

# City B&O Tax Model Ordinance





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## History of B&O Tax Model Ordinance

Cities had been working for several years prior to the adoption of EHB 2030 in 2003 to draft a model ordinance that would ensure against double taxation, while also making the tax easier to administer, more understandable, and more consistent.

- **1998:** Association of Washington Businesses (AWB) Municipal Tax Fairness Task Force
- **1999:** Legislative session amendment to a broadly titled SB 5300 that would have severely limited the ability of cities to administer their own B&O taxes
- **1999:** Task force involving legislators, businesses, and cities
- **2000:** Cities voluntarily began the B&O Tax Model Ordinance
- **2001:** Work group convened by DOR. Governor Locke's objectives for the meetings: 1) local control—allowing cities to tailor their B & O taxes to their own economies; 2) uniformity; 3) no multiple taxation and clear definition of nexus; 4) simplicity; and 5) revenue neutrality
- **2002:** Governor requested HB 2658 to implement the DOR recommendations did not pass





## History of B&O Tax Model Ordinance

- **Early 2003:** Bellevue, Bellingham, Bremerton, Burien, Everett, Seattle, Tacoma and Tumwater had either adopted or were in the process of adopting the city voluntary model ordinance - impacts to city revenue
- **2003 session:** EHB 2030 required city model ordinance to be implemented by 12/31/2004
- **2004:** DOR study of model ordinance provisions
- **2005:** DOR allocation/apportionment & mitigation options study -- \$23.3 million city impact in the 1<sup>st</sup> year
- **2008:** Allocation and apportionment provisions effective
- **2008:** Legislation clarifying that SST sales tax sourcing cannot be used to establish nexus for other local taxes
- **2011:** DOR Report to the Governor on Small Business Tax Simplification
- **2012:** Proposed legislation to require DOR administration of city licenses and B&O taxes
- **2012:** Last update to model ordinance to incorporate state law changes, including digital goods





## Overview & Structure of the Model Ordinance

### Two parts to model ordinance structure:

1. Required definitions and classifications
2. Administrative provisions related to penalties, interest, confidentiality, and enforcement
  - B&O cities may use for business licenses and other local taxes, such as local utility taxes and admissions taxes

Cities are required to work through the Association of Washington Cities to draft the model ordinance and updates require outreach to the business community





# Overview & Structure of the Model Ordinance

Department of Commerce contracts with MRSC to provide links to model ordinance and other B&O tax information

[www.mrsc.org](http://www.mrsc.org)

A screenshot of the MRSC website. The header includes the MRSC logo with the tagline "Local Government Success", a search bar, and links for "Blog" and "Contact Us". Below the header is a navigation menu with "RESEARCH TOOLS", "EXPLORE TOPICS", "STAY INFORMED", and "TRAINING". The breadcrumb trail reads "Home &gt; Explore Topics &gt; Finance &gt; Business and Occupation Taxes". There are social media icons for Facebook, Twitter, and a printer icon. The main heading is "Business and Occupation Taxes". A dropdown menu is open, showing a list of links: "Introduction", "Legal References", "Model B &amp; O Tax Documents", "B &amp; O Tax Rates", "B &amp; O Tax Studies", "Cities with B&amp;O Tax Code Deviations from Core Model Ordinance", and "Tax Sharing Agreement".

## Introduction

Business and occupation (B&O) taxes are levied at a percentage rate on the gross receipts of





# Overview & Structure of the Model Ordinance

## Three versions of model ordinance since 2003

### 2003: RCW 35.102 (ESHB 2030) required the cities with B&O taxes to:

- Implement model ordinance with mandatory provisions by December 31, 2004
  - \$20,000 minimum threshold
  - Specific definitions
  - Penalty and interest provisions linked to the state
  - Payment periods
- Require mandatory credits in the city model ordinance to ensure no double taxation
- Adopt an allocation and apportionment provisions effective January 1, 2008 (RCW 35.102.130)
- Specifically excluded application to utility taxes or local business taxes not based on gross receipts

