.

Sec. 3.29.060. Records to be preserved – Examination – Estoppel to question assessment.

Every person liable for any fee or tax imposed by this chapter shall keep and preserve, for a period of five (5) years after filing a tax return, such records as may be necessary to determine the amount of any fee or tax for which the person may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by the person. All books, records, papers, invoices, vendor lists, inventories, stocks of merchandise, and other data including federal income tax and state tax returns and reports shall be open for examination at any time by the director or its duly authorized agent. Every person’s business premises shall be open for inspection or examination by the director or a duly authorized agent.

A. If a person does not keep the necessary books and records within the city, it shall be sufficient if such person (1) produces within the city such books and records as may be required by the director, or (2) bears the cost of examination by the director’s agent at the place where such
books and records are kept; provided, that the person electing to bear such cost shall pay in advance to the director the estimated amount thereof including round-trip fare, lodging, meals, and incidental expenses, subject to adjustment upon completion of the examination.

B. If national security clearance status or federal regulation bars access to certain documents, facilities, or other necessary information, the auditor can implement alternative audit methods that determine, as accurately as possible and with the least possible expenditure of time, the amount of tax due.

C. Any person who fails, or refuses a department request, to provide or make available records, or to allow inspection or examination of the business premises, shall be forever barred from questioning in any court action the correctness of any assessment of taxes made by the city for any period for which such records have not been provided, made available, or kept and preserved, or in respect of which inspection or examination of the business premises has been denied. The director is authorized to determine the amount of the tax or fees payable by obtaining facts and information upon which to base the estimate of the tax or fees due. Such fee or tax assessment shall be deemed prima facie correct and shall be the amount of tax owing the city by the taxpayer. The director shall notify the taxpayer by mail the amount of tax so determined, together with any penalty, interest, and fees due; the total of such amounts shall thereupon become immediately due and payable.

Sec. 3.29.070. Accounting methods.
A. A taxpayer may file tax returns in each reporting period with amounts based upon cash receipts only if the taxpayer’s books of account are kept on a cash receipts basis. A taxpayer that does not regularly keep
books of account on a cash receipts basis must file returns with amounts based on the accrual method.

B. The taxes imposed and the returns required hereunder shall be upon a calendar year basis.

Sec. 3.29.080. Public work contracts – Payment of fee and tax before final payment for work.
The director may, before issuing any final payment to any person performing any public work contract for the city, require such person to pay in full all license fees or taxes due under this title from such person on account of such contract or otherwise, and may require such taxpayer to file with the director a verified list of all subcontractors supplying labor and/or materials to the person in connection with said public work.

Sec. 3.29.090. Underpayment of tax, interest, or penalty – Interest.
A. If, upon examination of any returns, or from other information obtained by the director, it appears that a tax or penalty less than that properly due has been paid, the director shall assess the additional amount found to be due and shall add thereto interest on the tax only. The director shall notify the person by mail of the additional amount, which shall become due and shall be paid within thirty (30) days from the date of the notice, or within such time as the director may provide in writing.

B. 1. The director shall compute interest in accordance with RCW 82.32.050 as it now exists or as it may be amended.
   2. If subsection (B)(1) of this section is held to be invalid, then the provisions of RCW 82.32.050 existing at the effective date of the ordinance codified in this chapter shall apply.
Sec. 3.29.095. Time in which assessment may be made.
The director shall not assess, or correct an assessment for, additional taxes, penalties, or interest due more than four (4) years after the close of the calendar year in which they were incurred, except that the director may issue an assessment:

A. Against a person who is not currently registered or licensed or has not filed a tax return as required by this chapter for taxes due within the period commencing ten (10) years prior to the close of the calendar year in which the person was contacted in writing by the director;

B. Against a person that has committed fraud or who misrepresented a material fact; or

C. Against a person that has executed a written waiver of such limitations.

Sec. 3.29.100. Overpayment of tax, penalty, or interest – Credit or refund – Interest rate – Statute of limitations.
A. If, upon receipt of an application for a refund, or during an audit or examination of the taxpayer's records and tax returns, the director determines that the amount of tax, penalty, or interest paid is in excess of that properly due, the excess amount shall be credited to the taxpayer's account or shall be refunded to the taxpayer. Except as provided in subsection (B) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four (4) years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

B. The execution of a written waiver shall extend the time for applying for or making a refund or credit of any taxes paid during, or attributable
to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the director discovers that a refund or credit is due.

