



ORDINANCE NO. 4127-25

AN ORDINANCE relating to Business and Occupation Tax, adopting the new revisions to the Model B&O Tax Ordinance incorporating SB 5814 changes relating to retail sales and amending EMC 3.24.030, Section C.

WHEREAS,

- A.** Chapter 35.102 RCW requires business and occupation tax cities to coordinate with the Association of Washington Cities to develop a model ordinance for the administration for business and occupation tax in order to promote greater uniformity and foster a positive business climate.
- B.** The City must amend its code to reflect the changes made to the Association of Washington Cities model ordinance.
- C.** Senate Bill changed the tax classifications for various services to retail sales and will be effective January 1, 2026.

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. EMC 3.24.030, Section C- *Sale at Retail, Retail Sale* definition is hereby amended as follows:

“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; ~~or 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 (a), (b), (c), (d), or (e) of this subsection following such use.~~
 - (f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection ~~(8)(7)~~ of this definition, 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.

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 (a), (b), (c), (d), (e), or (f) of this subsection following such use.

The term also means every sale of tangible personal property to persons engaged in any business that is taxable under RCW 82.04.280(1)(a), (b), and (g), 82.04.290, and 82.04.2908.

- (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 Section 3.24.050(A)(7).
- (3) The term "sale at retail" or "retail sale" includes the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:
 - (a) Information technology training services, technical support, and other services including, but not limited to, assisting with network operations and support, help desk services, in-person training related to hardware or software, network system support services, data entry services, and data processing services; or
 - (b) Custom website development services. For the purposes of this subsection (3), "website development services" means the design, development, and support of a website provided by a website developer to a customer; or

- (c) Investigation, security services, security monitoring services, and armored car services including, but not limited to, background checks, security guard and patrol services, personal and event security, armored car transportation of cash and valuables, and security system services and monitoring. This does not include locksmith services; or
- (d) Temporary staffing services. For the purposes of this subsection (3), "temporary staffing services" means providing workers to other businesses, except for hospitals licensed under chapter 70.41 or 71.12 RCW, for limited periods of time to supplement their workforce and fill employment vacancies on a contract or for fee basis; or
- (e) Advertising services. (i) For the purposes of this subsection (3), "advertising services" means all digital and nondigital services related to the creation, preparation, production, or dissemination of advertisements including, but not limited to: (A) Layout, art direction, graphic design, mechanical preparation, production supervision, placement, referrals, acquisition of advertising space, and rendering advice concerning the best methods of advertising products or services; and (B) Online referrals, search engine marketing, and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign.

(ii) "Advertising services" do not include:

- (A) Web hosting services and domain name registration;
- (B) Services rendered in respect to the following:
 - (I) "Newspapers" as defined in RCW 82.04.214;
 - (II) Printing or publishing under RCW 82.04.280; and
 - (III) "Radio and television broadcasting" within this state as defined in RCW 82.04 (section 1, chapter 9, Laws of 2025); and
- (C) Services rendered in respect to out-of-home advertising, including: Billboard advertising; street furniture advertising; transit advertising; place-based advertising, such as in-store display advertising or point-of-sale advertising; dynamic or static signage at live events; naming rights; and fixed signage advertising. Out-of-home advertising does not include direct mail; or
- (f) Live presentations including, but not limited to, lectures, seminars, workshops, or courses where participants attend either in person or via the internet or telecommunications equipment that allows audience members and the presenter or instructor to give, receive, and discuss information with each other in real time.

For the purposes of (a) through (c) and (e) of this subsection (3), the terms "sale at retail" and "retail sale" do not include a sale between members of an affiliated group as defined in RCW 82.04.299(1)(f).

(4) "Sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or 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 month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease 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 4(a), (b), (c), (d), (e), (f), and (g) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a “sale at retail” or “retail sale” even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(5) “Sale at retail” or “retail sale” shall also include the providing of competitive telephone service to consumers.

