



Everett City Attorney's Office

TO: Sharon Fuller, City Clerk
FROM: David Hall, Deputy City Attorney
CC: Mayor Stephanson, Council President Moore, and CAA Debra Bryant
DATE: November 3, 2014
SUBJECT: Codification of Ordinance No. 3384-14

Upon further review of Ordinance No. 3384-14, adopted on June 18, 2014, I discovered that it contained a manifest inconsistency between the taxation of cellular telephone companies and land line telephone companies. Section 8(A)(4) deducted from gross income "Charges to cellular telephone service subscribers passed on to compensate for the cost to the company of the tax imposed by this Ordinance." The Ordinance contained no similar deduction for land line telephone companies.

Historically, the City provided deductions for both companies and the legislative intent of Ordinance 3384-14 was to eliminate these deductions in their entirety. The inclusion of the deduction for cellular telephone companies constituted a clear conflict and inconsistency.

Therefore, pursuant to your authority under Section 19 of Ordinance 3384-14 and RCW 35.21.500(6), I request that you codify the corrected version of Ordinance No. 3384-14 which I have attached to this memo.

Sincerely,

David Hall
Deputy City Attorney



ORDINANCE NO. 3384-14

An Ordinance Relating to Taxes, including Utility Tax and Natural Gas Use Tax, and repealing Ordinances No. 2711, 3122, 4019, 1022-84, 1418-87, 1722-90, 2010-94, 2200-97, 2253-97, 2342-98.

WHEREAS, the City has not reviewed its Utility and Natural Gas Use Tax for over fifteen years; and

WHEREAS, the City's utility tax and natural gas use taxes are lower than many similarly situated cities;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Purpose.

Sections 1-10 of this Ordinance shall be deemed an exercise of the power of the City to license for revenue.

Section 2. Administrative Provisions.

The administrative provisions contained in Chapter 3.19 of the Everett Municipal Code shall be fully applicable to the provisions of this Ordinance except as expressly stated to the contrary herein.

Section 3. Definitions.

In construing the provisions of this Ordinance, save when otherwise plainly declared or clearly apparent from the context, the following definitions shall be applied:

A. "Cable television services" means the one-way transmission of video programming and associated nonvideo signals to subscribers together with subscriber interaction, if any, which is provided in connection with video programming.

B. "Cellular telephone service" means the two-way voice and data telephone/telecommunications system based in whole, or substantially in part, on wireless radio communications, and which is not subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes "cellular mobile service." The definition of "cellular mobile service" includes other wireless radio communications services such as

specialized mobile radio (SMR), personal communication services (PCS), and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service.

C. “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.

D. “Gas business” means the business of transmitting, distributing, brokering, or selling natural, manufactured, or mixed gas.

E. “Gross proceeds of sale” or “gross income” 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 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 expenses whatsoever paid or accrued and without any deduction on account of losses.

F. “Light or power business” means the business of operating a plant or system for the production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

G. “Network telephone service” means the providing by any person of access to a telephone network, 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 telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. “Network telephone service” includes the provision of transmission to and from the site of an internet provider via a 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, nor the provision of internet access as defined in RCW 82.04.297, including the reception of dial-in connection provided at the site of the internet service provider.

H. “Person” means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, 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, non-profit, or otherwise and the United States or any instrumentality thereof.

I. “Solid waste service” means every person who receives solid waste or recyclable materials for transfer, storage, or disposal including but not limited to all collection services,

public or private solid waste disposal sites, transfer stations, and similar operations. "Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction waste, abandoned vehicles or parts thereof, and recyclable materials. "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass.

J. "Taxpayer" means any "person," as herein defined, required to have a business license under Chapter 3.19, EMC, or liable for the collection of any tax or fee under this Ordinance, or who engages in any business or who performs any act for which a tax or fee is imposed by this Ordinance.

K. "Telephone business" means the business of providing network telephone service or cellular telephone service as defined in this section. "Telephone business" includes cooperative or farmer line telephone companies or associations operating an exchange. "Telephone business" does not include the providing of competitive telephone services, the providing of cable television services, nor the providing of broadcast services by radio or television stations.

Section 4. Business license required.

No person shall engage in or carry on any business, occupation, pursuit, or privilege for which a tax is imposed by Sections 1-10 of this Ordinance, without having first obtained and being the holder of a current, valid license in accordance with the requirements of Chapter 3.19, EMC.

Section 5. Business subject to utility tax.

There is hereby levied and shall be collected a tax on account of the business activities described herein, and in the amounts to be determined by the application of the rates against gross income, as follows:

A. Upon every person engaged in or carrying on a telephone business, a tax equal to six percent of the gross income derived from the operation of such business within the City of Everett.