C. Refunds shall be made by means of vouchers approved by the director and by the issuance of a city check or warrants drawn upon and payable from such funds as the city may provide.

D. Any final judgment for which a recovery is granted by any court of competent jurisdiction for tax, penalties, interest, or costs paid by any person shall be paid in the same manner, as provided in subsection (C) of this section, upon the filing with the director a certified copy of the order or judgment of the court.

E. 1. The director shall compute interest on refunds or credits of amounts paid or other recovery allowed a taxpayer in accordance with RCW 82.32.060 as it now exists or as it may be amended.

2. If subsection (E)(1) of this section is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of the ordinance codified in this chapter shall apply.

Sec. 3.29.110. Late payment - Disregard of written instructions - Evasion - Penalties.

A. If payment of any tax due on a return to be filed by a taxpayer is not received by the director by the due date, the director shall add a penalty in accordance with RCW 82.32.090(1), as it now exists or as it may be amended.

B. If the director determines that any tax has been substantially underpaid as defined in RCW 82.32.090(2), there shall be added a penalty

103Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
in accordance with RCW 82.32.090(2), as it now exists or as it may be amended.

C. If a citation or criminal complaint is issued by the director for the collection of taxes, fees, assessments, interest, or penalties, there shall be added thereto a penalty in accordance with RCW 82.32.090(3), as it now exists or as it may be amended.

D. If the director finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the director a registration certificate as required by KCC 3.29.025 and 3.29.030, the director shall impose a penalty in accordance with RCW 82.32.090(4), as it now exists or as it may be amended. No penalty shall be imposed under this subsection (D) if the person who has engaged in business without a registration certificate obtains a registration certificate prior to being notified by the director of the need to be registered.

E. If the director determines that all or any part of a deficiency resulted from the taxpayer's failure to follow specific written tax reporting instructions, there shall be assessed a penalty in accordance with RCW 82.32.090(5), as it now exists or as it may be amended.

F. If the director finds that all or any part of the deficiency resulted from an intent to evade the tax payable, the director shall assess a penalty in accordance with RCW 82.32.090(6), as it now exists or as it may be amended.

G. The penalties imposed under subsections (A) through (E) of this section can each be imposed on the same tax found to be due. This
subsection does not prohibit or restrict the application of other penalties authorized by law.

H. The director shall not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

I. For the purposes of this section, return means any document a person is required by the city to file to satisfy or establish a tax or fee obligation that is administered or collected by the city, and that has a statutorily defined due date.

J. If incorporation into the Kent City Code of future changes to RCW 82.32.090 is deemed invalid, then the provisions of RCW 82.32.090 existing at the time the ordinance codified in this chapter is effective shall apply.

Sec. 3.29.120. Cancellation of penalties.

A. The director may cancel any penalties imposed under KCC 3.29.110(A) if the taxpayer shows that its failure to timely file or pay the tax was due to reasonable cause and not willful neglect. Willful neglect is presumed unless the taxpayer shows that it exercised ordinary business care and prudence in making arrangements to file the return and pay the tax but was, nevertheless, due to circumstances beyond the taxpayer’s control, unable to file or pay by the due date. The director has no authority to cancel any other penalties or to cancel penalties for any other reason except as provided in subsection (C) of this section.

B. A request for cancellation of penalties must be received by the director within 30 days after the date the department mails the notice that the penalties are due. The request must be in writing and contain
competent proof of all pertinent facts supporting a reasonable cause
determination. In all cases the burden of proving the facts rests upon the
taxpayer.