### 2008: Updated model ordinance adopted by cities to incorporate allocation and apportionment, and other changes

### 2012: Updated model ordinance adopted by cities to incorporate state law changes related to changes to the definition of retail sales and allocation of sales of digital goods, penalties and interest, and first mortgage deductions





## Overview & Structure of the Model Ordinance

**RCW 35.102 provides the legal framework for the model ordinance**

- 1. Seven classifications - required to use state classifications “as a baseline” (RCW 35.102.040(2)(g) & 35.102.120)**
  - Extracting
  - Manufacturing
  - Wholesale
  - Retail
  - Retail Services
  - Printing Publishing
  - Other (Services)
- 2. Mandatory minimum threshold of \$20,000 per year (RCW 35.102.040(2)(b))**
  - Cities may adopt higher threshold







## Overview & Structure of the Model Ordinance

RCW 35.102 provides the legal framework for the model ordinance

3. Requires use of state penalties and interest provisions (RCW 35.102.040)
4. Requires amendments to mandatory provisions to be adopted by cities with same effective date (RCW 35.102.040(1)(c))
5. Limits model ordinance updates to once every four years, unless in response to a state law change (RCW 35.102.040(1)(c))
6. Requires system of credits to prevent multiple taxation
7. As of 1/1/2008, requires allocation and apportionment of taxes in multiple jurisdictions, including to “non-taxing jurisdictions”
8. Cities retain flexibility on exemptions and deductions to respond to local business conditions





## Overview & Structure of the Model Ordinance

### Other state law limitations continue to apply to local B&O tax administration

- Rate limitations in RCW 35.21.710 still apply - .002 unless grandfathered or voter-approved
- New cities adopting a B&O tax must use model ordinance framework but referendum provision in RCW 35.21.706 still applies
- State law requirements for certain businesses, such as financial services (RCW 82.14A)





## Nexus - Definition

“Nexus” is a term used to describe the amount and degree of activity that must be present before a jurisdiction can tax an entity, its property, or a certain amount of its transactions. The boundary of taxable nexus is set by the U.S. Constitution.

**Due Process Clause** - demands certain jurisdictional contacts

- Minimum connection between a state and the person, property or transaction
- Rational relationship between the tax and the “values connected with the taxing City”

**Commerce Clause** - cannot unreasonably burden interstate commerce and tax must

- Be applied to an activity with substantial nexus
- Fairly apportioned
- Not discriminate against interstate commerce
- Fairly related to the services provided by the City

Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.





## Nexus - Engaging in Business Definition

**“Engaging in business” - means commencing, conducting, or continuing in business by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf, 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.**





## Nexus - Engaging in Business Definition

The activities listed are illustrative only and are not intended to narrow the definition of "engaging in business." 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.

- 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
- Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City
- Soliciting sales
- Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance
- 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
- Installing, constructing, or supervising installation or construction of, real or tangible personal property
- Soliciting, negotiating, or approving franchise, license, or other similar agreements





## Nexus - Engaging in Business definition

- Collecting current or delinquent accounts; investigating, resolving, or otherwise assisting in resolving customer complaints
- Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials
- Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying...
- Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians...
- Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings
- Training or recruiting agents, representatives, independent contractors, brokers or others, domiciled or operating on a job in the City
- In-store stocking or manipulating products or goods, sold to and owned by a customer
- Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf





## Nexus - Engaging in Business - Safe Harbors

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.

- Meeting with suppliers of goods and services as a customer
- Meeting with government representatives other than those performing contracting or purchasing functions
- Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf
- Renting tangible or intangible property as a customer when the property is not used in the City
- Attending, but not participating in, a "trade show" or "multiple vendor events"
- Soliciting sales by phone from a location outside the City or conducting advertising through the mail
- A seller located outside the City merely delivering goods into the City by means of common carrier, provided that it engages in no other business activities in the City



# Questions?

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