

CORPORATE DIRECTOR FEES B&O TAX PAYMENT AGREEMENT

I. Recitals

This agreement is made between _____, (the “Corporation”), of _____, Account ID _____, and the State of Washington, Department of Revenue, (the “**Department**”).

Effective July 1, 2010, corporate directors who have substantial nexus with the state of Washington are responsible for remitting Business and Occupation (B&O) tax on their gross income received from services rendered as a corporate director (director fees). *See* 2010 WASH. LAWS, Sp. Sess. Ch. 23, §§ 701-702. The Department seeks to provide a cost effective and efficient method for collection of the Washington B&O Tax from corporate directors. For the benefit of its corporate directors, the Corporation also seeks to assist its corporate directors in complying with their Washington B&O tax responsibilities.

For the benefit of all of the parties, and in order to simplify and make more efficient the administration and collection of B&O tax imposed by the State of Washington on corporate directors, the parties agree as follows:

II. Payment of B&O Tax by the Corporation on behalf of its Corporate Directors

- 1. Payment Obligation.** For tax periods beginning _____, the Corporation will assume responsibility for remitting to the Department B&O tax on behalf of all or certain of its corporate directors for tax liability accrued by reason of serving as a member of its board of directors.
- 2. Apportionment.** Corporate directors who are taxable on their director fees in Washington State and another state may be entitled to report their taxable income for B&O purposes on an apportioned basis. A corporate director is taxable in another state if the person is either:
 - Subject to tax in another state on his or her director fee income, or
 - Another state has jurisdiction to tax that person’s director fee income under this state’s substantial nexus standards, even though that state does not actually impose such a tax.

Refer to WAC 458-20-19402 for details on the apportionment method applicable to the apportionable income of corporate directors.

3. **Small Business B&O Tax Credit.** Corporate directors may be entitled to a small business tax credit under RCW 82.04.4451. When calculating the B&O tax liability of its corporate directors, the Corporation will make reasonable efforts to claim, on its directors' behalf, any small business credit that they may be entitled to. To determine whether a corporate director is entitled to a small business tax credit, the Corporation may need to determine whether the corporate director is personally liable for B&O taxes for serving as the director of any other corporation or for engaging in business activities other than as a corporate director. If a corporate director is personally liable for B&O taxes other than by reason of serving on the Corporation's board of directors, the Corporation may rely on information provided by the director. Alternatively, the Corporation may contact the Department for assistance in determining the amount of small business tax credit, if any, a particular director is entitled to. For additional information on the small business B&O tax credit, refer to WAC 458-20-104.
4. **Reporting Frequency.** The Corporation will be issued a separate tax reporting account to report its directors' fees. The Corporation will report its directors' fees on a quarterly reporting frequency, unless both parties agree in writing to a different reporting frequency.

III. Annual Listing

Obligation to file Annual Listing: In addition to the other reporting requirements contained herein, within sixty days of execution of this agreement by both parties, the Corporation will provide the Department with a list of all of its corporate directors on behalf of whom the Corporation intends to remit B&O tax to the Department in that calendar year. At the close of each calendar year thereafter, the Corporation will provide the Department with a list of all of the corporate directors on behalf of whom the Corporation remitted B&O tax to the Department in the preceding calendar year. Each listing must contain the name and address of each corporate director. In addition, each annual listing must contain:

- The director fees earned by each director on behalf of whom the Corporation remitted B&O tax to the Department during the preceding calendar year, and
- The amount of B&O tax paid by the Corporation to the Department on behalf of each director on account of such director fees.

Director fees subject to B&O tax include all compensation received in any form for services rendered as a corporate director including, but not limited to, fees, bonuses, the value of stock options or property received in exchange for services, and all amounts recovered for expenses incurred in connection with such services. *See* 2010 WASH. LAWS, Sp. Sess. Ch. 23, §§ 701.

The annual listings must be submitted to the Department by January 31st of the year following the calendar year in which the Corporation remitted B&O tax to the

Department on behalf of its corporate directors. The listings may be mailed to Taxpayer Account Administration, PO Box 47476, Olympia WA 98504-7476. They may be appended to the filed excise tax return, or they may be submitted electronically as an attachment to a secure message.

The Department may request other information to determine whether the Corporation remitted the full amount of B&O tax due by its corporate directors in connection with the director fees paid by the Corporation to such directors.

