Clerk File No. 308773

**Clerk File No. 308773**
Department of Executive Administration Director's Rules, Implementing Seattle Business Tax Ordinance, effective May 15, 2007.

**The City of Seattle – Legisl**

**Clerk File sponsored by:**

**Committee**

| Date | Recommendation |
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This file is complete and ready for present

**Full Coun**

| Date | Decision |
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**Related Legislation File:**

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|---|---|
| Date Introduced and Referred: | To: (committee): |
| Date Re-referred: | To: (committee): |
| Date Re-referred: | To: (committee): |
| Date of Final Action: | Disposition: |

5.15.06
**Date Filed with City Clerk**

**By**

# The City of Seattle – Legislative Department

## Clerk File sponsored by: _____

## Committee Action:

Date Recommendation Vote

This file is complete and ready for presentation to Full Council. _____

## Full Council Action:

Date Decision Vote

City Clerk

CB308173

FILED
CITY OF SEATTLE
2007 MAY 15 PM 2:07
CITY CLERK

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-000

**Seattle Rule 5-000** **Rules Adopted.**

Pursuant to the Seattle Municipal Code (SMC) Section 5.55.165, the Director of the Department of Finance, acting on behalf of the City of Seattle, hereby adopts the following Business Tax Rules to implement Title 5 of the Seattle Municipal Code. These rules are designed to educate, inform, and assist taxpayers in completing applications, filing tax returns, determining the amount of tax due, and meeting all other taxpayer requirements established under Title 5 of the Seattle Municipal Code. In the event of a conflict between a rule adopted herein, and an ordinance of the City of Seattle, the ordinance prevails.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-000**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

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CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 25, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

# S .te of Washington, King Co. .ty

## City of Seattle

**NOTICE OF PROPOSED RULE MAKING HEARING**

**AND OPPORTUNITY TO COMMENT**

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

Seattle Rule 5-000 Rules adopted.

Seattle Rule 5-002 Business license requirements.

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Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(205880)

# THE CITY OF SEATTLE

## DIRECTOR'S RULE

## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE

RULE 5-002

**Seattle Rule 5-002** **Business License Requirements.**

(1) **Persons required to obtain a business license.** Every person, whether located inside or outside the City of Seattle engaged in any business activity in the City shall apply for and obtain a business license, unless exempt from licensing and tax requirements pursuant to SMC 5.45.090 and SMC 5.45.060, or the activity falls within the safe harbor provisions provided under SMC 5.30.030 B 4 in which certain de minimus business activities are allowed without having to obtain a business license or pay business license taxes. (See Seattle Rule 5-043 Engaging in business.)

(a) Small business license. Persons engaged in business in Seattle, with worldwide gross income of Twenty Thousand ($20,000) or less, shall pay a license fee of $45.

(b) Standard Business license. All other businesses, other than small businesses as defined in subsection (a) above shall pay a license fee of $90.

(c) Proration of license fees. The license fee for businesses beginning on or after July 1st of any license year will be prorated at fifty percent (50%) of the license fee in (a) or (b) above.

(2) **License Application and Renewal.**

(a) Application. A person shall apply to the Director of the Department of Executive Administration on a form provided by the Department. The license fee as provided in section 1 above shall accompany the application.

(b) Display of business license. The licensee shall post the business license conspicuously at all times in the place of business for which it is issued.

(c) Change in location. If the licensee changes the place of business, the licensee shall return the business license to the Director and a new license shall be issued free of charge for the new place of business.

(d) Lost or damaged license. If any business license is lost or destroyed a new license will be issued free of charge upon the taxpayer's request.

(e) License renewal. Business licenses are valid until December 31st of each calendar year and must be renewed on or before the date of the expiration of such license. Any licensee who fails to renew the license on or prior to the expiration date shall be subject to penalties for noncompliance as set forth under Section 5 of this rule.

(3) **Multiple locations – branch licenses.** A separate business license is required for each location at which business is transacted with the public. A separate license fee, as required by SMC 5.55.030 B, shall accompany each application for a branch license. A branch license is required for branch locations outside of the city of Seattle if that branch engages in business activity within the city of Seattle.

Tax reporting – multiple locations. A licensee shall report all tax liability on a single business license tax return. A taxpayer desiring to file a separate tax return covering a branch location, or a specific construction contract, may request from the Director a separate tax reporting form for each location; however, pursuant to SMC 5.55.040 D, any and all thresholds for determining tax liability will be based upon business activities of the entire entity, including all business locations.

(4) **Penalties for noncompliance.** Failure to timely obtain or renew a business license and pay the applicable fee may result in a suspension or revocation of the business license, civil penalties and/or a criminal citation being issued.

(a) Failure to renew license by the due date. SMC 5.55.030 E imposes monetary penalties for failure to renew a license by the due date as follows:

(i) Ten Dollars ($10.00) if not received on or before the last date of the month following the due date; or

(ii) Twenty Dollars ($20.00) if not received on or before the last day of the second month following the due date.

(b) Failure to obtain a business license. In addition to the penalties imposed by subsection 4 (a), any person who fails to obtain a business license prior to engaging in any taxable business activity is guilty of a gross misdemeanor punishable in accordance with Title 12A of the Seattle Municipal Code.

(c) Suspension or revocation of license. The Director may suspend or revoke a business license pursuant to SMC 5.55.230 (Suspension or Revocation of Business License). See Rule 5-003 for procedures pertaining to business license suspension or revocation. Any person, including an officer of a corporation, convicted of continuing to engage in business after the revocation of a license shall be guilty of a gross misdemeanor and punishable by a fine not to exceed Five Thousand Dollars ($5,000), or imprisonment not to exceed one (1) year, or by both fine and imprisonment in accordance with Title 12A of the Seattle Municipal Code.

(5) **Taxpayer Accounts.** An account is opened for each business licensee. Once an account is opened, it shall be presumed that a taxpayer is engaged in business in Seattle until the taxpayer closes the account. As long as a taxpayer's account remains open, the taxpayer is required to file tax returns and to renew its business license.

(a) To Close an Account. A taxpayer may close its account either by filing a tax return clearly and conspicuously marked "final return," or by submitting a request in writing to the Director to close the account.

(b) To Reactivate an Account. A person resuming business in Seattle may request that its account be reactivated. A person who has not engaged in business in the City of Seattle for at least twelve consecutive (12) months may reactivate a closed account without a penalty for late payment if payment of the license fee accompanies the application for reinstatement. (A person reactivating a license within 12 months of closing its account may be liable for delinquent license fees and penalties for late payment.)

(6) **Use of another person's business license prohibited.** No person to whom a business license has been issued pursuant to SMC 5.55.030 shall suffer or allow any other person for whom a separate license is required to operate under or display his or her license; nor shall such other person operate under or display such license.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-002**

## DIRECTOR'S CERTIFICATION

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DATED this 14TH day of May, 2007.

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# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

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Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

S te of Washington, King Co ty

# City of Seattle

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## AND OPPORTUNITY TO COMMENT

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-007

CITY CLERK

**Seattle Rule 5-007** **Penalties.**

(1) **Penalties.** Various penalties apply as a result of the failure to correctly or accurately compute and report the proper tax liability, or to timely pay the tax. More than one penalty may apply and some penalties may be cumulative. Pursuant to RCW 35.102 the Director must impose the same penalty provisions as those contained in RCW 82.32.090. SMC 5.55.110 codifies the various penalty provisions contained in RCW 82.32.090 as listed in the table below.

The penalty types and rates addressed in this subsection are:

| **Penalty Type** – Description | **Penalty Rate** | **See subsections of this rule listed below.** |
|---|---|---|
| **Late payment of a return** - Five percent added when payment is not received by the due date, and increases if the tax due remains unpaid. | 5/15/25% | (1)(a) |
| **Unregistered taxpayer** - Five percent added against unpaid tax when the Director discovers a taxpayer who has taxable activity but is not registered. | 5% | (1)(b) |
| **Substantially Underpaid Deficiency Assessment** - Five percent added when: (i) a notice of underpayment or tax assessment is issued by the Director (ii) the taxpayer has paid less than eighty percent; and (iii) the amount of underpayment is at least One Thousand Dollars. This penalty also increases if the tax due remains unpaid. | 5/15/25% | (1)(c) |
| **Issuance of a Notice of Violation or Criminal Complaint** - Ten percent added when a notice of violation or criminal complaint is issued to collect unpaid tax. | 10% | (1)(d) |
| **Disregard of specific written instructions** - Ten percent added when the Director has provided specific, written reporting instructions and tax is underpaid because the instructions are not followed. | 10% | (1)(e) |
| **Evasion** – Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact. | 50% | (1)(f) |

**Nonassessable and assessable penalties.** Nonassessable penalties are penalties that the law imposes automatically when the facts giving rise to them occur. There is no right to contest the imposition of a nonassessable penalty. By contrast, assessable penalties must be assessed by the Director within the statute of limitations for assessments and taxpayers have the right to contest the assessment in the same manner as any other assessment, such as taxes. Penalties in 1 (a) through (d) are nonassessable penalties. Penalties in 1 (e) and (f) are assessable penalties.