B. Upon every person engaged in or carrying on a gas business within the City of Everett, a tax equal to six percent of gross income. Provided, however, that with regards to any sales of natural gas that are exempt from the tax imposed under chapter 82.16, RCW, as provided in section 301 of Chapter 216, Laws of 2014 (ESSB 6440), the rate of taxation will be equal to that imposed by EMC 3.24.050(4).

C. Upon every person engaged in or carrying on a light or power business, a tax equal to six percent of the gross income derived from the sale of electricity within the City of Everett, exclusive of revenues derived from the sale of electricity for purposes of resale.

D. Upon every person engaged in or carrying on a cable television service within the City of Everett, a tax equal to:

1. From the effective date of this Ordinance to December 31, 2015, two percent of gross income.

2. From January 1, 2016 to December 31, 2016, four percent of gross income.
 3. After January 1, 2017, six percent of gross income.
- E. Upon every person engaged in or carrying on a solid waste service within the City of Everett, a tax equal to:
1. From the effective date of this Ordinance to December 31, 2015, two percent of gross income.
 2. From January 1, 2016 to December 31, 2016, four percent of gross income.
 3. After January 1, 2017, six percent of gross income.

Section 6. Cellular telephone service—Income allocation and administration.

A. Allocation of Income.

1. Service Address. Payments by a customer for the telephone service from telephones without a fixed location shall be allocated among taxing jurisdictions to the location of the customer's principal service address during the period for which the tax applies.

2. Presumption. There is a presumption that the service address a customer supplies to the taxpayer is current and accurate, unless the taxpayer has actual knowledge to the contrary.

3. Roaming Phones. When the cellular telephone service is provided while a customer is roaming outside the customer's normal cellular network area, the gross income shall be assigned consistent with the taxpayer's accounting system to the location of the originating cell site of the call, or to the location of the main cellular switching officer that switched the call.

B. Dispute Resolution. If there is a dispute between or among the City and another city or cities as to the service address of a customer who is receiving cellular telephone services, and the dispute is not resolved by negotiation among the parties then the dispute shall be resolved by the City and the other city or cities by submitting the issue for settlement to the Association of Washington Cities ("AWC"). Once taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service shall have no further liability with respect to additional taxes, penalties, or interest on the disputed revenues so long as it promptly changes its billing records for future revenues to comport with the settlement facilitated by AWC.

C. The director, as defined in EMC 3.19.020, is authorized to represent the City in negotiations with other cities for the proper allocation of cellular telephone service taxes imposed pursuant to this Ordinance.

Section 7. Exemptions.

The tax levied pursuant to this Ordinance is in lieu of any excise, privilege, or occupational tax based on gross proceeds under any chapters of Title 3, EMC with respect to activities specifically within the provisions of this Ordinance. Nothing herein shall be construed to exempt persons taxable under the provisions of this Ordinance from tax under any other chapters of Title 3, EMC, including but not limited to Chapter 3.24 EMC, Business and Occupation Tax, with respect to activities other than those specifically taxable within the provisions of this Ordinance.

Section 8. Deductions.

A. The following are deducted from the total gross income upon which the tax is computed:

1. That portion of the gross income derived from charges to another telecommunications company, as defined in RCW 80.04.010, for connecting fees, switching charges, or carrier access charges relating to intrastate toll telephone services, or for access to, or charges for, interstate services.

2. Charges by a taxpayer engaging in a telephone business to a telecommunications company, as defined in RCW 80.04.010, for telephone service that the purchaser buys for the purpose of resale.

3. Adjustments made to a billing or to a customer account or to a telecommunications company accrual account in order to reverse a billing or charge that had been made as a result of third-party fraud or other crime and was not properly a debt of a customer.

B. There shall be allowed, as a deduction as to cellular telephone service, cash discounts and credit losses actually sustained by a taxpayer who keeps their books on an accrual basis.

C. In computing tax, there may be deducted from, the total gross income upon which the tax is computed, amounts derived from business which the City is prohibited from taxing under the Constitution or laws of the State of Washington or the Constitution or laws of the United States.

Section 9. Monthly Payment.

The tax imposed by this Ordinance shall be due and payable monthly and is due on or before the last day of the next month.

Section 10. Municipal bus system.

There are levied and shall be collected annual license fees or occupation taxes on account of businesses or privileges, and in the amount fixed as follows: Upon every person engaged in or carrying on a municipal bus transportation system within the City for the transportation of passengers for hire, the sum of twenty-five dollars for each vehicle used in transportation of passengers for hire in connection with said business.