C. The director may cancel the penalties in KCC 3.29.110(A) one time
if a person:
   1. Is not currently registered and filing returns;
   2. Was unaware of its responsibility to file and pay tax; and
   3. Obtained a registration certificate and any applicable business
      licenses and filed past due tax returns within 30 days after being notified
      by the department.

D. The director shall not cancel any interest charged upon amounts
due.

E. The director may cancel the penalties imposed under KCC
   3.29.110(A) one time for a person:
      1. If payment of any tax due on a return to be filed by a
taxpayer was received by the director by the due date for the previous 24
         months; or
      2. If payment of any tax due on a return to be filed by a
taxpayer was received by the director by the due date for all previous
         months, if the person has not been required to file a return for the
         previous 24 months.

Sec. 3.29.125. Voluntary disclosure program.
A person that has not obtained from the director a registration certificate
as required by KCC 3.29.025 and 3.29.030 that voluntarily obtains a
registration certificate prior to being notified by the department may have
certain penalties waived under the voluntary disclosure program.
A. To be eligible for the program, the unregistered person:
   1. Must not have been contacted by the city regarding registration; and
   2. Must not have engaged in evasion or misrepresentation in reporting taxes properly due.

If the director determines that the person had been previously contacted in order to determine registration and reporting requirements or other enforcement issues, the person will not qualify for the voluntary disclosure program.

B. The director shall not assess for taxes due more than four years prior to the beginning of the calendar year of registration.

C. The director shall cancel the penalties in KCC 3.29.110(A), (B), and (D).

D. The director shall not cancel any interest charged upon amounts due.

E. Underpayment of tax. If a person has obtained from the director a registration certificate as required by KCC 3.29.025 and 3.29.030, but discovers that tax less than that properly due has been paid, then an amended return shall be filed. No penalty in accordance with KCC 3.29.110(B) shall be imposed for voluntarily correcting tax due on a filed return. The penalty imposed under KCC 3.29.110(B) shall not be waived during an audit or examination of the taxpayer’s records and tax returns.
Sec. 3.29.130. Taxpayer quitting business – Liability of successor.
A. Whenever any taxpayer quits business, sells out, exchanges, or otherwise disposes of his business or his stock of goods, any tax payable hereunder shall become immediately due and payable. Such taxpayer shall, within ten (10) days thereafter, make a return and pay the tax due.

B. Any person who becomes a successor shall become liable for the full amount of any tax owing. The successor shall withhold from the purchase price a sum sufficient to pay any tax due to the city from the taxpayer until such time as: (1) the taxpayer shall produce a receipt from the city showing payment in full of any tax due or a certificate that no tax is due, or (2) more than six (6) months has passed since the successor notified the director of the acquisition and the director has not issued and notified the successor of an assessment.

C. Payment of the tax by the successor shall, to the extent thereof, be deemed a payment upon the purchase price. If such payment is greater in amount than the purchase price, the amount of the difference shall become a debt due such successor from the taxpayer.

D. Notwithstanding the above, if a successor gives written notice to the director of the acquisition, and the director does not within six (6) months of the date it received the notice issue an assessment against the taxpayer and mail a copy of that assessment to the successor, the successor shall not be liable for the tax.

Sec. 3.29.140. Administrative appeal.
A. Correction of tax. Any person, except one who has failed to comply with KCC 3.29.060, having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the director may,
within 30 days after the issuance of such notice or within the period covered by any extension of the due date granted by the director, request a correction of the amount of the assessment and a conference with the director for review of the assessment. Interest and penalties assessed shall continue to accrue during the director's review of a request for a correction, except and to the extent that the director later determines that a tax assessment was too high or the delay in issuing a determination is due to unreasonable delays caused by the director. The director shall make a final determination regarding the assessment and shall notify the taxpayer of the director's determination within 60 days after the conference, unless otherwise notified in writing by the director. Such determination shall be subject to appeal pursuant to subsection (B) of this section. If no request for correction is filed within the time period provided herein, the assessment covered by such notice shall become final and immediately due and payable, and no appeal to the hearing examiner shall be allowed.