(a) Late payment of a return. SMC 5.55.110 A imposes a five percent penalty if the tax due on a taxpayer's return is not paid by the due date. A fifteen percent penalty is imposed if the tax due is not paid on or before the last day of the month following the due date, and a twenty-five percent penalty is imposed if the tax due is still not paid on or before the last day of the second month following the due date. The minimum penalty for late payment is five dollars.

Various sets of circumstances can affect how the late payment of a return penalty is applied. See (a)(i) and (ii) of this subsection for some of the most common circumstances.

(i) *Will I avoid the penalty if I file my return without the payment?* The Director may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. Failure to file the return can result in the issuance of a notice of underpayment (NOU) or an assessment for the actual, or an estimated, amount of unpaid tax. Any NOU or assessment issued will include a late payment penalty starting at five percent, which will increase the longer tax remains unpaid. If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) *I didn't license my business with the Director when I started it, and now I think I was supposed to be paying taxes! What should I do?* You should fill out and send in a business license application to get your business licensed. It is important for you to license before the department identifies you as an unlicensed taxpayer and contacts you about your business activities. Except as noted below, if a person engages in taxable activities while unlicensed, but then licenses prior to being contacted by the department, the license is considered voluntary. When a person voluntarily licenses, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unlicensed.

(A) However, even if the person has voluntarily licensed as explained above, the late payment of return penalty will apply if the person:

(1) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

(2) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.

(B) Even though circumstances, such as those listed in (5)(a)(iii)(A) above, may warrant retention of the late payment of return penalty, a person who has voluntarily licensed will not be subject to the unlicensed taxpayer penalty (see subsection (b) below).

(b) Unlicensed taxpayer. SMC 5.55.110 D imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily license prior to being contacted by the Director. "Voluntarily license" means to properly complete and submit a business license application before any contact from the City of Seattle with respect to licensing or paying taxes.

(c) Substantially underpaid deficiency assessment. SMC 5.55.110 B adds a five percent deficiency penalty to an assessment if the Director determines that any tax has been "substantially underpaid," as defined below.

As used in this section, "*substantially underpaid*" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the Director to be due for all taxes contained in SMC chapters 5.35, 5.37, 5.40, 5.45, 5.48, and 5.52, included in, and for the entire period of time covered by, the Director's examination, and the amount of underpayment is at least one thousand dollars.

If payment of the tax amount due and the five percent deficiency penalty due is not received by the due date specified in the notice, or any extension thereof, the deficiency penalty shall be increased to fifteen percent of the amount of the tax owing; and if payment of the tax amount due and the fifteen percent deficiency penalty due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, the penalty shall be increased to twenty-five percent of the amount of the tax due. No penalty so added shall be less than five dollars.

(d) Issuance of a notice of violation or criminal complaint. If the Director issues a notice of violation or criminal complaint pursuant to SMC 5.55.110 C for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ten percent of the amount of the tax due, but not less than ten dollars.

(e) Disregard of specific written instructions. If the Director finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions pursuant to SMC 5.55.110 E.

(i) A taxpayer is considered to have received specific written instructions when the Director has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in the imposition of this penalty. The specific written instructions may be given as a part of a

NOU, tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the Director has not issued its final instructions or decision.

(ii) The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.

(f) Evasion. If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax determined by the Director to be due will be added. The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The Director has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence. The evasion penalty only applies to the specific taxes that a taxpayer intended to evade. To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid.

(2) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:

(a) The penalties imposed for the late payment of a return, unlicensed taxpayer, substantial underpayment assessment, and issuance of a notice of violation or criminal complaint (see subsection (1)(a) through (d) of this rule) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax.

(b) The Director may impose either the evasion penalty (subsection (1)(f) of this rule) or the penalty for disregarding specific written instructions (subsection (1)(e) of this rule), but may not impose both penalties on the same tax.

Effective: May 15, 2007

Supersedes rule adopted July 15, 2005.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-007**

## DIRECTOR'S CERTIFICATION

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DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

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JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 25, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington,
residing in Seattle

# State of Washington, King County

## City of Seattle

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PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue - Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-008

**Seattle Rule 5-008** **Recordkeeping requirements.**



(1) **Introduction.** This rule defines the requirements for the maintenance and retention of books, records, and other sources of information. It also addresses these requirements where all or a part of the taxpayer's books and records are received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

(2) **Definitions.** For purposes of this rule the following definitions will apply:

(a) "Database management system" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(b) "Electronic data interchange" or "EDI technology" means the computer-to-computer exchange of business transactions in a standardized structured electronic format.

(c) "Hard copy" means any documents, records, reports or other data printed on paper.

(d) "Machine-sensible record" means a collection of related information in any electronic format (e.g., database management systems, EDI technology, automated data process systems, etc.). Machine-sensible records do not include hard-copy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche, or storage-only imaging systems.

(e) "Records" means all books, data, documents, reports, or other information, including those received, created, maintained, or generated through various computer, electronic, and/or imaging processes and systems.

(f) "Storage-only imaging system" means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hard copy or as an optical image.

(3) **Recordkeeping requirements-General.**

(a) Every taxpayer liable for a tax or fee imposed under Seattle Municipal Code Title 5 must keep complete and adequate records from which the Director may determine any tax liability for such taxpayer.

(b) It is the duty of each taxpayer to prepare and preserve all records in a systematic manner conforming to accepted accounting methods and procedures. Such records are to be kept, preserved, and presented upon request of the Director, which demonstrate:

(i) The amounts of gross receipts and gross income from all sources, however derived, including barter or exchange transactions, whether or not such receipts or income are taxable. These amounts must be supported by original source documents or records including but not limited to all purchase invoices, sales invoices, contracts, and such other records as may be necessary to substantiate gross receipts and income; and

(ii) The amounts of all deductions, exemptions, or credits claimed through supporting records or documentation required by statute or administrative rule, or

other supporting records or documentation necessary to substantiate the deduction, exemption, or credit.

(iii) The amounts of any refunds claimed. These amounts shall be supported by records as may be necessary to substantiate the refunds claimed. Refer to Seattle Rule 5-012 for information on the refund process.

(c) The records kept, preserved, and presented shall include the normal records maintained by an ordinary prudent business person. Such records may include general ledgers, sales journals, cash receipts journals, bank statements, check registers, and purchase journals, together with all bills, invoices, cash register tapes, and other records or documents of original entry supporting the books of account entries. The records shall include all federal and state tax returns and reports and all schedules, work papers, instructions, and other data used in the preparation of the tax reports or returns. The records shall also include financial statements and profit and loss statements.

(d) If a taxpayer retains records in both machine-sensible and hard-copy formats, the taxpayer must make the records available to the Department in machine-sensible format upon request of the Department. However, the taxpayer is not prohibited from demonstrating tax compliance with traditional hard-copy documents or reproductions thereof, although this does not eliminate the requirement that they provide access to machine-sensible records, if requested.

(e) Machine-sensible records used to establish tax compliance must contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the Department upon request.

(f) At the time of an examination, the retained records must be capable of being retrieved and converted to a readable record format, as required in section (7) below.

(g) Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

**(4) Record retention period.** SMC 5.55.060 requires that all records must be open for inspection and examination at any time by the Director, upon reasonable notice, and must be kept and preserved for a period of five (5) years. The statute of limitations on assessments of an unlicensed business is ten (10) years plus the current year. All taxpayers are responsible for keeping records from which the Director may ascertain the correct amount of tax. For unlicensed businesses, records will be requested for ten (10) years preceding the current year.

**(5) Failure to maintain or disclose records.** Any taxpayer who fails to comply with the requirements of SMC 5.55.060 or this rule is forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the Director based upon any period for which such books, records, and invoices have not been so kept, preserved, or disclosed. Where complete and adequate records are not maintained, or when such records are not provided to the Director, the Director shall make an estimated assessment based upon the best information available to the Director.

**(6) Where records must be produced.** Records must be produced in Seattle unless:

(a) The taxpayer does not maintain the required records in Seattle;

(b) Permits the examination of the records at the place where the records are kept; and

(c) The taxpayer pays in advance the cost of travel to the location where such records are kept.

