

June 9, 2020

## MEMORANDUM

**To:** Select Budget Committee  
**From:** Tom Mikesell, Analyst  
**Subject:** CB 119772: Payroll Expense Tax Package - Tax

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The Select Budget Committee (Committee) will continue its discussion on the proposed Payroll Expense Tax package (aka Tax on Corporate Payroll) on June 10, 2020. This tax package includes the following three bills:

1. [Council Bill \(CB\) 119772](#) – Tax
2. [CB 119773](#) – Interfund Loan
3. [CB 119774](#) – Spending Plan and Appropriation

This memo describes CB 119772 (Tax), as well as issues, proposed amendments and options for the Committee’s consideration. Central Staff summary and background memos are available via the [April 22](#) and [April 29](#) Select Committee agendas.

### **CB 119772 (Tax Bill)**

The proposed tax bill would:

- Raise \$500 million annually from a 1.3% tax on corporate payroll expense from non-exempt businesses with total annual Seattle payrolls greater than \$7 million; and
- Exempt the following businesses irrespective of size of payroll expense:
  - Non-profit organizations;
  - Educational employers;
  - Grocery stores;
  - Local government employers;
  - Entities for which the City does not have taxing authority, specifically,
    - federal government and its subsidiaries;
    - state government and its subsidiaries;
    - insurance businesses and their agents ([SMC 5.45.090](#));
    - businesses that only sell, manufacture, or distribute motor vehicle fuel ([RCW 82.38.080](#)); and
    - businesses that only sell or distribute liquor ([RCW 66.08.120](#)).
- Become Effective June 1, 2020. Estimated corporate tax liability in 2020 would total \$286.4 million, representing seven months of collection.

## **CB 119772: Issue Identification**

Issues identified to date, as well as proposed amendments by Councilmember Sawant and associated options discussed herein are not exhaustive. Additional amendment options may be identified during the Committee's review.

### **1. Technical and Clarifying Corrections**

CB 119772, as introduced on April 6, 2020, includes a June 1, 2020 effective date. However, the Committee's deliberation on the proposed tax package has extended beyond that date. Consequently, Amendment 1 (Attachment A) would be needed to revise the effective date to July 1, 2020 if this tax package advances. It is estimated that this tax would raise \$245.5 million over a period of six months (July through December 31, 2020) as opposed to \$286.4 million over a period of seven months.

#### Options:

1. No action.
2. Adopt Amendment 1.

### **2. Add, Remove or Modify Exemptions**

As noted earlier, the following businesses would be exempt from the tax:

- Businesses with total annual Seattle payroll below \$7 million;
- Non-profit organizations;
- Educational employers;
- Grocery stores;
- Local government employers; and
- Those entities for which the City does not have authority to tax, specifically:
  - federal government and its subsidiaries;
  - state government and its subsidiaries;
  - insurance businesses and their agents<sup>1</sup> ;
  - businesses that only sell, manufacture, or distribute motor vehicle fuel<sup>2</sup>; and,
  - businesses that only sell or distribute liquor<sup>3</sup>.

This list can be expanded, reduced, or redefined. Amendment 2 (Attachment B) would add consumer directed employers and home care agencies that receive Medicare funding to the list of exemptions. State law defines these two new categories of employers, as follows:

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<sup>1</sup> [SMC 5.45.090](#)

<sup>2</sup> [RCW 82.38.080](#)

<sup>3</sup> [RCW 66.08.120](#)

- Consumer directed employer: "... a private entity that contracts with the (State Department of Social and Health Services) to be the legal employer of individual providers for purposes of performing administrative functions. <sup>4</sup>
- Home care agency: "... a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence"<sup>5</sup>

Amendment 3 (Attachment C) would revise the bill's grocery store exemption. As introduced, the bill defines a grocery business as receiving 75% or more of its revenue from the sale of tax-exempt food. Amendment 3 would lower that threshold to a lower percentage. The percentage in the introduced amendment will be based on stakeholder feedback.

