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DIRECTOR FEES ARE SUBJECT TO BUSINESS AND OCCUPATION (B&O) TAX

Background

The purpose of this notice is to clarify how the City of Bellevue treats corporate director fees for purposes of gross receipts B&O taxation. The State of Washington adopted legislation (Second Engrossed Substitute Senate Bill 6143, Part VII -- Chapter 23, Laws of 2010 1st Special Session) to clarify how the *State* treats corporate director fees for purposes of its gross receipts B&O taxation, effective July 1, 2010. Although this state legislation has no direct impact on local B&O tax treatment, it has focused attention on the issue of B&O taxation for these types of gross receipts and raised questions regarding how cities apply their existing gross receipts B&O provisions to director fees.

The City of Bellevue excludes from license registration and B&O taxation businesses that only engage in certain specific safe harbor activities in Bellevue. One example of a safe harbor activity is attending meetings within Bellevue, such as board meetings, wherein the business does not provide training in connection with tangible personal property sold by the business or on its behalf. In applying this safe-harbor provision to corporations and their directors, this section excludes the qualifying corporation from taxation. This means that under the safe harbor the corporation need not register for a business license or file tax returns as these activities do not constitute engaging in business. Thus, a business that holds a corporate board meeting in the City, by itself, does not give rise to a registration or tax filing requirement to the corporation. This section does not apply to persons that are in the business of providing corporate director services. While taxation of fees received by individual corporate directors has long been taxable within the City of Bellevue, some taxpayers have erroneously interpreted this safe harbor to exclude persons providing corporate director services in the City from taxation.

Due to the focus on B&O tax treatment of director fees in the past several months because of the state legislation, Bellevue is providing this notice to clarify for all taxpayers the appropriate application of its existing B&O tax code to director's fees earned by a taxpayer who is subject to Bellevue's B&O tax code.

Registering for a Business License

Corporate directors are required to register with the City if:

- You have established nexus or are engaging in business within the City, and
- You receive compensation as a corporate board director.

To register, please visit our website at http://www.bellevuewa.gov/business_licenses.htm.

Once the application is processed, you will receive a Master License with a City Business License endorsement.

Determining Nexus

Effective July 1, 2010 as part of the bill referenced above, 2ESSB 6143, the State of Washington adopted an economic nexus standard for application of the state's B&O tax provisions. Please note that the state provisions do not apply at the local level. Local jurisdictions have separate authority to adopt gross receipts taxes at the local level, and separate code provisions that apply within each local jurisdiction. In fact, the legislature specifically

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stated that the State of Washington economic nexus standard does not apply to Washington cities. The next paragraph describes how Bellevue determines whether a potential taxpayer has “nexus” with the City and as a result is subject to Bellevue’s B&O tax code.

A corporate director is deemed to have substantial nexus with the City if the director is “engaging in business” in the City in accordance with US Constitutional requirements (the Commerce and Due Process Clauses). See Bellevue City Code (BCC) 4.09.030 (L) for the definition of “engaging in business”. Please note that the safe harbor provision regarding board meetings does not apply to corporate directors attending meetings in their capacity as a corporate board member.

Director Fees Subject to City of Bellevue Gross Receipts B&O Tax

All compensation received, in any form, for services rendered as a corporate director is subject to City of Bellevue gross receipts B&O tax under the Service and Other Activities classification.

Compensation includes, but is not limited to, fees, the value of stock options or property received in exchange for services, awards and bonuses. Compensation also includes all amounts recovered as expenses in connection with rendering corporate director services, including, but not limited to, telephone costs, preparation fees for meetings, and travel expenses. Generally, director fees are included on IRS Form 1099-MISC. Director fees include the value of stock options granted as compensation (compensatory stock options) to the extent that amount should be reported on the official IRS Form 1099-MISC.

Apportionment

For purposes of local gross receipts B&O taxes, Service and Other Activities classification income is subject to apportionment under the prescribed two factor method in accordance with RCW 35.102.130 and BCC 4.09.077. In the event a corporate director does not have payroll, then a single factor apportionment is applicable in accordance with the laws cited therein.

Effective Date

Because of the confusion created by the state legislation and the city safe harbor exclusion discussed above and to streamline procedures and reporting across the state and local levels, Bellevue is establishing *July 1, 2010* as the date by which persons subject to taxation as a result of director fees should come into compliance, consistent with the effective date for the state legislation.

Filing Your Tax Return

Once you have registered with the City, you will receive a packet of information with tax filing instructions.

The City may allow corporations to agree to report and pay taxes on behalf of their registered directors. However, participation by a corporation is voluntary and corporate directors remain responsible for ensuring the timely and accurate filing of tax returns and payment of all applicable taxes even when the corporation on whose board the director serves has been authorized by the City to file returns and pay taxes on behalf of their directors. There is a written agreement for parties interested in combined reporting. For more information on corporate reporting of director fees, interested corporations may contact the City’s Tax Division at 425-452-6851.

Please note that corporate directors engaging in business in the City are required to secure a business license even if their taxes are reported through a combined reporting agreement.

For More Information

Visit our website at http://www.bellevuewa.gov/bellevue_taxes.htm, send an email to tax@bellevuewa.gov, or call the Tax Division at 425-452-6851.