

Subject: **Ordinance #1524** – Updating the Administrative Provisions of the Business and Occupation Tax, Amending Chapter 5.01A of the Ruston Municipal Code

Dept. Origin: City Attorney’s Office

Prepared by: City Attorney’s Office

For Agenda of: November 5, 2019

Exhibits: Ordinances #1524

Proposed Council Action:

This is on for First Reading. Unless directed Otherwise, this ordinance will return for Second Reading and Action on November 19, 2019.

	Initial & Date
Concurred by Mayor:	_____
Approved/form by Town Atty:	<u>JSR/10-31-19</u>
Approved by _____ Director:	_____
Approved by Department Head:	_____

INFORMATION / BACKGROUND

I. Background on the B&O Tax Model Ordinance

Under the Washington State Constitution, the City of Ruston has the authority to assess and collect taxes for municipal purposes.¹ The State Legislature has authorized cities and towns to license businesses for the purposes of regulation and revenue.² Currently, forty Washington cities have adopted a business and occupation tax (hereinafter “B&O tax”). The B&O tax on business is measured by a percentage of the firm’s gross receipts.

II. History of Model B&O Ordinances

The State has been requiring cities to adopt model B&O ordinances since 2003. There were model codes created by the State (typically a task force) and adopted by Ruston in 2003, 2008 and 2012. The last major revisions to the B&O tax model ordinance took effect January 1, 2013.

III. 2019 Revisions

This year, the State has again updated the model ordinance and required B&O cities to adopt these provisions. There are also some required changes to the B&O Administrative provisions code. A city workgroup met over the summer of 2019 to review changes needed to the B&O model ordinance. Workgroup members included: Bellevue, Burien, Kent, Seattle, Shoreline, Snoqualmie, and Tacoma.

In the 2019 session, two bills passed that impact city B&O tax administration: **HB 1403** related to service income apportionment and **HB 1059** related to annual tax filing deadlines.

¹ Article XI, Section 12, Washington State Constitution.
² RCW 35A.82.020 (Code Cities); 35.27.370(9) (Towns).

The workgroup revised the model ordinance to include changes to RCW 35.102 and to reflect other changes made to state law since 2013. Cities must adopt mandatory changes to model ordinance with same effective date: January 1, 2020.

The changes to the administrative provisions for the model code are as follows:

1. Annual tax filing deadline.

Administrative provisions in RMC 5.01A.040: Includes language linking the change to April 15 for annual tax return filing by referencing RCW 82.32.045 effective January 1, 2021, as provided in **HB 1059**. This is found in Section 1 of Ordinance No. 1524.

2. Apportionment Rule.

In addition, as part of the implementation of the change, a work group of city tax managers has drafted a proposed city B&O apportionment model rule to assist in uniformity of implementation. The City Clerk (as the Director to administer B&O taxes in Ruston) will be adopting this as permitted under RMC 5.01A.160 which provides.

5.01A.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 or with law for the purpose of carrying out the provisions of this chapter and it shall be unlawful to violate or fail to comply with, any such rule or regulation.

3. Conversion to Hearing Examiner System.

In addition to adopting the State-mandated revisions, Ordinance No. 1524 also updates Chapter 5.01A to allow a Hearing Examiner, rather than the City Council, to hear tax appeals under RMC 5.01A.140 as well as appeals of suspensions or revocations of business licenses under RMC 5.01A.230. This required revisions to the following section: RMC 5.01A.140, 5.01A.150, and 5.01A.230. This change also necessitated revisions to the City's code on Hearing Examiners, Chapter 1.20 RMC. Those changes are contained in Ordinance No. 1525.

FISCAL CONSIDERATION

None.

RECOMMENDATION / MOTION

This is scheduled for First Reading. No action required. Unless directed otherwise, this Ordinance will be brought back for Second Reading and Adoption on November 19, 2019. The state law requires that these changes be adopted and take effect on January 1, 2020.