Options:

1. No action.
2. Adopt Amendment 2 to exempt from the tax consumer directed employers and home care agencies that receive Medicare funding.
3. Adopt Amendment 3 to lower the percent of total revenue from sales of tax-exempt food that is required to be categorized as a grocery store.
4. Adopt both Amendment 2 and Amendment 3.

**3. Revise Applicability to Alternate Business Structures**

As described above, the proposed bill exempts businesses with Seattle payrolls lower than \$7 million. The calculation of payrolls against that threshold would depend on the business structure. The [April 17, 2020 Central Staff memo](#) describes how the total payroll expense for the two alternate business structures would be calculated:

- Integrated enterprise: an organization that informally operates and advertises as a single business but is a collection of related and independently licensed businesses. Each independent business payroll would be measured against the exemption threshold, rather than the aggregate of these businesses; and,
- Franchise Business: an individual business that is granted "the right or license ...to market a company's goods or services in a particular territory"<sup>6</sup>. These business hold licenses independent from the larger regional, national or international company and would be treated as discrete businesses for the purpose of calculating the tax.

One option described in Amendment 4 (Attachment D) would modify the treatment of integrated enterprises such that the Seattle payroll for discrete businesses organized as integrated enterprises would be aggregated for purposes of calculating tax liability.

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<sup>4</sup> [RCW 74.39A.009\(7\)](#)

<sup>5</sup> [RCW 70.127.010\(7\)](#)

<sup>6</sup> <https://www.merriam-webster.com/dictionary/franchise>

Options:

1. No action.
2. Adopt Amendment 4 to define an integrated enterprise as a single business for calculating tax liability.

**Attachments:**

- A. Proposed Amendment 1
- B. Proposed Amendment 2
- C. Proposed Amendment 3
- D. Proposed Amendment 4

cc: Kirstan Arestad, Executive Director  
Dan Eder, Deputy Director

Amendment 1 to CB 119772

V1

**Amendment 1 to CB 119772:**

Sponsor: Technical amendment

Meeting: Select Budget Committee

Date: June 10, 2020

Description:

This would amend CB 119772 to change the effective date from June 1, 2020 to July 1, 2020.

Notes:

Double underlines indicate new language to be added.

~~Double strikethroughs indicate~~ language proposed to be removed.

**Amendments**

1. Amend Section 14 to Council Bill 119772, as follows:

Section 14. Effective date of tax. Sections 1 through 13 of this ordinance shall take effect on ~~June~~July 1, 2020.

Amendment 2 to CB 119772 – Corporate Payroll Expense Tax

V1

**Amendment 2 to CB 119772:**

Sponsor: Councilmember Sawant

Meeting: Select Budget Committee

Date: June 10, 2020

Description:

This would amend CB 119772 to exempt home care agencies from the corporate payroll expense tax imposed by the bill.

Notes:

Double underlines indicate new language to be added.

~~Double strikeouts indicate~~ language proposed to be removed.

**Amendments**

1. Amend Section 5.38.050 as shown:

**5.38.050 Exemptions from the tax on corporate payroll**

A. The following are exempt from the tax on corporate payroll:

1. Any business having payroll expense, as defined under subsection 5.38.020, of \$7,000,000 or less in the most recent complete calendar year.
2. Any business engaged in business in Seattle as a grocery business.
3. Any business having a formally recognized exemption from income tax pursuant to Sections 501(c), 501(d), or 401(a) of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, and 504 of the Internal Revenue Code of 1986, as amended.
4. Any individual who is an independent contractor for purposes of the business license tax under Section 5.45.090.S and whose compensation is included in the payroll expense of another business subject to the tax imposed by Section 5.38.030.

5. Any business engaged in business as a consumer directed employer as defined in RCW

74.39A.009.