Section 11. Natural Gas Use Tax.

A. Tax Imposed. There is fixed and imposed upon every person a use tax for the privilege of using natural gas or manufactured gas in the city of Everett as a consumer.

B. Rate. The tax is fixed and imposed in an amount equal to the value of the article used by the consumer multiplied by the rate of six percent.

The “value of the article used” shall have the meaning set forth in RCW 82.12.010(7)(a) and does not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas subject to tax under this Section if those amounts are subject to tax under Section 5 of this Ordinance or a tax imposed under RCW 35.21.870.

C. Exemptions.

1. The tax imposed under this Section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under Section 5 of this Ordinance or a tax imposed under RCW 35.21.870, with respect to the gas for which exemption is sought under this section.

2. The tax imposed by this Section does not apply to the use of natural gas, compressed natural gas, or liquefied natural gas, if the consumer uses the gas for transportation fuel as defined in section 301 of Chapter 216, Laws of 2014 (ESSB 6440).

D. Credit. There shall be a credit against the tax levied under this chapter in an amount equal to any tax paid by:

1. The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to Section 5 of this Ordinance by another state with respect to the gas for which a credit is sought under this Subsection; or

2. The person consuming the gas upon which a use tax similar to the tax imposed by this Section has paid to another state with respect to the gas for which a credit is sought under this Subsection.

E. Payment. The use tax imposed shall be paid by the consumer.

F. Administration and Collection. The administration and collection of the tax imposed by this Section shall be pursuant to Chapter 3.48 of the Everett Municipal Code.

G. Records Inspection. The City of Everett consents to the inspection of such records as are necessary to qualify the City for inspection of records of the Department of Revenue, pursuant to RCW 82.32.330.

Section 12. Codification.

Sections 1-11 of this Ordinance will be codified in Chapter 3.28 of the Everett Municipal Code, to be called Utility and Gas Use Taxes as follows:

Section 1: EMC 3.28.010

Section 2: EMC 3.28.020

Section 3: EMC 3.28.030

Section 4: EMC 3.28.040

Section 5: EMC 3.28.050

Section 6: EMC 3.28.060

Section 7: EMC 3.28.070

Section 8: EMC 3.28.080

Section 9: EMC 3.28.090

Section 10: EMC 3.28.100

Section 11: EMC 3.28.110

Section 13. Effective Date.

This Ordinance will become effective on January 1, 2015, in compliance with RCW 35.21.865.

Section 14. Repealer.

Ordinance Nos. 2711, 3122, 4019, 1022-84, 1418-87, 1722-90, 2010-94, 2200-97, 2253-97, and 2342-98 are hereby repealed as of the effective date of this Ordinance, except to the extent that such ordinances repealed earlier ordinances.

Section 15. Referendum Provisions.

To the extent RCW 35.21.706 is applicable, the citizens of the City of Everett are put on notice that this Ordinance is subject to Article XI of the Charter of the City of Everett. Article XI entitles direct legislation and provides procedures which must be followed for exercising the power of initiative or referendum and shall be the special initiative procedure adopted in this Ordinance pursuant to RCW 35.21.706.

Section 16. Savings.

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. Nothing contained herein shall be construed as discontinuing, abating, modifying, or altering any tax liability or any tax owing or assessed under or by virtue of the ordinances herein repealed, or as discontinuing, abating, modifying, or altering any penalty accrued or to accrue, or as affecting the right or liability of any person, firm, or corporation, or as waiving any right of the City under any City ordinance or provision thereof in force at the time of passage of this Ordinance.

Section 17. General Duty.

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.

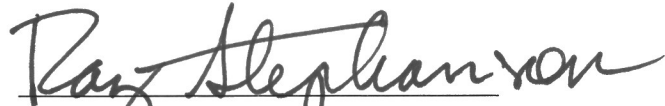
Section 18. Severability.

Should any section, subsection, paragraph, sentence, clause, phrase, or portion of this Ordinance or its application to any person or situation, be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to any other person or situation. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, paragraph, sentence, clause, phrase, or

portion thereof irrespective of the fact that any one or more sections, subsections, paragraphs, clauses, phrases, or portions be declared invalid or unconstitutional.

Section 19. Corrections.

The City Clerk is 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 references thereto.


Ray Stephanson, Mayor

ATTEST:


Sharon Fuller, City Clerk

PASSED: 6-18-2014

VALID: 6-23-2014

PUBLISHED: 7-8-2014

EFFECTIVE DATE: 1-1-2015