**(7) Electronic records.**

(a) Electronic Data Interchange Requirements.

(i) Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the Director to interpret the coded information.

(ii) The taxpayer may capture the information at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system captures information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists and make them available to the Director. In this example, the taxpayer need not retain its EDI transaction for tax purposes if the vendor master file contains the required information.

(b) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this section.

(c) Internal controls.

(i) Upon the request of the Director, the taxpayer must provide a description of the business process that created the retained records. Such description must include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(ii) The taxpayer must be capable of demonstrating:

(A) The functions being performed as they relate to the flow of data through the system;

(B) The internal controls used to ensure accurate and reliable processing; and

(C) The internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(iii) The following specific documentation is required for machine-sensible records retained pursuant to this section:

(A) Record formats or layouts;

(B) Field definitions (including the meaning of all codes used to represent information);

(C) File descriptions (e.g., data set name); and

(D) Detailed charts of accounts and account descriptions.

**(8) Access to machine-sensible records.**

(a) The manner in which the Director is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(b) Such access will be provided in one or more of the following manners:

(i) The taxpayer may arrange to provide the Director with the hardware, software, and personnel resources to access the machine-sensible records;

(ii) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records;

(iii) The taxpayer may convert the machine-sensible records to a standard record format specified by the Director, including copies of files, on a magnetic medium that is agreed to by the Director; and/or

(iv) The taxpayer and the Director may agree on other means of providing access to the machine-sensible records.

**(9) Storage-only imaging systems.**

(a) For purposes of storage and retention, taxpayers may convert hard-copy documents received or produced in the normal course of business and required to be retained under this section to microfilm, microfiche or other storage-only imaging systems and may discard the original hard-copy documents, provided the conditions of this section are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of details, such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(b) Microfilm, microfiche and other storage-only imaging systems must meet the following requirements:

(i) Documentation establishing the procedures for converting the hard-copy documents to microfilm, microfiche or other storage-only imaging system must be maintained and made available upon request. Such documentation must, at a

minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance;

(ii) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for a period of five (5) years;

(iii) Upon request by the Director, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system;

(iv) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers;

(iv) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record; and

(v) There must be no substantial evidence that the microfilm, microfiche, or other storage-only imaging system lacks authenticity or integrity.

**(10) Effect on hard-copy recordkeeping requirements.**

(a) The provisions of this rule do not relieve taxpayers of the responsibility to retain hard-copy records that are created or received in the ordinary course of business as required by existing law and regulations, except as otherwise provided in this section. Hard-copy records may be retained on a recordkeeping medium as provided in section (9) of this rule.

(b) If hard-copy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hard-copy records need not be created.

(c) Hard-copy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with this section.

(d) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(e) Nothing in this section prevents the Director from requesting hard-copy printouts in lieu of retained machine-sensible records at the time of examination.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-008**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

## STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING
CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 25, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington,
residing in Seattle

St. .e of Washington, King Cou..y

# City of Seattle

## NOTICE OF PROPOSED RULE MAKING HEARING

## AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

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Seattle Rule 5-009 Limitations on tax assessments.

Seattle Rule 5-033 When tax liability arises.

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-009

**Seattle Rule 5-009** **Limitations on tax assessments.**



(1) **Introduction.** This rule explains the time period that can be covered during an audit or review by the Director of the taxpayer's records to ascertain whether the taxpayer has been correctly reporting its business activities. It also explains the circumstances under which the Director may request that a taxpayer complete a statute of limitations waiver.

(2) **Assessment period.** The Director shall not assess, or correct an assessment for, additional taxes, or penalties or interest due more than four (4) years after the close of the calendar year in which they were incurred, except under the following conditions:

(a) Against a taxpayer who is not currently registered or licensed or has not filed a tax return as required by SMC chapter 5.55;

(b) Against a person that has committed fraud or misrepresented a material fact;

(c) Against a taxpayer that has executed a written waiver of such limitation, for taxes due within the period authorized by the waiver; or

(d) Against a taxpayer that has collected and not remitted admissions taxes imposed by SMC Chapter 5.40 or parking taxes imposed by SMC Chapter 5.35.

(3) **Unlicensed taxpayer; Non-filers.**

(a) Ten-year limitations period for unlicensed taxpayer. Except in cases of fraud or misrepresentation, if the Director discovers any unlicensed taxpayer engaged in business activities in this City, or that a taxpayer has not filed a tax return as required, the Director may assess taxes, fees, interest, and penalties due for a period of ten (10) years plus the current year in which the person was contacted in writing by the Director. For purposes of this subsection (3), contact occurs on the date that the Director mails correspondence to the taxpayer to notify the taxpayer of its unlicensed and delinquent status with the Department.

(b) Voluntary licensing or filing. If a taxpayer voluntarily licenses and files delinquent tax returns prior to being contacted by the Director, whether for a routine tax audit or otherwise, the Director will apply the general limitations period of four (4) years as described in SMC 5.55.095 for the subsequent assessment against such taxpayer rather than the ten (10) year look-back period. This will only apply if the taxpayer has made a good faith attempt to voluntarily report correctly and there is no evidence of fraud, misrepresentation, or intent to evade tax. It will be presumed that a taxpayer has voluntarily licensed or filed with the Director if the taxpayer files a business license application, remits the associated license fees, files a tax return(s), and pays its tax liability in the amount of tax shown as due on the return(s), prior to being contacted by the Director.

(4) **Fraud or misrepresentation**. The time in which the Director may assess the tax is not limited if the taxpayer has committed fraud or misrepresented a material fact. One example of misrepresenting a material fact is providing documents or schedules which are intended to mislead the Director. Any assessment of interest, penalties and taxes will be limited to the interest, penalties and taxes which were underpaid as a result of the fraud or misrepresentation.

**(5) Statute of limitations waiver.**

(a) The Director may request that a taxpayer sign a waiver of the statute of limitations to extend the time in which the Director may assess tax, penalties, or interest in cases where the delay in timely completing an audit or issuing an assessment is the result of the action, or inaction, of the taxpayer. Where a taxpayer has extended the period in which to assess the tax, penalties, or interest, the Director may assess the tax, penalties, or interest within the period agreed to.

(b) A signed written waiver also extends the time in which a taxpayer may apply for, or the Director may make, a refund or credit of any taxes, penalties, or interest paid during, or attributable to, the years covered by the waiver.

**(6) Trust funds.** Since the admissions tax and parking tax are paid by the consumer and not by the person required to collect and remit the tax to the City, those taxes are deemed held in trust by the person required to collect them until the taxes are remitted to the Director. The person who collects these taxes has no legal right to retain them. Therefore, no statute of limitations applies and the Director may collect the tax at any time.

**(7) Assessments following conditional refunds or credits.** Taxpayers may petition for a credit or refund of overpaid taxes by following the procedures in Seattle Rule 5-012. The Director may grant such credits or refunds without further immediate verification. If it is later determined that a refund was granted in error and that there was no fraud/evasion or misrepresentation of a material fact, the Director may issue an assessment to recover the taxes and interest which were refunded in error, provided the assessment is issued within four (4) years from the close of the tax year in which the tax was incurred or within a period covered by a statute of limitations waiver.

**(8) Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) The Director issued its assessment on December 20, 2004, for taxes owed by ABC Company covering the period January 1, 2000, through September 30, 2004 (Audit Period). The taxpayer subsequently contacted the Director in April 2006 and provided documentation to support its position that retailing tax had previously been paid for certain retail sales assessed in the tax years 2001 and 2002.

In the process of reviewing this documentation, the Director discovered that the auditor inadvertently failed to assess wholesaling tax on some overlooked wholesale sales sold in the year 2001, which would have resulted in a larger tax assessment for that year than originally assessed in 2004.

The Director issued a revised assessment on June 15, 2006, covering the Audit Period which adjusted the retailing tax assessed in error for tax years 2001 and 2002. The revised assessment did not increase the tax assessment for wholesaling taxes owed in 2001 because the statute of limitations had expired for this tax year. Any petition for refund must be made within four years of the close of the tax year in which the tax was paid.

(b) The Director contacted XYZ Distributing on September 1, 2006, to schedule a routine audit of its records. The taxpayer requested that the Director delay the start of the audit until December 1, 2006, because its records are maintained on a fiscal year ending

September 30 and the audit would be extremely disruptive to its year end closing if begun immediately. This delay would not allow the Director sufficient time to complete the review of the records for 2002 and timely make an assessment for any taxes found to be due. In this instance, the Director may request the taxpayer to complete a statute of limitations waiver for the year 2002 in exchange for delaying the start of the audit. The completion of the waiver by the taxpayer will also hold open the year 2002 for refund or credit of any taxes found to have been overpaid in this period until such time as an assessment is issued or the waiver expires.