6. Any business engaged in business as a home care agency as defined in RCW

70.127.010, licensed under RCW 70.127 and receiving funding under provisions of RCW 74.39A.310

57. Businesses that are preempted from taxation by cities pursuant to federal or state statutes or regulations, including, but not limited to, the following:

a. Insurance businesses and their agents as defined by RCW 48.01.050 and 48.17.010, respectively, and whose total revenue is exempt from the business license tax per Chapter 5.45.

b. Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.38.020 and exempted under RCW 82.38.080.

c. Businesses that only distribute or sell liquor as defined in RCW 66.04.010 and exempted in RCW 66.08.120.

d. Federal and state government agencies and any local governmental entity.

B. Beginning on January 1, 2022, and on January 1 of every year thereafter, the Director shall adjust the amount of the exemption in subsection 5.38.050.A.1 as follows:

1. The amount shall increase commensurate with the rate of growth of the prior year's June-to-June consumer price index (CPI-U) for the Seattle-Tacoma-Bellevue area as published by the United States Department of Labor;

2. If the annual change in the CPI-U is negative, no adjustment to the amount must be made; and

3. The amount calculated shall be rounded to the nearest whole dollar.

Amendment 3 to CB 119772

V1

**Amendment 3 to CB 119772:**

Sponsor: Councilmember Sawant

Meeting: Select Budget Committee

Date: June 10, 2020

Description:

This would amend CB 119772 to define a grocery business as a business that receives      percent of its total revenue from sale of tax-exempt food. The definition in the bill as introduced includes 75% as the threshold percentage.

Notes:

Double underlines indicate new language to be added.

~~Double strikethroughs indicate~~ language proposed to be removed.

**Amendments**

1. Amend Section 2 of Council Bill 119772, as follows:

Section 2. A new Chapter 5.38 is added to the Seattle Municipal Code as follows:

**Chapter 5.38 TAX ON CORPORATE PAYROLL**

**5.38.010 Administrative provisions**

All of the provisions contained in Chapter 5.55 shall have full force and application with respect to taxes imposed under the provisions of this Chapter 5.38 except as may be expressly stated to the contrary herein.

**5.38.020 Definitions**

The definitions contained in Chapter 5.30 shall be fully applicable to this Chapter 5.38 except as may be expressly stated to the contrary herein. The following additional definitions shall apply throughout this Chapter 5.38:



“Business” has the same meaning as that term is defined in SMC 5.30.020. Depending on the context, “business” may also mean a person engaging in business in Seattle.

“Compensation” means remuneration as that term is defined in RCW 50A.05.010, net distributions, or incentive payments, including guaranteed payments, whether based on profit or otherwise, earned for services rendered or work performed, whether paid directly or through an agent, and whether in cash or in property or the right to receive property. “Compensation” does not include payments to an owner of a pass-through entity that are not earned for services rendered or work performed, such as return of capital, investment income, or other income from passive activities.

“Employee” means any individual who performs work, labor, or personal services of any nature for compensation paid by a business. For purposes of this Chapter 5.38, the term “employee”:

1. Includes individuals who are members of limited liability companies, members of professional limited liability companies, partners, other owners of pass-through entities, and sole proprietors; and
2. Includes individuals who would be considered to be independent contractors for purposes of the business license tax under subsection 5.45.090.S.

“Grocery business” means:

1. A business whose primary business is making retail sales of food and food ingredients to consumers that are exempt from the retail sales tax under RCW 82.08.0293; and
2. A business whose primary business is making wholesale sales of food and food ingredients that will be exempt from the retail sales tax under RCW 82.08.0293 when resold by the purchaser.

For subsections (1) and (2) of this definition, “primary business” means that        percent of the gross income of the business for purposes of calculating the business license tax under Chapter 5.45 is attributable to that business activity.

“Local government entity” has the same meaning as that term is defined in RCW 4.96.010.