IV. Terms and Conditions Applicable to the Payment of B&O Tax on behalf of the Corporate Directors of the Corporation

- A. Tax reporting and payment.** The Corporation will, in the manner and frequency required by the Department, report to the Department the amount of B&O tax to be paid on behalf of its corporate directors. The Corporation will remit the full amount of the tax to the Department. The Department will not require any corporate director to register with the Department or remit B&O tax so long as the full amount of the tax owed by the corporate director has been remitted to the Department pursuant to this Agreement, and the corporate director engages in no other business activity that would require the director to register with the Department. Nothing in this contract alters the Department's authority to apply or exercise the provisions in chapter 82.32 RCW as it exists or may hereafter be amended.
- B. Limitation on Liability.** The Corporation is not a guarantor of any corporate director's payment of his or her tax obligations. The Corporation will be liable to the Department only to the extent it has actually collected the B&O tax from a corporate director. The Corporation will not be liable to the Department for any tax collection, reporting, or remittance obligations on behalf of its corporate directors beyond those specifically set forth in this Agreement. The Corporation agrees to use its best efforts to remit the full amount of Washington B&O tax due on behalf of its corporate directors. The Corporation will not be liable for any unpaid tax liability of its corporate directors, unless such unpaid taxes were collected by the Corporation from its corporate directors.
- C. Release of Corporate Directors.** Any corporate director who shows to the Department's satisfaction that he or she has paid to the Corporation the full amount of Washington B&O tax due on his or her director fees will be relieved of any further B&O tax liability in connection with the same director fees. This Agreement does not limit the Department's ability to collect B&O taxes from any corporate director to the extent he or she cannot show to the Department's satisfaction that the full amount of taxes were remitted to the Corporation or the Department. The Corporation will notify its corporate directors of their potential liability for B&O taxes on their director fees, when the full amount of such taxes

are not collected by the Corporation and remitted to the Department on behalf of such directors.

VI. Terms and Conditions Applicable to the Entire Agreement

- A. Term.** This agreement is effective upon signing and will remain in full effect and will be binding on the parties until terminated by any party. Any party may terminate this agreement on at least sixty (60) days advance written notice, unless the parties agree in writing to a shorter notice period.
- B. Assignment.** This agreement is binding upon and inures to the benefit of the Department and the Corporation and their respective successors and assigns.
- C. Disclosure of Reporting Agreement.** The Corporation authorizes the Department to disclose to anyone identifying themselves as current or potential corporate directors (or their lawyers, accountants, or other authorized representatives), that the Corporation has entered into this tax payment agreement with the Department. The Department may inform such persons of the general ramifications of this agreement, and/or direct such persons to contact designated persons at the Corporation's offices.
- D. Changes in Law.** The Department will notify the Corporation, by its normal means of taxpayer notification, of any substantive, administrative or procedural changes affecting the Corporation's responsibility for collecting and remitting the B&O tax pursuant to this agreement, including but not limited to changes in rates, exemptions, and filing dates.
- E. Notices.** Any notice to a party required under this agreement must be in writing and must be personally delivered or sent by mail to the party at the following addresses:

State of Washington
Department of Revenue
Taxpayer Account Administration
PO Box 47476
Olympia, WA 98504-7476

- F. Scope.** This agreement applies only to the B&O tax imposed on director fees and does not impact any other tax. This agreement only applies to those of its corporate directors on whose behalf the Corporation has entered this agreement.

G. Full Authority. By executing this agreement, both the Corporation and the Department represent and warrant that they have full power and authority to enter into this agreement.

H. Integration. This agreement represents the entire agreement between the parties and no other statements or representations shall be deemed a part thereof.

I. Modification. This agreement may not be modified except by a written addendum or new agreement in writing signed by both parties.

J. Waiver. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless it complies with the modification clause above.

K. Plurals, Pronouns. Whenever in this agreement words, including pronouns, are used in the masculine, they must be read in the feminine or neuter whenever they would so apply and vice versa, and words in the agreement that are singular must be read as plural whenever the latter would so apply and vice versa.

L. Breach of Agreement. If the Corporation materially breaches any provision of this agreement or if the facts reported to the Department in the Annual Listing are materially different from facts subsequently established by the Department, this agreement is null and void and the Department may take any steps necessary to ensure compliance with the Revised Code of Washington.

M. Forum. No suit, action or proceedings of any kind, type, or nature whatsoever arising out of or in any way relating to this agreement will be commenced by the Corporation other than in the Superior Court of Thurston County, Washington.

N. Choice of Law. This agreement is being entered into and will be construed and interpreted in accordance with the laws of the state of Washington.

IN WITNESS WHEREOF, the parties have executed this six (6) page agreement

Individual Contact Information for Excise Tax Returns

Name: _____

Title: _____

Address: _____

City, State, Zip: _____

Phone Number: _____

Desired filing frequency (circle one):

Annual

Quarterly

Date: _____

Corporation: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Department of Revenue

By: _____

Print Name: _____

Title: Assistant Director