(c) The Director was auditing ABC Theaters for the period January 1, 2002, through September 30, 2006. During the process of examining the records, the Director discovered that ABC had collected admission tax on ticket sales in 1998 which had never been remitted to the Director. There was no fraud or misrepresentation involved in the taxpayer's failure to remit the tax. The Director appropriately expanded the period covered by the assessment to include the un-remitted admission tax in the year 1998. Admission tax collected by a seller is deemed to be held in trust until paid to the Director and the statute of limitations does not apply.

(d) The Department of Executive Administration audit staff was unable to find a license registration for ARC Company. The audit staff contacted ARC by letter inquiring about its business activities in Washington and asking ARC for its business license number. ARC had not licensed with the City of Seattle to engage in business activity within Seattle. Shortly after being contacted by the audit staff, ARC contacted a Customer Service Representative within the Department of Executive and completed an application for a business license without disclosing the earlier contact by the audit staff. ARC subsequently argued that the assessment should be restricted to four years plus the current year. The Director appropriately made the assessment for ten years plus the current year because the taxpayer was unlicensed at the time of being first contacted by the City of Seattle.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-009**

## DIRECTOR'S CERTIFICATION

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DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

## STATE OF WASHINGTON – KING COUNTY

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Subscribed and sworn to before me on

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Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

# St[illegible]e of Washington, King Cou[illegible]y

## City of Seattle

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# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-033



**Seattle Rule 5-033** **When tax liability arises.**

**(1) Method of reporting.** Gross proceeds of sales and gross income shall be included in the return for the period in which the value proceeds or accrues to the taxpayer. For the purpose of determining tax liability of persons making sales of tangible personal property or providing services, a sale takes place when activity is entered into the taxpayer's business records (invoiced or billed) and the buyer has received the goods or services. With respect to leases or rentals of tangible personal property, tax liability arises as of the time the lease or rental payments fall due (see Seattle Rule 5-536). See also Seattle Rule 5-126 regarding conditional and installment sales.

**(2) Accrual basis.**

(a) Amounts actually received do not constitute value accruing to the taxpayer in the period in which received if the value accrues to the taxpayer during another period. It is immaterial if the act or service for which the consideration accrues is performed or rendered, in whole or in part, during a period other than the tax return period. The controlling factor is the time when the taxpayer is entitled to receive, or takes credit for, the consideration.

(b) When tax returns are prepared upon the accrual basis, value accrues to a taxpayer at the time:

(i) The taxpayer becomes legally entitled to receive the consideration; or,

(ii) In accordance with the system of accounting regularly employed, enters as a charge against the purchaser, customer, or client the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time.

**(3) Cash receipts basis.**

(a) See Seattle Rule 5-037 for limitation as to persons who may report on the cash receipts basis.

(b) When tax returns are prepared upon a cash receipts basis, value proceeds to a taxpayer at the time the taxpayer actually or constructively receives the payment. It is immaterial that the contract is performed, in whole or in part, during a period other than the one in which payment is received.

**(4) Special application, contractors.** Value accrues for a building or construction contractor who maintains his or her accounting records on the accrual basis, as of the time the contractor becomes entitled to compensation under the contract.

(a) If the contract provides that the taxpayer becomes entitled to compensation upon estimates as the work progresses, value, to the extent of such estimates, accrues as of the time that each estimate is made and the balance at the time of the completion of the work or of the final billing.

(b) If the contract provides that the taxpayer becomes entitled to compensation only upon the completion of the work, value accrues as of the earlier of the completion of the work, or,

any use of the facilities being constructed, or, 60 days after the facility is substantially complete.

(i) Example: A contractor agrees to build two buildings for a buyer. Under the terms of the contract, payment is to be made only upon completion of both buildings. One building is substantially completed and occupied on April 15, 2005; the other building is substantially completed on May 15, 2005 and occupied on July 1, 2005. The work on both buildings is completed under the contract on June 15, 2005. Value accrues for the first building on April 15, 2005, the date it was used. Value accrues for the remainder of the contract on June 15, 2005, the date the work was completed.

(ii) Example: A contractor agrees to build a building for a buyer. Under the terms of the contract, the buyer is to make payment for the building only upon completion of the building. The building is completed, except for minor alterations, and available for planned occupancy on August 15, 2005. However, because of a contract dispute between the buyer and his tenant for the building, the buyer is unable to pay the contractor until February 25, 2006 when the building is finally occupied. The building is completed under the contract on November 15, 2005. Value accrues on the building for business license tax purposes on October 14, 2005, 60 days after August 15, 2005, the date the building was substantially complete.

**(5) Warehousemen.** In the case of warehousemen, value proceeds or accrues to the taxpayer as follows:

(a) When the taxpayer is reporting upon the accrual basis, value accrues at the time the charge for storage is entered into the taxpayer's books of account in accordance with the terms of the contract between the parties and the regular system of accounting employed by the taxpayer. Value accrues when the charge is entered into the taxpayer's books of account whether the consideration for storage is at a fixed rate per unit per month or other period, or, at a flat charge regardless of the length of time, or, whether payable periodically or at the time of withdrawal.

For example, a warehouseman keeping his books on an accrual basis customarily charges the owner of the goods the full amount of a flat storage charge at the time the goods are received. Even though the payment is deferred until the goods are withdrawn value accrues as of the time the goods are received. However, if the warehouseman customarily does not enter such charge until the time of withdrawal, value accrues at the time of withdrawal.

(b) When the taxpayer is reporting upon a cash receipts basis, value proceeds at the time the payment for storage is received.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-033**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

## STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

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CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 25, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

State of Washington, King County

# City of Seattle

## NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

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Seattle Rule 5-500 Computer software.

Seattle Rule 5-501 Computer hardware.

Seattle Rule 5-502 Taxation of information services and computer related services.

Seattle Rule 5-804 Staffing businesses, staffing services.

Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-034

**Seattle Rule 5-034** **Finance charges, carrying charges, interest and penalties.**

CITY CLERK

**(1) Introduction.** This rule explains the business license and utility taxation of finance charges, carrying charges, interest and/or penalties received by taxpayers in the regular course of business.

**(2) Business license tax.** Persons who receive finance charges, carrying charges, service charges, penalties and interest are taxable under the service and other business activities classification. Included in this are:

(a) Interest amounts received by persons regularly engaged in the business of selling real estate.

(b) Persons engaged in financial business activities. (Refer to Seattle Rule 5-520.)

(c) A penalty or interest charge assessed on a late payment on a lease payment.

(d) Interest or finance charges received from an installment sale.

Generally, amounts categorized as "interest" in a lease payment for tangible personal property are taxable in the retailing classification as part of the total lease payment for purposes of the business license tax. See Seattle Rule 5-536.

**(3) Exemptions and deductions.** SMC Chapter 5.45 provides an exemption for credit unions, international banking facilities and amounts derived from the sale of real estate. Deductions are also permissible pursuant to SMC Chapter 5.45 for interest on investments or loans secured by mortgages or deeds of trust and interest on obligations of the state, its political subdivisions, and municipal subdivisions.

**(4) Utility Tax.** Interest, late fees, non-sufficient fund fees, and other penalties received by persons receiving gross income from engaging in utility activities per Seattle Municipal Code Chapter 5.48 are taxable under the appropriate classification of the utility tax code.

**(5) Examples.** The following examples identify a number of facts and then state a conclusion as to whether the situation results in taxable interest or finance charges. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Electric Company, who sells electricity to consumers, receives $9,000.00 in late charges in the month of November. These fees are not taxable under the service and other business activities classification of the business license tax. Per Section 4 above, the late fees are taxable under the selling of electricity classification of the utility tax code pursuant to Chapter 5.48 of the Seattle Municipal Code.

(b) XYZ Furniture Company sells furniture and allows its customers to pay for the furniture over a twelve-month period. The seller charges interest at twelve percent (12%) per annum for allowing the customer to defer immediate payment. The interest charged the customer is a separate activity from the sale of the furniture and is taxable under the service and other business activities classification.

(c) Jane Doe is leasing a car from ABC Leasing, Inc. The lease contract provides that if the customer is more than fifteen (15) days late in making the lease payment, a five percent

(5%) penalty will be charged. Jane Doe was more than fifteen (15) days late in making her March payment and was required to pay the five percent (5%) penalty. The penalty amount received by ABC Leasing is a separate activity from the lease of the vehicle and is taxable under the service and other business activities classification. Any interest included in the lease payment for the car is part of the lease payment and subject to the retailing business license tax.