“Net distribution” means the draws from net income by any owner of a pass-through entity. Taxable distributions are limited by the amount of draws or net income for that owner, whichever is less. If the owner’s draw exceeds that individual’s net profit, the excess draw is a return of capital. A return of capital is not taxable because it is a liquidation of an owner’s assets.

“Pass-through entity” includes a trust, partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity.

“Payroll expense” means the compensation paid in Seattle to employees. Compensation is paid in Seattle to an employee if:

1. The employee is primarily assigned within Seattle;
2. The employee is not primarily assigned to any place of business for the tax period and the employee performs 50 percent or more of the employee’s service for the tax period in Seattle; or
3. The employee is not primarily assigned to any place of business for the tax period, the employee does not perform 50 percent or more of the employee’s service in any one city, and the employee resides in Seattle.

“Primarily assigned” means the business location of the taxpayer where the employee performs the employee’s duties.

“Remuneration” has the same meaning as that term is defined in RCW 50A.05.010.

“Tax on corporate payroll” means the payroll expense tax imposed by this Chapter 5.38.

“Taxpayer” means any person who engages in any business in Seattle or who performs any act for which a tax is imposed under this Chapter 5.38.

#### **5.38.030 Tax imposed—Rate**

A. A tax on corporate payroll is hereby levied upon and shall be collected from every person engaging in business within Seattle.

B. The amount of the tax on corporate payroll due shall be the payroll expense of the business for the tax period, subject to any deductions authorized under this Chapter 5.38, and multiplied by a rate of 1.30 percent.

C. The tax imposed by this Chapter 5.38 is levied on businesses. A business may not make any deductions from employees’ compensation to pay for this tax.

#### **5.38.040 Allocation and apportionment**

A. The Director may adopt procedures to allow taxpayers who have payroll expenses consisting of work done and services provided within and outside Seattle to use a representative test period or conduct a survey based on factual data to arrive at a formula with which to calculate the percentage of payroll expense attributable to Seattle. Any formula so established will be subject to review and correction by the Director.

B. If the payroll expense as defined in Section 5.38.020 does not fairly represent the extent of the compensation paid by the taxpayer to its employees that is attributable to work performed or services rendered in Seattle, the taxpayer may petition the Director for, or the Director may require, the employment of another method to effectuate an equitable allocation and apportionment.

C. Nothing in this Chapter 5.38 shall be construed as requiring the payment of any tax for engaging in business when such payment would be in violation of the Constitution or a statute of the United States or of the Constitution or a statute of the State of Washington. Notwithstanding anything to the contrary herein, if imposition of the City’s tax would place an undue burden upon interstate

commerce or violate other constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City's tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

D. Businesses engaging temporary or contracted employees shall report and pay the tax on the payroll expense of such temporary or contracted employees, whether or not they are from an employment agency.

### **5.38.050 Exemptions from the tax on corporate payroll**

A. The following are exempt from the tax on corporate payroll:

1. Any business having payroll expense, as defined under subsection 5.38.020, of \$7,000,000 or less in the most recent complete calendar year.
2. Any business engaged in business in Seattle as a grocery business.
3. Any business having a formally recognized exemption from income tax pursuant to Sections 501(c), 501(d), or 401(a) of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, and 504 of the Internal Revenue Code of 1986, as amended.
4. Any individual who is an independent contractor for purposes of the business license tax under Section 5.45.090.S and whose compensation is included in the payroll expense of another business subject to the tax imposed by Section 5.38.030.
5. Businesses that are preempted from taxation by cities pursuant to federal or state statutes or regulations, including, but not limited to, the following:
  - a. Insurance businesses and their agents as defined by RCW 48.01.050 and 48.17.010, respectively, and whose total revenue is exempt from the business license tax per Chapter 5.45.
  - b. Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.38.020 and exempted under RCW 82.38.080.

c. Businesses that only distribute or sell liquor as defined in RCW 66.04.010 and exempted in RCW 66.08.120.