ORDINANCE NO. 1524

AN ORDINANCE OF THE CITY OF RUSTON, WASHINGTON, AMENDING CHAPTER 5.01A OF THE RUSTON MUNICIPAL CODE, ENTITLED “ADMINISTRATIVE PROVISIONS FOR BUSINESS AND OCCUPATION TAXES” AS REQUIRED BY AND FOR THE PURPOSE OF CONSISTENCY WITH STATE LAW, AMENDING SECTIONS 5.01A.040, 5.01A.100, 5.01A.140, 5.01A.150 AND 5.01A.230 FOR CONSISTENCY WITH STATE LAW AND TO ALLOW FOR APPEALS UNDER THIS CHAPTER TO BE HEARD BY THE CITY HEARING EXAMINER, RATHER THAN THE CITY COUNCIL, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Ruston has adopted a Gross Receipts Tax under Chapter 5.01 of the Ruston Municipal Code entitled “Business & Occupation Tax”; and

WHEREAS, in conjunction, the City Council also adopted Chapter 5.01A of the Ruston Municipal Code entitled “Administrative Provisions for Business and Occupation Taxes”; and

WHEREAS, the State Legislature has mandates that all B&O Tax Cities adopt certain changes to the B&O Tax and Administrative Codes; and

WHEREAS, this update is required to take effect on January 1, 2020; and

WHEREAS, on November 5, 2019, the City Council held the first reading on this Ordinance; and

WHEREAS, on November 19, 2019, the City Council adopted this Ordinance during its regular meeting at second reading; **NOW, THEREFORE**

THE CITY COUNCIL OF THE CITY OF RUSTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Section 5.01A.040 of the Ruston Municipal Code is hereby amended to read as follows:

5.01A.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.

- (1) Other than any annual license fee or registration fee assessed under this chapter, 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 or annual reporting period depending on the tax amount owing or type of tax. Until December 31, 2020, tax ~~Tax~~ payments are due on or before the last day of the next month following the end of the 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).
- (2) 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.
- (3) Tax returns must be filed and returned by the due date whether or not any tax is owed.
- (4) For purposes of the tax imposed by Chapter 5.01 RMC, any person whose value of products, gross proceeds of sales, or gross income of the business, subject to tax after all allowable deductions, is equal to or less than \$20,000.00 in the current calendar year or equal to or less than \$5,000 in the current quarter, shall file a return, declare no tax due on their return, and submit the return to the Director. The gross receipts and deduction amounts shall be entered on the tax return even though no tax may be due.
- (5) 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.
- (6) 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, or City or Federal legal holiday.
- (7) 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.

Section 2. Section 5.01A.100 of the Ruston Municipal Code is hereby amended to read

as follows:

5.01A.100 - Overpayment of tax, penalty, or interest — Credit or refund — Interest rate — Statute of limitations.

- (1) 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 (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.
- (2) 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.
- (3) 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.
- (4) 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 (3) of this section, upon the filing with the Director a certified copy of the order or judgment of the court.
- (5)(a) Interest on overpayments of taxes paid prior to January 1, 2005, shall be at the rate of three percent per annum.
 - (b) For tax periods after December 31, 2004, 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.
 - (c) If ~~{Section}~~RMC 5.01A.100(5)(b) is held to be invalid, then the provisions of RCW 82.32.060 existing at the effective date of this ordinance ~~{section}~~ shall apply.

Section 5. Section 5.01A.140 of the Ruston Municipal Code is hereby amended to read

as follows:

5.01A.140 - Administrative appeal.

Any person, except one who has failed to comply with ~~Section~~ RMC 5.01A.060, aggrieved by the amount of the fee or tax determined by the Director to be required under the provisions of this chapter may pay the amount due and appeal from such determination to the City Council by

filing a written notice of appeal with the City Clerk within 30 days from the date written notice of such amount was mailed to the taxpayer. A filing fee in the amount established by resolution of the City Council shall be submitted with the appeal, which filing fee is required to process the appeal. The City Clerk 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. All appeals under this chapter shall be heard by the City's Hearing Examiner. At the hearing before the ~~City Council~~ Hearing Examiner, the taxpayer shall be entitled to be heard and to introduce evidence in his own behalf. The Mayor may by subpoena require the attendance of any person, and may require the production of pertinent books and documents. Any person appearing by subpoena will testify under oath before the ~~City Council~~ Hearing Examiner. The decision of the ~~City Council~~ Hearing Examiner shall indicate the correct amount of the fee or tax owing.