(d) John Doe sold his personal residence on contract. He receives monthly interest and principal payments. The interest is received in exchange for the seller's deferring receipt of immediate payment. The sale of the residence was not related to any other business activities and John Doe has sold no other real estate. The interest is not taxable under the business license tax since the transaction was a casual and isolated sale.

(e) Judy Smith is engaged in business as a real estate broker and regularly sells real estate for others. Judy Smith sold her personal residence on contract. She receives monthly interest and principal payments. She receives no other interest from real estate contracts. The sale of Judy's property can be distinguished from the sale of real estate for others. Since this was a single sale of Judy's residence, it is a casual and isolated sale and the interest is not subject to business license tax.

(f) James Smith sold on contract seventeen of twenty-three apartment complexes which he owned during a four-year period. He receives payment of principal and interest every month from these sales. The only other income he receives is from the rental of apartment units to non-transients. The income which James Smith receives as interest from the sale of the real estate is subject to the service business license tax. The rental of the apartment units is not taxable for the business license tax. The courts have held that the selling and financing of sales of capital assets by means of real estate contracts does not constitute an investment within the meaning of RCW 82.04.4281. James Smith is engaged in a taxable business activity. A deduction is provided to sellers who are engaged in banking, loan, security, or other financial businesses if the sale is primarily secured by a first mortgage or trust deed on non-transient residential property (see 5.45.100 G). However, James Smith is not engaged in these types of business, nor was the loan secured in this manner. Persons in a financial business should refer to Seattle rule 5-520.

(g) David Roe acquired four pieces of real property over a period of several years. These properties have been held for residential rental to non-transients. David Roe sold all of the real estate in 1991 and is receiving payments of principal and interest pursuant to sales contracts. The determination of whether the interest received is subject to the business license tax depends on all facts and circumstances and cannot be made based on the limited facts set forth in this example. Additional facts and circumstances would include, but not be limited to, the extent to which David Roe has purchased and sold real property in the past, the number of other sales contracts held by David Roe aside from the ones mentioned here, whether the property may have been acquired by inheritance, and the type of business in which David Roe regularly engages.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-034**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING
CITY OF SEATTLE:REVENUE &

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JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007

Subscribed and sworn to before me on 04/11/07

Notary public for the State of Washington, residing in Seattle

# State of Washington, King County

## City of Seattle

**NOTICE OF PROPOSED RULE MAKING HEARING**

**AND OPPORTUNITY TO COMMENT**

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE

## DIRECTOR'S RULE

## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE

RULE 5-037

**Seattle Rule 5-037 Accounting methods.**

(1) **Introduction.** In computing tax liability under the business license tax, admission tax, or utility tax, one of the following accounting methods must be used. This is true for all businesses, whether their activity involves the sale of tangible personal property or the rendering of services. (See WAC 458-20-197 for an explanation of when tax liability arises under the accrual method versus the cash receipts method.)

(2) **Method one, cash basis.** Taxpayers maintaining formal accounting records may file tax returns using figures based upon cash receipts only if the taxpayer's books of account are regularly kept on a cash receipts basis. Taxpayers maintaining formal accounting records whose books of account recognize income at the time a sale is made or a service is rendered, regardless of when payment is received, are keeping their records on an accrual basis and must report revenue and pay tax on the accrual basis. Formal accounting records are normally recognized by the use of sales or income journals which are then entered into a general ledger. For taxpayers not maintaining formal accounting records, the Director will consider all records of the taxpayer to determine whether the records are being kept on an accrual basis.

The fact that a taxpayer makes sales "on account" and has records to identify the accounts receivable does not preclude the taxpayer from reporting on a cash receipts basis. Some taxpayers create estimated billings which are later corrected for the actual amount due from the customer. Such taxpayers may report on a cash receipts basis. For such taxpayers, once a reporting basis is selected, the reporting basis may not be changed without authorization from the Director. A taxpayer who maintains its records throughout the year on a cash basis, including a general ledger, and elects to make a worksheet adjustment at year-end to report federal taxes on an accrual basis, will be permitted to report city taxes on a cash basis.

(3) **Method two, accrual basis.** Taxpayers not maintaining books of account on a cash receipts basis must file returns with figures based on the accrual method. These taxpayers must report the gross proceeds from all cash sales made in the tax reporting period in which the sales are made, together with the total amount of charge sales during such period. The law does not require a taxpayer to use a particular accounting system. However, the taxpayer must report based on the system of accounting used by the business, regardless of the taxpayer's reasons for selecting a particular accounting system. It will be presumed that a taxpayer who is permitted under federal law or regulations to report its federal income taxes on a cash basis and does do so is maintaining the records on a cash basis. A taxpayer who maintains a general ledger on an accrual basis and files federal tax returns on an accrual basis must also report city tax returns on an accrual basis.

(a) Taxpayers who make installment sales or leases of tangible personal property must use the accrual method when they compute their tax liability. (See Seattle Rule 5-126.)

(b) In the case of rentals or leases, the income is considered to have accrued to the seller in the tax reporting period in which the seller is entitled to receive the rental or lease payment. (See Seattle Rule 5-536.)

(4) **Constructive receipt.** "Constructive receipt" means income that a cash basis taxpayer is entitled to receive, but will not receive because of an action taken by the taxpayer. Constructive receipts are taxable in the tax reporting period in which the taxpayer gives up the entitlement to actual future receipt of the income. The following examples show how constructive receipt applies.

(a) XYZ has $10,000 in accounts receivable which XYZ expects to collect over the next six months. XYZ elects to sell these accounts receivable for eighty percent of their face value. Even though the taxpayer only receives $8,000 from the sale of the accounts receivable, XYZ is taxable on the full $10,000 because it has taken constructive receipt of the full $10,000 by taking an action to give up entitlement to the $2,000.

(b) XYZ has $1,500 in accounts receivable from customers who are delinquent in making payment. XYZ turns these accounts receivable over to a collection agency with the understanding that the collection agency may keep half of whatever is collected. The collection agency over the next month collects $500 and keeps $250 of this amount for its services. XYZ is taxable on the full $500 collected by the collection agency. XYZ has constructive receipt of this amount and the $250 retained by the collection agency is a cost of doing business to the taxpayer.

(c) XYZ is involved in a bankruptcy proceeding. The receipt of cash from accounts receivable will be placed in an escrow account. These funds will be used to pay creditors and a portion of these amounts will be given to the taxpayer. The full amount of the accounts receivable collected and going into the escrow is taxable income to XYZ. XYZ has received the full benefit of the cash received from the accounts receivable through payment of XYZ's creditors.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-037**

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DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
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# STATE OF WASHINGTON – KING COUNTY

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04/11/07

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

# St..e of Washington, King Co..ty

## City of Seattle

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4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-039

**Seattle Rule 5-039** **Employees distinguished from persons engaging in business.**

**(1)** **Introduction**. The Seattle Municipal Code imposes taxes and fees upon persons engaged in business but not upon persons acting solely in the capacity of employees pursuant to SMC 5.45.090 S.

**(2)** **Considerations.** While no one factor definitely determines employee status, the most important consideration is the employer's right to control the employee. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished. In cases of doubt about employee status all the pertinent facts should be submitted to the Revenue and Consumer Affairs Division for a specific determination.

**(3)** **Persons engaging in business.** For the purpose of determining whether an individual is an employee or independent contractor, the term "engaging in business" means the act of transferring, selling or otherwise dealing in real or personal property, or the rendition of services, for consideration except as an employee. The following conditions will serve to indicate that a person is engaging in business.

If a person is:

(a) Holding oneself out to the public as engaging in business with respect to dealings in real or personal property, or in respect to the rendition of services;

(b) Entitled to receive the gross income of the business or any part thereof;

(c) Liable for business losses or the expense of conducting a business, even though such expenses may ultimately be reimbursed by a principal;

(d) Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;

(e) Employing others to carry out duties and responsibilities related to engaging in business and being personally liable for their pay;

(f) Filing a statement of business income and expenses (Schedule C) for federal income tax purposes;

(g) A party to a written contract, the intent of which establishes the person to be an independent contractor; or

(h) Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).

**(4)** **Employees.** The following conditions indicate that a person is an employee.

If the person:

(a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;

(b) Is employed to perform services in the affairs of another, subject to the other's control or right to control;

(c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;

(d) Has no liability for losses or indebtedness incurred in the conduct of the business;

(e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

(f) Is treated as an employee for federal tax purposes;

(g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this section.