B. Appeal to the hearing examiner. Any person aggrieved by the amount of any fee, tax, interest, or penalty determined by the director to be due under the provisions of this chapter or Chapter 3.18 KCC Utility Tax, 3.21 KCC Gambling Tax, 3.26 KCC Admissions Tax and 3.28 KCC Business and Occupation Tax may, upon full payment of the amount assessed, appeal such determination pursuant to the following procedures:

1. Form of appeal. It must be in writing and must contain the following:
   
   a. The name and address of the taxpayer;
   
   b. A statement identifying the determination of the director from which the appeal is taken;
   
   c. A statement setting forth the grounds upon which the appeal is taken and identifying specific errors the director is alleged to have made in making the determination; and

109Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
d. A statement identifying the requested relief from the
determination being appealed.

2. **Time and place to appeal.** The appeal shall be filed with the
office of the city clerk with a copy to the director no later than 30 days
following the date on which the determination of the director was mailed to
the taxpayer. A $250 filing fee shall be submitted with the appeal, which
filing fee is required to process the appeal. If no appeal is filed within the
time period provided herein, the assessment covered by such notice shall
become final and immediately due and payable. No refund request may be
made for the audit period covered in that assessment. Failure to follow the
appeal procedures in this section shall preclude the taxpayer’s right to
appeal.

3. **Appeal hearing.** The city’s hearing examiner shall, as soon as
practical, fix a time and place for the hearing of such appeal, and shall
cause a notice of the time and place thereof to be delivered or mailed to
the parties. The hearing shall be conducted in accord with the provisions of
Chapter 1.04 KCC and procedures developed by the hearing examiner, at
which time the appellant taxpayer and the director shall have the
opportunity to be heard and to introduce evidence relevant to the subject
of the appeal.

4. **Burden of proof.** The appellant taxpayer shall have the burden
of proving by a preponderance of the evidence that the determination of
the director is erroneous.

5. **Hearing record.** The hearing examiner shall make an
electronic sound recording of each appeal unless the hearing is conducted
solely in writing. The hearing examiner may, by subpoena, require the
attendance of any person at the hearing, and may also require him or her
to produce pertinent books and records. Any person served with such a
subpoena shall appear at the time and place therein stated and produce
the books and records required, if any, and shall testify truthfully under
oath administered by the hearing examiner as to any matter required of

110Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 -
Re: Tax Codes
him or her pertinent to the appeal; and it shall be unlawful for him or her to fail or refuse to do so. The city attorney shall seek enforcement of a hearing examiner subpoena in an appropriate court.

6. **Decision of the hearing examiner.** Following the hearing, the hearing examiner shall enter a decision on the appeal, supported by written findings and conclusions in support thereof. A copy of the findings, conclusions, and decision shall be mailed to the appellant taxpayer and to the director. The decision shall state the correct amount of the fee, tax, interest or penalty owing.

7. **Interest accrual or payment.** Interest and/or penalties shall continue to accrue on all unpaid amounts, in accordance with KCC 3.29.090 and 3.29.110, notwithstanding the fact that an appeal has been filed. If the hearing examiner determines that the taxpayer is owed a refund, such refund amount shall be paid to the taxpayer in accordance with KCC 3.29.100.

**Sec. 3.29.150. Judicial review of director's determination.**

Any person, except one who has failed to comply with KCC 3.29.060, having paid any tax as required and feeling aggrieved by the amount of the tax assessed, and after first exhausting the right of administrative appeal set forth in this chapter, may seek judicial review in the King County Superior Court within twenty-one (21) days of the date of the decision of the hearing examiner. The taxpayer shall set forth the amount of the tax imposed upon the taxpayer that the taxpayer concedes to be the correct amount of tax and the reason why the tax imposed should be reduced or abated. The trial in the superior court shall be de novo in accordance with the laws of the state of Washington. The burden shall rest upon the taxpayer to prove that the tax paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax.
Sec. 3.29.160. Director to make rules.
The director shall have the power, from time to time, to adopt, publish, and enforce rules and regulations not inconsistent with this chapter and Chapter 3.18 KCC Utility Tax, 3.21 KCC Gambling Tax, 3.26 KCC Admissions Tax and 3.28 KCC Business and Occupation Tax or with law for the purpose of carrying out the provisions of this chapter and for the administration of Chapters 3.18, 3.21, 3.26 and 3.28. It shall be unlawful to violate or fail to comply with any such rule or regulation.

