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Cellular Telephones - Utility Tax

ORDINANCE NO. 1820

ORIGINAL

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, RELATING TO OCCUPATION TAXES FOR CELLULAR TELEPHONE SERVICE, ADDING A NEW DEFINITION FOR CELLULAR TELEPHONE SERVICE, CLARIFYING THE EXCEPTIONS AND DEDUCTIONS FROM GROSS INCOME FOR PURPOSES OF COMPUTING THE OCCUPATION TAX, AND DESCRIBING A PROCESS FOR ALLOCATION OF INCOME FROM CELLULAR TELEPHONE SERVICE, AMENDING SECTIONS 5.44.020 AND 5.44.100, AND ADDING NEW SECTIONS 5.44.105 AND 5.44.195 TO THE REDMOND MUNICIPAL CODE.

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WHEREAS, the Department of Revenue was directed by the Washington State Legislature to form a Cellular Communications Committee, so that the Committee would study the industry and make a report about how cellular communications should be taxed; and

WHEREAS, the Committee found that there was a lack of uniformity in utility tax ordinances in cities throughout the state, that certain cities were not receiving the tax revenue to which they were entitled because the customer's billing address was not the same as the cellular user's normal location; and that necessary adjustments were not made in the definition of gross income for purposes of computing the cellular company's tax to the cities; and

WHEREAS, the Association of Washington Cities has asked all cities in Washington to review and amend their ordinances consistent with the findings of the Committee;

Now, Therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO  
ORDAIN AS FOLLOWS:

Section 1. A new subsection is added and Section 5.44.020 of the Redmond

Municipal Code is hereby amended and the subsections renumbered to read as follows:

**5.44.020 Definitions.** Unless the context clearly indicates otherwise, the words, phrases and terms used in this chapter shall have the following meanings:

(a) "Gross income" means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged, whether received or not) by reason of investment of capital in the business engaged in (including rentals, royalties, receipts, or proceeds from the use or sale of real property or any interest therein, and proceeds from the sale of notes, bonds, mortgages or other evidence of indebtedness, or stocks and the like) and without any deduction on account of the cost of the property sold, cost of materials used, labor costs, taxes, interest or discount paid, or any expenses whatsoever, and without any deduction on account of losses. Further deductions and exceptions from gross income upon which the fee or tax described in this chapter is computed are set forth in Section 5.44.100.

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(e) "Telephone business" means the business of providing access to a local telephone network, local telephone network switching service, toll service, or coin telephone services, or providing telephonic, video, data or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. It includes cooperative or farmer line telephone companies or associations operating an exchange. Telephone business does not include the providing of competitive telephone service, the providing of cable television service, nor the providing of broadcast services by radio and television stations.

(f) *Cellular Telephone Service* means a 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 communications services (PCS), and any other evolving wireless radio communications technology which accomplishes a purpose similar to cellular mobile service.

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Section 2. Section 5.44.100 of the Redmond Municipal Code is hereby amended

to read as follows:

**5.44.100 Exceptions and Deductions.**

A. There shall be excepted and deducted from the total gross income upon which the license fee or tax is computed the following:

(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 or to a telecommunications company, as defined in RCW 80.040.010, 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.

(4) There shall be excepted and deducted from the total gross income upon which the tax is computed all cash discounts allowed and actually granted to customers of the taxpayer during the tax year.

(5) So much thereof as is derived from the transactions in interstate or foreign commerce, or from business done for the government of the United States, its officers or agents in their official capacity, and any amount paid by the taxpayer to the United States, the state of Washington, as excise taxes levied or imposed on the sale or distribution of property or service.

B. There shall be excepted and deducted from the total gross income upon which the tax is computed all bad debts for services incurred, rendered or charged for during the tax year. Debts shall be deemed bad and uncollectible when they have been written off the books of the taxpayer. In the event debts are subsequently collected, the income shall be reported in the return for the quarter in which the debts are collected and at the rate prevailing in the tax year when collected.

C. Nothing in this chapter shall be construed as requiring a license, or the payment of a license fee or tax, or the doing of any act, which would constitute an unlawful burden or interference in violation of the Constitution or laws of the United States or which would not be consistent with the Constitution or laws of the State of Washington.

Section 3. A new Section 5.44.105 is hereby added to the Redmond Municipal

Code to read as follows:

**5.44.105 Allocation of income -- Cellular Telephone Service.**

A. 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.

B. 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.

C. Roaming phones. When the service is provided while a subscriber is roaming outside the subscriber'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 office that switched the call.

D. **Dispute Resolution.** If there is a dispute between or among the City and one or more other 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 the taxes on the disputed revenues have been paid to one of the contesting cities, the cellular telephone service company shall have no further liability with respect to additional taxes on the disputed revenues so long as it changes its billing records for future revenues to comport with the settlement facilitated by AWC.

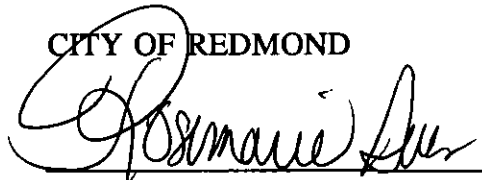
Section 4. A new Section 5.44.195 is hereby added to the Redmond Municipal Code, to read as follows:

**5.44.195 Rate Change.** No change in the rate of tax upon persons engaging in providing cellular telephone service shall apply to business activities occurring before the effective date of the change and, except for a change in the tax rate authorized by RCW 35.21.870, no change in the rate of the tax may take effect sooner than sixty (60) days following the enactment of the ordinance establishing the change. The City shall send to each cellular telephone service company at the address on its license, a copy of any ordinance changing the rate of tax upon cellular telephone service promptly upon its enactment.

Section 5. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or 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 6. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect

five (5) days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND  
  
MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:

  
CITY CLERK, DORIS SCHAIBLE

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By: 

FILED WITH THE CITY CLERK: 12/21/94  
PASSED BY THE CITY COUNCIL: January 17, 1995  
SIGNED BY THE MAYOR: January 17, 1995  
PUBLISHED: January 25, 1995  
EFFECTIVE DATE: January 30, 1995  
ORDINANCE NO. 1820