**(5) Full-time life insurance salespersons.** Chapter 275, Washington State Laws of 1991, effective July 1, 1991, provides that individuals performing services as full-time life insurance salespersons, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code, will be considered employees. Treatment as an employee under this subsection (5) applies only to persons engaged in the full-time sale of life insurance. The status of other persons, including others listed in section 3121(d) of the Internal Revenue Code, will be determined according to the provisions of subsections (2) through (4) of this section. See Seattle Rule 5.526 for the proper tax treatment of insurance agents, brokers, and solicitors.

**(6) Operators of rented or owned equipment.** Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in business and not to be employees of their customers.

**(7) Casual laborers.** Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc., for the public generally are presumed to be engaging in business. The burden of proof is upon such persons to show otherwise.

**(8) Entities.** A corporation, joint venture, or any group of individuals acting as a unit, is not an employee.

**(9) Booth renters.** For purposes of the business license tax a "booth renter," as defined in RCW 18.16.020 (19), is considered engaged in business and not an employee. A "booth renter" is any person who:

(a) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required pursuant to chapter 18.16 RCW; and

(b) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-039**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

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CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 25, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

# State of Washington, King County

## City of Seattle

**NOTICE OF PROPOSED RULE MAKING HEARING**

**AND OPPORTUNITY TO COMMENT**

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Seattle Rule 5-804 Staffing businesses, staffing services.

Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

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Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-042



**Seattle Rule 5-042** **Successor liability.**

**(1) Liability in general.** This rule explains the responsibilities and liabilities of a successor per SMC 5.55.130. A person to whom business property is sold or transferred, or who is obligated to perform the terms of a contract, may be liable to pay the transferor's or contractor's business license tax liability even if the taxes have not yet been assessed. If the criteria for liability are met, such person becomes a "successor" and is jointly and severally liable with the taxpayer to pay the tax. The Director may collect the tax from either the successor or the taxpayer, and is not required to first attempt collection from the taxpayer. If the Director collects the tax from the successor, the amount collected is considered to be a payment to the taxpayer. If the tax payment exceeds the price, the transferee may collect the difference from the taxpayer, but not from the Director.

**(2) Successor defined.**

Pursuant to SMC 5.30.050 G, "Successor" means any person to whom a taxpayer quitting, selling out, exchanging or disposing of a business sells or otherwise conveys directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

(a) Transfer of property. A person will not be liable to pay the taxpayer's tax unless the person is a "successor." In general, a "successor" includes all persons who acquire a taxpayer's business property in bulk, whether they operate the business or not, unless the property is acquired through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, judgment, or repossession under a security agreement.

(b) Contractor defaulting on contract. A person who is a surety or guarantor on a contract and is also obligated to fulfill the terms of the contract is a successor to the contract.

**(3) Taxpayer's obligations.**

(a) Payment required upon transfer of property. Any taxpayer that quits business, or sells out, exchanges, or otherwise disposes of his or her business or stock of goods, shall, within ten (10) days thereafter, make a return and pay the tax or fee due.

(b) Payment required upon default in contract. Any contractor who defaults on a contract, shall, within ten (10) days thereafter, make a return and pay the tax or fee due.

**(4) Successor's obligations.**

(a) The successor must withhold the purchase or contract price a sum sufficient to pay any taxes that are currently due or that may still be assessed against the taxpayer until such time as one of the following first occurs:

(i) The taxpayer produces a receipt from the Director showing payment in full of any tax due and that no further tax is due or will be assessed against it; or

(ii) More than six (6) months has passed since the successor notified the Director of the transfer or default and the Director has not issued, and notified the successor of, an assessment against the taxpayer.

(b) The successor must notify the Director in writing of the date of the transfer or default. The written notice must contain the following information:

(i) The (predecessor) taxpayer's name, business name, address, and UBI number;

(ii) The successor's name, business name, address, and UBI number;

(iii) The date of the acquisition;

(iv) Whether or not the successor acquired any part of the materials, supplies, merchandise, inventory, fixtures or equipment of the (predecessor) taxpayer;

(v) A description of the assets acquired and their estimated fair market value;

(vi) The total costs of acquisition; and

(vii) How the person became a successor (i.e., asset purchase merger, guarantor of a defaulting contractor, etc.).

**(5) Examples.**

The following factual situations illustrate the application of the foregoing:

(a) Taxpayer sells business and stock of goods. Purchaser is the successor.

(b) Taxpayer sells stock of goods in bulk. Purchaser is a successor, even though taxpayer continues in business through purchase of new stock of goods.

(c) Taxpayer sells business, including fixtures and good will, to one party and his stock of goods to another. Both purchasers are successors.

(d) Taxpayer sells one branch of the business and stock of goods, and continues to carry on his or her business at other locations. Purchaser is successor to the portion of the business purchased and liable for any tax incurred in the operation of that branch of the business.

(e) Taxpayer leaves business, including fixtures and stock of goods, which his landlord holds for unpaid rent. The landlord will be a successor unless he proceeds to foreclose his landlord's lien by posting notice and holding a sale by the sheriff.

(i) If the landlord, instead of foreclosing his lien, takes a bill of sale to all of the taxpayer's interest in the business or stock of goods in satisfaction of rent, he is a successor.

(ii) If the landlord fails to foreclose his lien and sells the fixtures or stock of goods and the purchaser continues the business or a similar business, the purchaser is a successor.

(iii) If the taxpayer does not leave any fixtures or stock of goods and the landlord engages in a like business in the same location, or rents to a third person, neither the landlord nor the third person is a successor.

(f) Taxpayer purchases business, equipment, or stock of goods under a security agreement and the vendor repossesses the property; the vendor is not a successor.

(i) If the vendor sells to a third person who continues the business, the third person is not a successor.

(ii) If the taxpayer sells his equity under the security agreement to a third person, the third person is a successor.

(iii) If the property is not repossessed and the vendor buys back the interest of the taxpayer, the vendor is a successor, and any third person who purchases the same from such vendor and continues the business is also a successor.

(g) Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors.

(i) The executor, administrator, trustee, receiver, or assignee is not a successor but stands in the place of the taxpayer and is responsible for payment of tax out of the proceeds derived upon disposition of the assets.

(ii) A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement he assumes and agrees to pay taxes and/or lien claims.

(h) Taxpayer is a contractor and is required to post a bond to insure completion of the contract. Taxpayer defaults on the contract and the bonding company completes it. The bonding company is a successor to the contractor to the extent of the contractor's liability for that particular contract and is also liable for taxes incurred in the completion of the contract.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-042**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

## STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING
CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

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04/11/07

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JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

# State of Washington, King County

## City of Seattle

**NOTICE OF PROPOSED RULE MAKING HEARING**

**AND OPPORTUNITY TO COMMENT**

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11 2007.

4/11(209880)

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-044

CITY CLERK

**Seattle Rule 5-044** **Value of products.**

(1) **Introduction.** In cases where there is not a selling price for the goods, or the goods are manufactured for the person's own use, the value of products is used to measure the amount subject to tax. This rule explains how to ascertain the value of products and when it is used.

(2) **Definitions.** The term "value of products" includes the value of by-products, extracted or manufactured, and except as provided herein, shall be determined by "gross proceeds of sales" whether such sales are at wholesale or at retail, to which shall be added all subsidies and bonuses received with respect to the extraction, manufacture, or sale thereof (see SMC 5.30.060 G).

"The term 'gross proceeds of sales' means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses." (See also SMC 5.30.035 and RCW 82.04.070.)

(3) **In the case of bona fide sales of products.** Under the extracting and manufacturing classifications of the business license tax the value of products extracted or manufactured shall be determined by the gross proceeds of sales in every instance in which a bona fide sale of such products is made, whether sold at wholesale or at retail.

(4) **Sales to points outside the state.** In determining the value of products delivered to points outside the state, a deduction is allowed for actual transportation costs from the point at which the shipment originates in this state to the point of delivery outside the state.

(5) **Research and development.** The value of products developed as a prototype for the development of a new or improved product is the retail selling price of the new or improved product when first offered for sale, or the value of the materials used to create the prototype in the event that the prototype is not offered for sale.

(6) **All other cases.** The law provides that where products extracted or manufactured are:

(a) For commercial or industrial use (by the extractor or manufacturer--see Seattle Rule 5-112); or

(b) Shipped, transported or transferred out of the state, or to another person without prior sale; or

(c) Sold under circumstances such that the stated gross proceeds from the sale are not indicative of the true value of the subject matter of the sale;

The value shall correspond as nearly as possible to the gross proceeds from other sales at comparable locations in this state of similar products of like quality and character, in similar quantities, under comparable conditions of sale, to comparable purchasers, and shall include subsidies and bonuses.