Sec. 3.29.170. Ancillary allocation authority of director.
The director is authorized to enter into agreements with other Washington cities which impose an “eligible gross receipts tax”:

A. To conduct an audit or joint audit of a taxpayer by using an auditor employed by the city of Kent, another city, or a contract auditor; provided, that such contract auditor’s pay is not in any way based upon the amount of tax assessed;

B. To allocate or apportion in a manner that fairly reflects the gross receipts earned from activities conducted within the respective cities the gross proceeds of sales, gross receipts, or gross income of the business, or taxes due from any person that is required to pay an eligible gross receipts tax to more than one (1) Washington city;

C. To apply the city’s tax prospectively where a taxpayer has no office or place of business within the city and has paid tax on all gross income to another Washington city where the taxpayer is located; provided, that the other city maintains an eligible gross receipts tax, and the income was not derived from contracts with the city.
Sec. 3.29.180. Mailing of notices.
Any notice required by this chapter to be mailed to any taxpayer, registrant, or licensee shall be sent by ordinary mail, addressed to the address of the taxpayer, registrant, or licensee as shown by the records of the director. Failure of the taxpayer, registrant, or licensee to receive any such mailed notice shall not release the taxpayer, registrant, or licensee from any tax, fee, interest, or any penalties thereon, nor shall such failure operate to extend any time limit set by the provisions of this chapter. It is the responsibility of the taxpayer to inform the director in writing about a change in the taxpayer’s address.

Sec. 3.29.190. Tax declared additional.
The tax and any applicable fee herein levied shall be additional to any license fee or tax imposed or levied under any law or any other ordinance of the city of Kent except as herein otherwise expressly provided.

Sec. 3.29.200. Public disclosure – Confidentiality – Information sharing.
A. For purposes of this section, defined terms shall be as set forth in KCC 3.29.020:

1. Disclose means to make known to any person in any manner whatever a return or tax information.

2. Tax information means:
   a. A taxpayer’s identity;
   b. The nature, source, or amount of the taxpayer’s income, payments, receipts, deductions, exemption, credits, assets, liability, net worth, tax liability deficiencies, over-assessments, or tax payments, whether taken from the taxpayer’s books and records or any other source;
   c. Whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing; or

113Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
d. Other data received by, recorded by, prepared by, or provided to the city with respect to the determination or the existence, or possible existence, of liability, or the amount thereof, of a person under Chapter 3.28 KCC for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense. However, data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Nothing in this chapter requires any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure.

3. *City agency* means every city office, department, division, bureau, board, commission, or other city agency.

4. *Taxpayer identity* means the taxpayer’s name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer.

B. Returns and tax information are confidential and privileged, and except as authorized by this section, neither the director nor any other person may disclose any return or tax information.

C. This section does not prohibit the director from:

1. Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:
   a. In respect of any tax imposed under Chapter 3.28 KCC if the taxpayer or its officer or other person liable under this title is a party in the proceeding; or
   b. In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

2. Disclosing, subject to such requirements and conditions as the director prescribes by rules adopted pursuant to KCC 3.29.160, such
return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person. However, tax information not received from the taxpayer must not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure would identify a confidential informant, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

3. Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

4. Disclosing such return or tax information, for official purposes only, to the mayor or city attorney, or to any city agency, or to any member of the city council or their authorized designees dealing with matters of taxation, revenue, trade, commerce, the control of industry, or the professions;

5. Permitting the city's records to be audited and examined by the proper state officer, his or her agents, and employees;

6. Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related
court proceeding, or in the court proceeding for which the return or tax information originally was sought or where otherwise allowed to be disclosed under this section;

