

**CITY OF BURIEN  
AGENDA BILL**

<b>Agenda Subject:</b> Discussion on Proposed Ordinance No. 509, Revision to B&O Tax Ordinance		<b>Meeting Date:</b> April 6, 2009
<b>Department:</b> Finance Department	<b>Attachments:</b> 1. Proposed Ordinance	<b>Fund Source:</b> N/A <b>Activity Cost:</b> N/A <b>Amount Budgeted:</b> N/A <b>Unencumbered Budget Authority:</b> N/A
<b>Contact:</b> Tabatha Miller, Finance Director		
<b>Telephone:</b> (206) 439-3150		
<b>Adopted Work Plan Priority:</b> Yes No X	<b>Work Plan Item Description:</b> N/A	
<p><b>PURPOSE/REQUIRED ACTION:</b> The purpose of this agenda item is for the Council to discuss a revision to the B&amp;O Tax threshold in order to comply with state law.</p> <p><b>BACKGROUND (Include prior Council action &amp; discussion):</b></p> <p>In 2003 the Washington State Legislature enacted EHB 2030 requiring cities assessing a B &amp; O tax to comply with a “model” business and occupation tax ordinance.</p> <p>On December 6, 2004, the Council adopted Ordinance No. 424 the model city business and occupation tax ordinance.</p> <p>In 2007, the model code was revised and incorporated changes consistent with updated allocation and apportionment provisions to avoid taxation by different jurisdictions on the same activity. On November 26, 2007, the Council adopted Ordinance No. 482 incorporating those changes. Additionally in adopting Ordinance No. 482, the Council established a modified threshold for applicability of the B&amp;O tax. Prior to Ordinance 482, gross income from <u>activity in Burien</u> less than \$20,000 was exempted from tax and if a taxpayer’s total gross income from <u>activity both in and outside Burien</u> was less than \$100,000, the taxpayer was not subject to the City’s B&amp;O tax. Under the revisions in Ordinance 482, a taxpayer with gross income less than \$100,000, regardless of where earning activity occurred, was no longer exempt from Burien B &amp; O taxes.</p> <p>While the model code requires, at a minimum, a \$20,000 small business exemption, a city may establish higher thresholds. In any case, RCW Chapter 35.102.040 (2), states that cities which lower their threshold must provide all businesses licensed to do business within the City notice of the proposed change one hundred twenty (120) days prior to implementation. Ordinance 482 was discussed by Council on November 19, 2007 and adopted the following week on November 26, 2007. There is no record that notices pursuant to RCW 35.102.040(2) were provided.</p> <p>As a result, staff recommends that the original threshold be re-established for businesses with less than \$100,000 in total gross income.</p> <p><b>OPTIONS (Including fiscal impacts):</b> N/A</p>		
<b>Administrative Recommendation:</b> Hold discussion and consider placing on the April 13, 2009 consent agenda.		
<b>Committee Recommendation:</b> N/A		
<b>Advisory Board Recommendation:</b> N/A		
<b>Suggested Motion:</b> None required		
Submitted by: Tabatha Miller, Finance Director		
<b>Administration</b> _____	<b>City Manager</b> _____	
<b>Today’s Date:</b> March 31, 2009	<b>File Code:</b> <a href="R:\CC\Agenda Bill 2009\040609ad-1 B&amp;O Tax Ord.docx">R:\CC\Agenda Bill 2009\040609ad-1 B&amp;O Tax Ord.docx</a>	

# CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 509

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### **AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, REPEALING BURIEN MUNICIPAL CODE CHAPTER 3.11, SECTION 050 (2) BUSINESS AND OCCUPATION TAX, AND REVERTING TO A SECTION WITHIN NEW CHAPTER 3.11; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE**

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WHEREAS, state law authorizes municipalities to impose a Business and Occupation tax on business activities within the City; and

WHEREAS, the City of Burien adopted the mandatory revisions to the Model Business and Occupation tax ordinance effective January 1, 2008, codified at Chapter 3.11 Burien Municipal Code (“BMC”) including the section codified as BMC 3.11.050(2); and

WHEREAS, RCW Chapter 35.102.040 (2) requires that cities adopt a minimum small business threshold of at least the equivalent of \$20,000 in gross annual income, but allows cities to deviate from this requirement by creating a higher threshold. RCW 35.102.040 (2), states that if a city deviates below the threshold in place prior to January 1, 2003, the city must notify all businesses licensed to do business within that city at least one hundred twenty (120) days prior to the potential implementation of a lower threshold; and

WHEREAS, on November 26, 2007, City of Burien adopted the language in the model Business and Occupation tax ordinance establishing the equivalent of a \$20,000 annual gross income threshold; and

WHEREAS, prior to November 26, 2007, City of Burien Business and Occupation tax code established a threshold equivalent to \$20,000 in annual income for activities conducted within the City, and established the equivalent of a \$100,000 threshold for all activities conducted in and outside the City; and

WHEREAS, there is no record that notice to all businesses licensed to do business within the city was provided one hundred twenty (120) days prior to the implementation of the January 1, 2008 revisions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Repeal and Re-enactment of Section 3.11.050 (2) BMC (Imposition of the tax – Tax or fee levied). Section 3.11.050 (2) of the Burien Municipal Code is hereby repealed in its entirety and re-enacted to read as follows:

(2) The gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted within the City is less than Twenty Thousand Dollars (\$20,000) for persons filing an annual tax return or less than Five Thousand Dollars (\$5,000) for persons filing a quarterly tax return. Furthermore, the gross receipts tax imposed in this section shall not apply to any person whose gross proceeds of sales, gross income of the business, and value of products, including by-products, as the case may be, from all activities conducted inside or outside the City is less than One Hundred Thousand Dollars (\$100,000) for persons filing an annual tax return or less than Twenty Five Thousand Dollars (\$25,000) for persons filing a quarterly tax return.

Section 2. Severability. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 3. Savings. The enactments 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 4. Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE \_\_\_\_ DAY OF APRIL, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS \_\_\_\_ DAY OF APRIL, 2009.

CITY OF BURIEN

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Joan McGilton, Mayor

ATTEST/AUTHENTICATED:

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Monica Lusk, City Clerk

Approved as to form:

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Chris D. Bacha  
Kenyon Disend, PLLC  
Interim City Attorney

Filed with the City Clerk:  
Passed by the City Council:  
Ordinance No.  
Date of Publication:

DRAFT