B. Beginning on January 1, 2022, and on January 1 of every year thereafter, the Director shall adjust the amount of the exemption in subsection 5.38.050.A.1 as follows:

1. The amount shall increase commensurate with the rate of growth of the prior year's June-to-June consumer price index (CPI-U) for the Seattle-Tacoma-Bellevue area as published by the United States Department of Labor;

2. If the annual change in the CPI-U is negative, no adjustment to the amount must be made; and

3. The amount calculated shall be rounded to the nearest whole dollar.

**5.38.060 Tax on corporate payroll—When due**

The tax on corporate payroll imposed by this Chapter 5.38 shall be due and payable in accordance with Section 5.55.040. The tax on corporate payroll shall be due and payable on an annual basis for 2020 and the measure of the tax shall be prorated based on the effective date of the tax. For years subsequent to 2020, the tax on corporate payroll shall be due quarterly. Notwithstanding Section 5.55.040, the tax due for 2020 and 2021 shall be payable on the same date that the tax payment for the fourth quarter of 2021 is due. The Director may use discretion to assign businesses to an annual reporting period. Forms for such filings shall be prescribed by the Director. Persons discontinuing their business activities in Seattle shall report and pay the tax on corporate payroll at the same time as they file their final business license tax return under Chapter 5.45.

**5.38.070 Tax in addition to other license fees or taxes**

The tax imposed herein shall be in addition to any license fee or tax imposed or levied under any other law, statute, or ordinance whether imposed or levied by the City, the State, or other governmental entity or political subdivision.

**5.38.080 Tax part of operating overhead**

It is not the intention of this Chapter 5.38 that the taxes herein levied upon persons engaging in business be construed as taxes upon the customers of such businesses, but that taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the operating overhead or cost of doing business of such persons.

**5.38.090 Rules and regulations**

The Director shall adopt, publish, and enforce rules and regulations not inconsistent with this Chapter 5.38 for the purpose of carrying out the provisions of this Chapter 5.38, including but not limited to rules to determine the payroll expense attributable to work performed and services rendered by employees in Seattle.

Amendment 4 to CB 119772

V1

**Amendment 4 to CB 119772:**

Sponsor: Councilmember Sawant

Meeting: Select Budget Committee

Date: June 5, 2020

Description:

This would amend CB 119772 to define two or more businesses informally organized as an integrated business enterprise as a single business for the purpose of calculating and measuring payroll expense against the payroll expense tax's \$7 million threshold.

Notes:

Double underlines indicate new language to be added.

~~Double strikethroughs indicate~~ language proposed to be removed.

**Amendments**

1. Amend Section 2 of Council Bill 119772, as follows:

Section 2. A new Chapter 5.38 is added to the Seattle Municipal Code as follows:

**Chapter 5.38 TAX ON CORPORATE PAYROLL**

**5.38.010 Administrative provisions**

All of the provisions contained in Chapter 5.55 shall have full force and application with respect to taxes imposed under the provisions of this Chapter 5.38 except as may be expressly stated to the contrary herein.

**5.38.020 Definitions**

The definitions contained in Chapter 5.30 shall be fully applicable to this Chapter 5.38 except as may be expressly stated to the contrary herein. The following additional definitions shall apply throughout this Chapter 5.38:

“Business” has the same meaning as that term is defined in SMC 5.30.020. Depending on the context, “business” may also mean a person engaging in business in Seattle.

“Compensation” means remuneration as that term is defined in RCW 50A.05.010, net distributions, or incentive payments, including guaranteed payments, whether based on profit or otherwise, earned for services rendered or work performed, whether paid directly or through an agent, and whether in cash or in property or the right to receive property. “Compensation” does not include payments to an owner of a pass-through entity that are not earned for services rendered or work performed, such as return of capital, investment income, or other income from passive activities.

“Employee” means any individual who performs work, labor, or personal services of any nature for compensation paid by a business. For purposes of this Chapter 5.38, the term “employee”:

1. Includes individuals who are members of limited liability companies, members of professional limited liability companies, partners, other owners of pass-through entities, and sole proprietors; and
2. Includes individuals who would be considered to be independent contractors for purposes of the business license tax under subsection 5.45.090.S.