7. Disclosing any such return or tax information to the proper officer of the Internal Revenue Service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of the city;

8. Disclosing any such return or tax information to the United States Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection Agencies of the United States Department of Homeland Security, the United States Coast Guard, the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury, and the United States Department of Transportation, or any authorized representative of these federal agencies or their successors, for official purposes;

9. Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

10. Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers and the active/closed status of such registrations, state or local business license registration identification and the active/closed status and effective dates of such licenses, reseller permit numbers and the expiration date and status of such permits, North American Industry Classification System or Standard Industrial Classification code of a taxpayer, and the dates of opening and closing of
business. Except that this subsection may not be construed as giving authority to the city or any recipient to give, sell, or provide access to any list of taxpayers for any commercial purpose;

11. Disclosing such return or tax information that is also maintained by another Washington State or local governmental agency as a public record available for inspection and copying under the provisions of Chapter 42.56 RCW or is a document maintained by a court of record and is not otherwise prohibited from disclosure;

12. Disclosing such return or tax information to the United States Department of Agriculture, or successor department or agency, for the limited purpose of investigating food stamp fraud by retailers;

13. Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the city for a filed tax warrant, judgment, or lien against the real property;

14. Disclosing to a person against whom the director has asserted liability as a successor under KCC 3.29.130 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

15. Disclosing real estate excise tax affidavit forms filed under Chapter 3.19 KCC in the possession of the city, including real estate excise tax affidavit forms for transactions exempt or otherwise not subject to tax;

16. Disclosing such return or tax information to the court or hearing examiner in respect to the city's application for a subpoena if there is probable cause to believe that the records in possession of a third party will aid the director in connection with its official duties under this title or a civil or criminal investigation.

D. 1. The director may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under investigation as provided in this

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
subsection (D). The disclosure must be in connection with the director’s official duties under KCC Title 3, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The director may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the director may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert’s workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

2. Before disclosure of any tax return or tax information under this subsection (D), the director must, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence must clearly identify the data, materials, or documents to be disclosed. The director may not disclose any tax return or tax information under this subsection (D) until the time period allowed in subsection (D)(3) of this section has expired or until the court has ruled on any challenge brought under subsection (D)(3) of this section.

3. The person in possession of the data, materials, or documents to be disclosed by the director has twenty (20) days from the receipt of the written request required under subsection (D)(2) of this section to petition the superior court of the county in which the petitioner resides for injunctive relief. The court must limit or deny the request of the director if the court determines that:

a. The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

b. The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the
needs of the director, the amount in controversy, limitations on the petitioner’s resources, and the importance of the issues at stake; or

   c. The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

4. The director must reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

5. Requesting information under subsection (D)(2) of this section that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

E. Service of a subpoena issued by the court or by the hearing examiner pursuant to Chapter 2.32 KCC and the ancillary administrative rules does not constitute a disclosure of return or tax information under this section. Notwithstanding anything else to the contrary in this section, a person served with a subpoena issued by the court or by the hearing examiner may disclose the existence or content of the subpoena to that person’s legal counsel.

F. Any person acquiring knowledge of any return or tax information in the course of his or her employment with the city and any person acquiring knowledge of any return or tax information as provided under subsection (C)(4), (5), (6), (7), (8), (9), or (11) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the state, such person must forfeit such office or employment and is incapable of holding any public office or employment in this city for a period of two (2) years thereafter.

Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 - Re: Tax Codes
**Sec. 3.29.210. Tax constitutes debt.**

Any applicable fee or tax due and unpaid under this chapter, and all interest and penalties thereon, shall constitute a debt to the city of Kent and may be collected in the same manner as any other debt in like amount, which remedy shall be in addition to all other existing remedies.

**Sec. 3.29.220. Unlawful actions – Violation – Penalties.**

A. It shall be unlawful for any person subject to the tax, fee, or registration provisions of this chapter:

1. To violate or fail to comply with any of the provisions of this chapter or any lawful rule or regulation adopted by the director;
2. To make any false statement on any license or registration application or tax return;
3. To aid or abet any person in any attempt to evade payment of a license, or fee, or tax;
4. To fail to appear or testify in response to a subpoena;
5. To testify falsely in any investigation, audit, or proceeding conducted pursuant to this chapter.