(7) **Absence of Comparable Value.** In the absence of sales of similar products as a guide to value, such value may be determined upon a cost basis. In such cases, there shall be included every item of cost attributable to the particular article or article extracted or manufactured, including direct and indirect overhead costs.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-044**

## DIRECTOR'S CERTIFICATION

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CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
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# STATE OF WASHINGTON – KING COUNTY

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04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

State of Washington, King County

# City of Seattle

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-064



**Seattle Rule 5-064** **Credit losses, bad debts, recoveries.**

**(1) Introduction.** This rule explains the Seattle business license tax as it applies to credit losses, bad debts, and recovery of previously reported losses. It also addresses bad debt deductions available to cellular telephone businesses.

**(2) Bad debts defined.** Bad debts mean income or revenue amounts written off the taxpayer's books of record when it is decided that the income previously reported by a taxpayer will not be received.

**(3) Business License Tax.**

(a) Bad debt deductions. In computing the business license tax, taxpayers whose regular books of accounts are kept on an accrual basis may deduct the amount of business credit losses actually sustained, providing that such deduction will be allowed only with respect to activities upon which a tax has been previously paid and providing that the amount has not been otherwise deducted and that credits have not been previously issued (see 5.45.100 L).

(b) Bad debt deductions must be taken by the taxpayer during the tax reporting period during which such bad debts were actually charged off on the taxpayer's books of account and would be eligible for a bad debt deduction for federal income tax purposes. Such deduction must be adjusted to amounts attributable to:

(i) Expenses incurred in attempting to collect debt; and

(ii) The value of repossessed property taken in payment of the debt; and

(iii) Amounts due on property that remains in the possession of the seller until the full purchase price is paid.

(c) In cases where the amount of bad debts legitimately charged off in a particular reporting period exceeds the gross income for such period, the excess of the amount of the bad debts charged off during such period may be deducted from the gross income of the subsequent tax reporting period.

(d) A dishonored (bad) check which proves to be uncollectible is a bad debt, to the extent it was taken as payment for goods or services on which business tax was previously reported and paid.

(e) Extracting or manufacturing. Bad debt deductions under the extracting or manufacturing classifications will be allowed only when the value of products is computed on the basis of gross proceeds of sales.

**(4) Determining credit losses—Specific charge off method.** The amount of credit losses actually sustained must be determined in accordance with the specific charge-off method which is the amount actually charged off within the tax reporting period with respect to debts determined to be worthless.

(a) Worthlessness of a debt is usually evidenced when all the surrounding and attending circumstances indicate that legal action to enforce payment would result in an uncollectible judgment.

(b) A "charge-off" of a debt, either wholly or in part, must be evidenced by entry in the taxpayer's books of account.

(c) When the taxpayer actually determines and charges off bad debts on a tax reporting period basis, the amount so charged off each period shall be considered prima facie as a proper deduction for such period.

(d) When bad debt losses are ascertained annually upon specific charge-off method, the deduction must be taken against the gross amount reported for the period in which the bad debts were actually charged off.

(e) Credits, refunds, and deductions for bad debts are based on federal standards for worthlessness under section 166 of the Internal Revenue Code. If federal income tax return is not required to be filed, the taxpayer is eligible for a bad debt credit, refund, or deduction n the Seattle business license return if the taxpayer would otherwise be eligible for the federal bad debt deduction.

**(5) Recoveries.** Amounts subsequently received on account of a bad debt or on account of a part of such debt previously charged off and allowed as a deduction for business license tax purposes, must be included in gross proceeds of sales (including value of products when measured by gross proceeds of sales) or gross income of the business reported for the taxable period in which received. This is true even though the recoveries during such period exceed the amount of the bad debt charge-off.

**(6) Application of payments.** Payments received before or after a bad debt credit, refund, or deduction is claimed should be applied first against interest and then against other amounts.

**(7) Utility tax.** Only bad debts written off for cellular phone revenue may be deducted as bad debts under the utility tax. There are no other provisions for bad debt deductions under the utility tax.

**(8) Statute of limitations for claiming bad debts.** No credit, refund, or deduction, as applicable, may be claimed for debt that became eligible for a bad debt deduction for federal income tax purposes more than four years before the beginning of the calendar year in which the credit, refund, or deduction is claimed.

**(9) Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

In all cases, an eight percent combined state and local sales tax rate is assumed. Figures are rounded to the nearest dollar. Payments are applied first against interest and then ratably against the taxable price, sales tax, and other charges except when the special rules for subsequent recoveries on a bad debt apply (see subsections (2) and (3) of this section). It is assumed that the income from all retail sales described has been properly reported under the retailing B&O tax classification and that all interest or service fees described have been accrued and reported under the service and other activities B&O tax classification.

(a) Seller makes a retail sale of goods with a selling price of $500. No payment is received by Seller at the time of sale. One and a half years later, no payment has been received by Seller, and the balance with interest is $527. Seller is entitled to claim a bad debt deduction on the federal income tax return. Seller is entitled to claim a bad debt deduction of $500 under the retailing tax classification, and a bad debt deduction of $27 under the service and other activities B&O tax classification.

(b) The facts are the same as in (a) of this subsection, except that six months after the write off and deduction are claimed, a $50 payment is received on the debt. Recoveries received on a retail sale after a write off and deduction have already been claimed must be applied first to the interest and then to the taxable price in order to determine the amount of tax that must be repaid. Therefore, Seller must report $27 in interest income on the current excise tax return and $23 under the retailing classification.

(c) Seller sells a car at retail for $1000 and charges the buyer an additional $50 for license and registration fees. Seller accepts trade-in property with a value of $500 in which the buyer has $300 of equity. Seller receives and passes on the $50 for license and registration fees. Eight months later, Seller has not received any payment on balance due. Seller is entitled to claim a bad debt deduction on the federal income tax return. The equity in the trade-in is equivalent to a payment received at the time of purchase, reducing the balance remaining on the initial sale to $700, or $1000 - $300. Seller is entitled to claim a deduction of $700 under the retailing tax classification, exclusive of any deduction for accrued interest.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-064**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

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CT:NOTICE PROPOSED RULE

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04/11/07

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JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 25, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

State of Washington, King County

# City of Seattle

## NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapter 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

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PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-065

**Seattle Rule 5-065** **Taxes – deductible and nondeductible.**



(1) **Introduction.** This rule explains the circumstances under which taxes may be deducted from the gross amount reported as the measure of tax under the business license tax and the utility tax. It also lists specific deductible and nondeductible taxes.

(2) **Deductibility of taxes.** In computing tax liability, the amount of certain taxes may be excluded or deducted from the gross amount reported as the measure of tax under the business license tax and the utility tax. These taxes may be deducted provided they have been included in the gross amount reported under the classification in which the deduction is sought, and have not been otherwise included in another allowable deduction, such as credit losses or interstate sales.

The amount of taxes which are not allowable as deductions or exclusions must always be included in the gross amount reported. License and regulatory fees are not deductible. Questions regarding the deductibility or exclusion of a tax that is not specifically identified in this rule should be submitted to the Director for determination.

(3) **Motor vehicle fuel taxes.** RCW 82.04.4285 provides a B&O tax deduction for certain state and federal motor vehicle fuel taxes when the taxes are included in the sales price. These taxes include:

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| State motor vehicle fuel tax . . . . . | chapter 82.36 RCW; |
| State special fuel tax . . . . . | chapter 82.38 RCW; |
| Federal tax on diesel and special motor fuels (including leaking underground storage tank taxes), except train and aviation fuels | 26 U.S.C.A. Sec. 4041; |
| Federal tax on inland waterway commercial fuel . . . . . | 26 U.S.C.A. Sec. 4042; |
| Federal tax on gasoline and diesel fuel for use in highway vehicles and motorboats . . . . . | 26 U.S.C.A. Sec. 4081. |

(4) **Taxes collected as an agent of municipalities, the state, or the federal government.** The amount of taxes collected by a taxpayer, as agent for municipalities, the state of Washington or its political subdivisions, or the federal government, may be deducted from the gross amount reported. These taxes are deductible under each tax classification in which the gross amount from such sales or services is reported.