(6)

(a) “Sale at retail” or “retail sale” shall also include the sale of prewritten software, custom software, and customization of prewritten computer software to a consumer, 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 ~~(65)~~(a) the sale of 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 characterized by the vendor or by the purchaser. ~~The term “sale at retail” or “retail sale” does not include the sale of or charge made for:~~

~~(i) Custom software; or~~

~~(ii) The customization of prewritten software.~~

(b)

~~(1)~~The term “sale at retail” or “retail sale” also includes the charge made to consumers for the right to access and use prewritten computer software, custom software, and customization of 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.

(2)

(A) The service described in subsection ~~(6)~~(b)(1) of this definition includes the right to access and use prewritten software, custom software, and customization of prewritten computer software to perform data processing.

(B) For purposes of this subsection ~~(6)~~(b)(2) “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.

(7) “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.(Public road construction)

(8) "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.

(9) "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 (government contracting).

(10) "Sale at retail" or "retail sale" shall not include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development. [This should be reported under the service and other classification.]

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

(12)

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

(a1) Sales in which the seller has granted the purchaser the right of permanent use;

(b2) Sales in which the seller has granted the purchaser a right of use that is less than permanent;

(c3) Sales in which the purchaser is not obligated to make continued payment as a condition of the sale; and

(d4) Sales in which the purchaser is obligated to make continued payment as a condition of the sale.

(b) A retail sale of digital goods, digital codes, or digital automated services under this subsection 3.24.030(12)5(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.



(c) A retail sale of digital goods, digital codes, or digital automated services does not include the following services if the sale occurs between members of an affiliated group as defined in RCW 82.04.299(1)(f):

(1) Any service that primarily involves the application of human effort by the seller, and the human effort originated after the customer requested the service;

(2) Live presentations, such as lectures, seminars, workshops, or courses, where participants are connected to other participants via the internet or telecommunications equipment, which allows audience members and the presenter or instructor to give, receive, and discuss information with each other in real time;

(3) Advertising services. For purposes of this subsection, "advertising services" means all services directly related to the creation, preparation, production, or dissemination of advertisements. Advertising services include layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration; and

(4) Data processing services. For purposes of this subsection, "data processing service" means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to extract the required information in an appropriate form or to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include the service described in subsection 6 (b) of this section.

(d) 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.

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

Section 2. EMC 3.24.030, Sections C- *Sale at Wholesale, Wholesale Sale* - definition is hereby amended as follows:

"Sale at wholesale," "wholesale sale." "Sale at wholesale" or "wholesale sale" means any sale of tangible personal property, digital goods, digital codes, digital automated services, prewritten computer

software, custom software, customization of prewritten software to a consumer, or services described in “sale at retail” Section 6(b)(i), which is not a retail sale, and any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property and retail services, if such charge is expressly defined as a retail sale or retail service when rendered to or for consumers. Sale at wholesale also includes the sale of telephone business to another telecommunications company as defined in RCW 80.04.010 for the purpose of resale, as contemplated by RCW 35.21.715.

Section 4. The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener’s/clerical errors, references, ordinance numbering, section/subsection numbers, and any internal references.

Section 5. The City Council hereby declares that should any section, paragraph, sentence, clause or phrase of this ordinance be declared invalid for any reason, it is the intent of the City Council that it would have passed all portions of this ordinance independent of the elimination of any such portion as may be declared invalid.

Section 6. The enactment of this Ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this Ordinance.

Section 7. It is expressly the purpose of this Ordinance to provide for and promote the health, safety and welfare of the general public and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. It is the specific intent of this Ordinance that no provision or any term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees. Nothing contained in this Ordinance is intended nor shall be construed to create or form the basis of any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from any action or inaction on the part of the City related in any manner to the enforcement of this Ordinance by its officers, employees or agents.



Cassie Franklin, Mayor

ATTEST:



Marista Jorve, City Clerk

PASSED: 11/19/2025



VALID: 11/20/2025

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