B. Violation of any of the provisions of this chapter is a gross misdemeanor. Any person convicted of a violation of this chapter may be punished by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed one (1) year, or both fine and imprisonment. Penalties or punishments provided in this chapter shall be in addition to all other penalties provided by law.

C. Any person, or officer of a corporation, convicted of continuing to engage in business after the revocation of a registration certificate shall be guilty of a gross misdemeanor and may be punished by a fine not to exceed five thousand dollars ($5,000), or imprisonment not to exceed one (1) year, or both fine and imprisonment.
Sec. 3.29.230. Suspension or revocation of registration certificate.

A. The director, or designee, shall have the power and authority to suspend or revoke any registration certificate issued under the provisions of this chapter. The director, or designee, shall notify such registrant in writing by certified mail of the suspension or revocation of his or her registration certificate and the grounds therefor. Any registration certificate issued under this chapter may be suspended or revoked based on one (1) or more of the following grounds:

1. The registration certificate was procured by fraud or false representation of fact.
2. The registrant has failed to comply with any provisions of Chapter 3.28 KCC and this chapter.
3. The registrant has failed to comply with any provisions of the Kent City Code.
4. The registrant is in default in any payment of any license fee or tax under Chapter 3.28 KCC and this chapter.
5. The registrant or employee has been convicted of a crime involving the business.

B. Any registrant may, within thirty (30) days from the date that the suspension or revocation notice was mailed to the registrant, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the director. A copy of the petition must be provided by the registrant to the director and the city attorney on or before the date the petition is filed with the city clerk. The hearing shall be conducted in accordance with the procedures for hearing contested cases set out in KCC 3.29.140. The hearing examiner shall set a date for hearing said appeal and notify the registrant by mail of the time and place of the hearing. After the hearing thereon the hearing examiner
shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the registration certificate, and may impose any terms upon the continuance of the registration certificate.

No suspension or revocation of a registration certificate issued pursuant to the provisions of this section shall take effect until thirty (30) days after the mailing of the notice thereof by the director, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action on the appeal. All registration certificates which are suspended or revoked shall be surrendered to the city on the effective date of such suspension or revocation.

The decision of the hearing examiner shall be final. The registrant and/or the director may seek review of the decision by the superior court of Washington in and for King County. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the superior court.

Sec. 3.29.240. Closing agreement provisions.
The director may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the chapters within this title and administered by this chapter for any taxable period(s). Upon approval of such agreement, evidenced by execution thereof by the director and the person so agreeing, the agreement shall be final and conclusive as to the tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

A. The case shall not be reopened as to the matters agreed upon, or the agreement modified, by the director or the taxpayer; and
B. In any suit, action or proceeding, such agreement, or any
determination, assessment, collection, payment, abatement, refund, or
credit made in accordance therewith, shall not be annulled, modified, set
aside, or disregarded.

Sec. 3.29.250. Charge-off uncollectible taxes.
The director may charge off any tax, penalty, or interest that is owed by a
taxpayer, if the director reasonably ascertains that the cost of collecting
such amounts would be greater than the total amount that is owed or
likely to be collected from the taxpayer.

SECTION 6. – Severability. If any one or more section, subsection,
or sentence of this ordinance is held to be unconstitutional or invalid, such
decision shall not affect the validity of the remaining portion of this
ordinance and the same shall remain in full force and effect.

SECTION 7. – 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 8. – Effective Date. This ordinance shall take effect and
be in force thirty days from and after its passage, as provided by law. The
amendments to the Kent City Code herein, however, shall not be effective
until January 1, 2020.

DANA RALPH, MAYOR

November 19, 2019
Date Approved

123Amend KCC 3.18, 3.21, 3.26, 3.28, 3.29 -
Re: Tax Codes