“Grocery business” means:

1. A business whose primary business is making retail sales of food and food ingredients to consumers that are exempt from the retail sales tax under RCW 82.08.0293; and
2. A business whose primary business is making wholesale sales of food and food ingredients that will be exempt from the retail sales tax under RCW 82.08.0293 when resold by the purchaser.

For subsections (1) and (2) of this definition, “primary business” means that 75 percent of the gross income of the business for purposes of calculating the business license tax under Chapter 5.45 is attributable to that business activity.



“Integrated business enterprise” means separate business entities that are organized so that a separate business entity controls the operation of one or more other business entities. The factors to consider to determine control include, but are not limited to:

1. Degree of interrelation between the operations of multiple entities;

2. Degree to which the entities share common management;

3. Centralized control of labor relations; and

4. Degree of common ownership or financial control over the entities.

All business organized into an integrated business enterprise are considered “members” of that integrated business enterprise.

“Local government entity” has the same meaning as that term is defined in RCW 4.96.010.

“Net distribution” means the draws from net income by any owner of a pass-through entity.

Taxable distributions are limited by the amount of draws or net income for that owner, whichever is less. If the owner’s draw exceeds that individual’s net profit, the excess draw is a return of capital. A return of capital is not taxable because it is a liquidation of an owner’s assets.

“Pass-through entity” includes a trust, partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended, limited liability company, limited liability partnership, professional corporation, and any other person or entity which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of such person or entity.

“Payroll expense” means the compensation paid in Seattle to employees. Compensation is paid in Seattle to an employee if:

1. The employee is primarily assigned within Seattle;

2. The employee is not primarily assigned to any place of business for the tax period and the employee performs 50 percent or more of the employee's service for the tax period in Seattle; or

3. The employee is not primarily assigned to any place of business for the tax period, the employee does not perform 50 percent or more of the employee's service in any one city, and the employee resides in Seattle.

"Primarily assigned" means the business location of the taxpayer where the employee performs the employee's duties.

"Remuneration" has the same meaning as that term is defined in RCW 50A.05.010.

"Tax on corporate payroll" means the payroll expense tax imposed by this Chapter 5.38.

"Taxable integrated business enterprise" means an integrated business enterprise whose members have a combined having payroll expense, as defined under subsection 5.38.020, of more than \$7,000,000 in the most recent complete calendar year.

"Taxpayer" means any person who engages in any business in Seattle or who performs any act for which a tax is imposed under this Chapter 5.38.

#### **5.38.030 Tax imposed—Rate**

A. A tax on corporate payroll is hereby levied upon and shall be collected from every person engaging in business within Seattle.

B. The amount of the tax on corporate payroll due shall be the payroll expense of the business for the tax period, subject to any deductions authorized under this Chapter 5.38, and multiplied by a rate of 1.30 percent.

C. The tax imposed by this Chapter 5.38 is levied on businesses. A business may not make any deductions from employees' compensation to pay for this tax.

#### **5.38.040 Allocation and apportionment**

A. The Director may adopt procedures to allow taxpayers who have payroll expenses consisting of work done and services provided within and outside Seattle to use a representative test period or conduct a survey based on factual data to arrive at a formula with which to calculate the percentage of payroll expense attributable to Seattle. Any formula so established will be subject to review and correction by the Director.

B. If the payroll expense as defined in Section 5.38.020 does not fairly represent the extent of the compensation paid by the taxpayer to its employees that is attributable to work performed or services rendered in Seattle, the taxpayer may petition the Director for, or the Director may require, the employment of another method to effectuate an equitable allocation and apportionment.