Section 6. Section 5.01A.150 of the Ruston Municipal Code is hereby amended to read as follows:

5.01A.150 - Judicial review of administrative appeal decision.

The taxpayer or the City may obtain judicial review of the ~~City Council's~~ Hearing Examiner's administrative decision by applying for a Writ of Review in the Pierce County Superior Court within 21 days from the date of the City Council's decision in accordance with the procedure set forth in Chapter 7.16 RCW, other applicable law, and court rules. The City shall have the same right of review from the administrative decision as does a taxpayer.

Section 7. Section 5.01A.230 of the Ruston Municipal Code is hereby amended to read as follows:

5.01A.230 - Suspension or revocation of business license.

- (1) The Director, or designee, shall have the power and authority to suspend or revoke any license issued under the provisions of Title 5 RMC. The Director, or designee, shall notify such licensee in writing by certified mail of the suspension or revocation of his or her license and the grounds therefor. Any license issued under Title 5 RMC may be suspended or revoked based on one or more of the following grounds:
 - (a) The license was procured by fraud or false representation of fact.
 - (b) The licensee has failed to comply with any provisions of this Title 5 RMC.
 - (c) The licensee has failed to comply with any provisions of the Ruston Municipal Code.
 - (d) The licensee is in default in any payment of any license fee or tax under Title 5 RMC.

- (e) The licensee or employee has been convicted of a crime involving the business.
- (2) Any licensee may, within 30 days from the date that the suspension or revocation notice was mailed to the licensee, appeal from such suspension or revocation by filing a written notice of appeal ("petition") setting forth the grounds therefor with the City Clerk. A copy of the petition must be provided by the licensee 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 described herein. The ~~City Council~~ Ruston Hearing Examiner shall set a date for hearing said appeal and notify the licensee by mail of the time and place of the hearing. The licensee shall submit all materials in writing by 5:00 p.m. five business days before the hearing date. During the hearing, the licensee shall have 15 minutes to present his appeal. After the hearing thereon the ~~City Council~~ Hearing Examiner shall, after appropriate findings of fact, and conclusions of law, affirm, modify, or overrule the suspension or revocation and reinstate the license, and may impose any terms upon the continuance of the license.

No suspension or revocation of a license issued pursuant to the provisions of this subchapter shall take effect until ten days after the mailing of the notice thereof by the City, and if appeal is taken as herein prescribed the suspension or revocation shall be stayed pending final action by the ~~City Council~~ Hearing Examiner. All licenses which are suspended or revoked shall be surrendered to the City on the effective date of such suspension or revocation.

The decision of the ~~City Council~~ Hearing Examiner shall be final. The licensee and/or the City may seek review of the decision by the Superior Court of Washington in and for Pierce County within 21 days from the date of the decision. If review is sought as herein prescribed the suspension or revocation shall be stayed pending final action by the Superior Court.

- (3) Upon revocation of any license as provided in this subchapter no portion of the license fee shall be returned to the licensee.

Section 8. Effective Date. This ordinance shall take effect and be in force on January 1, 2020 which is more than five (5) days after passage and legal publication.

Section 9. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 10. Publication. This Ordinance shall be published by an approved summary consisting of the title.

ADOPTED by the City Council of the City of Ruston and attested by the City Clerk in authentication of such passage on this 19th day of November, 2019.

APPROVED by the Mayor this 19th day of November, 2019.

Bruce Hopkins, Mayor

ATTEST/AUTHENTICATED:

Judy Grams, City Clerk

APPROVED AS TO FORM:

Office of the City Attorney

FILED WITH THE CITY CLERK: _____

PASSED BY THE CITY COUNCIL: _____

PUBLISHED: _____

EFFECTIVE DATE: _____

ORDINANCE NO: 1524