C. Nothing in this Chapter 5.38 shall be construed as requiring the payment of any tax for engaging in business when such payment would be in violation of the Constitution or a statute of the United States or of the Constitution or a statute of the State of Washington. Notwithstanding anything to the contrary herein, if imposition of the City's tax would place an undue burden upon interstate commerce or violate other constitutional requirements, a taxpayer shall be allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City's tax to as much of the taxpayer's activities as may be subject to the City's taxing authority.

D. Businesses engaging temporary or contracted employees shall report and pay the tax on the payroll expense of such temporary or contracted employees, whether or not they are from an employment agency.

### **5.38.050 Exemptions from the tax on corporate payroll**

A. The following are exempt from the tax on corporate payroll:

1. Any business, except members of a taxable integrated business enterprise, having payroll expense, as defined under subsection 5.38.020, of \$7,000,000 or less in the most recent complete calendar year.

2. Any business engaged in business in Seattle as a grocery business.

3. Any business having a formally recognized exemption from income tax pursuant to Sections 501(c), 501(d), or 401(a) of the Internal Revenue Code of 1986, as amended, as qualified by Sections 502, 503, and 504 of the Internal Revenue Code of 1986, as amended.

4. Any individual who is an independent contractor for purposes of the business license tax under Section 5.45.090.S and whose compensation is included in the payroll expense of another business subject to the tax imposed by Section 5.38.030.

5. Businesses that are preempted from taxation by cities pursuant to federal or state statutes or regulations, including, but not limited to, the following:

a. Insurance businesses and their agents as defined by RCW 48.01.050 and 48.17.010, respectively, and whose total revenue is exempt from the business license tax per Chapter 5.45.

b. Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.38.020 and exempted under RCW 82.38.080.

c. Businesses that only distribute or sell liquor as defined in RCW 66.04.010 and exempted in RCW 66.08.120.

B. Beginning on January 1, 2022, and on January 1 of every year thereafter, the Director shall adjust the amount of the exemption in subsection 5.38.050.A.1 as follows:

1. The amount shall increase commensurate with the rate of growth of the prior year's June-to-June consumer price index (CPI-U) for the Seattle-Tacoma-Bellevue area as published by the United States Department of Labor;

2. If the annual change in the CPI-U is negative, no adjustment to the amount must be made; and

3. The amount calculated shall be rounded to the nearest whole dollar.

#### **5.38.060 Tax on corporate payroll—When due**

The tax on corporate payroll imposed by this Chapter 5.38 shall be due and payable in accordance with Section 5.55.040. The tax on corporate payroll shall be due and payable on an annual basis for 2020 and the measure of the tax shall be prorated based on the effective date of the tax. For years subsequent to 2020, the tax on corporate payroll shall be due quarterly. Notwithstanding Section 5.55.040, the tax due for 2020 and 2021 shall be payable on the same date that the tax payment for the fourth quarter of 2021 is due. The Director may use discretion to assign businesses to an annual reporting period. Forms for such filings shall be prescribed by the Director. Persons discontinuing their business activities in Seattle shall report and pay the tax on corporate payroll at the same time as they file their final business license tax return under Chapter 5.45.

#### **5.38.070 Tax in addition to other license fees or taxes**

The tax imposed herein shall be in addition to any license fee or tax imposed or levied under any other law, statute, or ordinance whether imposed or levied by the City, the State, or other governmental entity or political subdivision.

#### **5.38.080 Tax part of operating overhead**

It is not the intention of this Chapter 5.38 that the taxes herein levied upon persons engaging in business be construed as taxes upon the customers of such businesses, but that taxes shall be levied upon, and

collectible from, the person engaging in the business activities herein designated and that such taxes or fees shall constitute a part of the operating overhead or cost of doing business of such persons.

**5.38.090 Rules and regulations**

The Director shall adopt, publish, and enforce rules and regulations not inconsistent with this Chapter 5.38 for the purpose of carrying out the provisions of this Chapter 5.38, including but not limited to rules to determine the payroll expense attributable to work performed and services rendered by employees in Seattle.