This deduction applies only when the amount of such taxes is received by the taxpayer as collecting agent and is paid by the agent directly to a municipality, the state, its political subdivisions, or to the federal government. When the taxpayer is the person upon whom a tax is primarily imposed, no deduction or exclusion is allowed, since in such case the tax is a part of the cost of doing business. The mere fact that the amount of tax is added by the taxpayer as a separate item to the price of goods sold, or to the charge for services rendered, does not in itself, make such taxpayer a collecting agent for the purpose of this deduction. Examples of deductible taxes include:

FEDERAL –

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| Tax on communications services (telephone and teletype-writer exchange services) . . . . . | 26 U.S.C.A. Sec. 4251; |
| Tax on transportation of persons . . . . . | 26 U.S.C.A. Sec. 4261; |
| Tax on transportation of property . . . . . | 26 U.S.C.A. Sec. 4271; |

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| STATE -- | |
| Aviation fuel tax collected from buyers by a distributor as defined by RCW 82.42.010 | chapter 82.42 RCW; |
| Leasehold excise tax collected from lessees | chapter 82.29A RCW; |
| Oil spill response tax collected from taxpayers by marine terminal operators | chapter 82.23B RCW; |
| Retail sales tax collected from buyers | chapter 82.08 RCW; |
| Solid waste collection tax collected from buyers | chapter 82.18 RCW; |
| State enhanced 911 tax collected from subscribers | chapter 82.14B RCW; |
| Use tax collected from buyers | chapter 82.12 RCW; |
| MUNICIPAL -- | |
| City admission tax | SMC 5.40 070; |
| City parking tax | SMC 5.35.060; |
| County admissions and recreations tax | chapter 36.38 RCW; |
| County enhanced 911 tax collected from subscribers | chapter 82.14B RCW; |
| Local retail sales and use taxes collected from buyers | chapter 82.14 RCW. |

(5) **Specific taxes which are not deductible.** Examples of specific taxes which may be neither deducted nor excluded from the measure of the tax include the following:

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| FEDERAL -- | |
| A.A.A. compensating tax | 7 U.S.C.A. Sec. 615(e); |
| A.A.A. processing tax | 7 U.S.C.A. Sec. 609; |
| Aviation fuel | 26 U.S.C.A. Sec. 4091; |
| Distilled spirits, wine and beer taxes | 26 U.S.C.A. chapter 51; |
| Diesel and special motor fuel tax for fuel used for purposes other than motor vehicles and motor-boats | 26 U.S.C.A. Sec. 4041; |
| Employment taxes | 26 U.S.C.A. chapters 21-25; |
| Estate taxes | 26 U.S.C.A. chapter 11; |
| Firearms, shells and cartridges | 26 U.S.C.A. Sec. 4181; |
| Gift taxes | 26 U.S.C.A. chapter 12; |
| Importers, manufacturers and dealers in firearms | 26 U.S.C.A. Sec. 5801; |
| Income taxes | 26 U.S.C.A. Subtitle A; |
| Insurance policies issued by foreign insurers | 26 U.S.C.A. Sec. 4371; |
| Sale and transfer of firearms tax | 26 U.S.C.A. Sec. 5811; |
| Sporting goods | 26 U.S.C.A. Sec. 4161; |
| Superfund tax | 26 U.S.C.A. Sec. 4611; |
| Tires | 26 U.S.C.A. Sec. 4071; |
| Tobacco excise taxes | 26 U.S.C.A. chapter 52; |
| Wagering taxes | 26 U.S.C.A. chapter 35; |
| STATE -- | |
| Ad valorem property taxes | Title 84 RCW; |
| Alcoholic beverages licenses and stamp taxes (Breweries, distillers, distributors and wineries) | chapter 66.24 RCW; |
| Aviation fuel tax when not collected as agent for the state | chapter 82.42 RCW; |
| Boxing, sparring and wrestling tax | chapter 67.08 RCW; |
| Business and occupation tax | chapter 82.04 RCW; |
| Cigarette tax | chapter 82.24 RCW; |
| Gift and inheritance taxes | Title 83 RCW; |

| | |
|---|---|
| Insurance premiums tax . . . . . | chapter 48.14 RCW; |
| Hazardous substance tax . . . . . | chapter 82.21 RCW; |
| Litter tax . . . . . | chapter 82.19 RCW; |
| Pollution liability insurance fee . . . . . | RCW 70.149.080; |
| Parimutuel tax . . . . . | RCW 67.16.100; |
| Petroleum products - underground storage tank tax . . . . . | chapter 82.23A RCW; |
| Public utility tax . . . . . | chapter 82.16 RCW; |
| Real estate excise tax . . . . . | chapter 82.45 RCW; |
| Tobacco products tax . . . . . | chapter 82.26 RCW; |
| Use tax when not collected as agent for state . . . . . | chapter 82.12 RCW; |
| | |
| MUNICIPAL -- | |
| Local use tax when not collected as agent for cities or counties . . | chapter 82.14 RCW; |
| Municipal utility taxes . . . . . | SMC 5.48.030; |
| Municipal and county real estate excise taxes . . . . . | chapter 82.46 RCW; |
| Employee hours tax | SMC 5.37.030; |
| City business license tax | SMC 4.45.050. |

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-065**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

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## STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING
CITY OF SEATTLE:REVENUE &

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CT:NOTICE PROPOSED RULE

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Affidavit of Publication

# S..te of Washington, King County

## City of Seattle

**NOTICE OF PROPOSED RULE MAKING HEARING**

**AND OPPORTUNITY TO COMMENT**

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

**4/11(209880)**

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-067

**Seattle Rule 5-067** **Accommodation sales, exchange of fungible products.**

**(1) Introduction.** In general, retail sellers who sell tangible personal property at cost to another seller of the same kind of tangible personal property to fill a sales order for its customer as described herein may claim an accommodation sale exemption.

Exchanges of fungible products are taxable unless they meet the criteria of an accommodation sale or qualify for some other exemption or deduction. (Refer to section 4 for more information.)

**(2) Definition.** As used herein:

(a) "Accommodation sales" means only sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where:

(1) The amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article; and

(2) The sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

Provided, that where the seller holds itself out as being regularly engaged in the business of making sales at wholesale of such property, such sales shall be included in its principal business activity, and not exempt from tax. (See SMC 5.45.090 Z).

**(3) Business license tax and accommodation sales.** In computing tax under the retailing classification, receipts from accommodation sales may be excluded from the reported gross receipts amount. Each seller claiming this exemption must retain sufficient evidence to prove the nature of the transactions as a part of his sales records to qualify for this exemption.

**(4) Requirements for exemption.** The following conditions must be satisfied for the exemption to apply:

(a) Amount paid by buyer may not exceed amount paid by seller. The amount the buyer pays to the seller may not exceed the amount the seller paid to the seller's vendor in the acquisition of the property. A seller that manufactured the property sold cannot claim the exemption because the property has not been acquired from a vendor.

(i) *Expenses associated with preparing property for sale.* Under some circumstances, a seller may add reasonable expenses to the invoice cost of the article sold in connection with an accommodation sale, including but not limited to, actual freight or delivery costs incurred by the seller and billed as such to the buyer. The specific facts concerning such additional costs must be submitted to the Director for a tax determination prior to claiming the exemption.

(ii) *Holdbacks or discounts.* The amount paid by the seller may not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold even though the seller may retain such holdbacks or discounts.

(b) Sale is an accommodation to fill an existing order. The sale must occur as an accommodation to allow the buyer to fill a bona fide existing order of a customer or occur within fourteen days to reimburse in-kind a previous accommodation sale by the buyer to the seller. A bona fide existing order is present if there is a commitment by the buyer's customer to purchase the property. The buyer must retain records demonstrating the customer's commitment to purchase, such as a written agreement or deposit. For example, Recreational Vehicle Dealer A purchases a fifth-wheel trailer from Recreational Vehicle Dealer B as an accommodation. Ten days later, Dealer A sells a travel trailer to Dealer B as reimbursement in-kind of the previous accommodation sale. For Dealer A to claim the business license tax exemption for the sale of the travel trailer to Dealer B, Dealer A must keep sufficient records to document a bona fide existing customer order for the fifth-wheel trailer purchased from Dealer B.

(c) Documentation. A person claiming the exemption for an accommodation sale must maintain sufficient documentation to verify the exemption. In addition to the documentation noted above establishing, where pertinent, the existence of a bona fide existing customer order, this documentation must also include:

(i) The buyer's name and address;

(ii) The seller's name and address;

(iii) The buyer's UBI/tax registration number;

(iv) Description of the property purchased, including make, model, and serial numbers as appropriate;

(v) The date of purchase and the purchase price;

(vi) A statement by the buyer as to whether the purchase is to fill a bona fide existing order or to reimburse a previous in-kind accommodation sale, including information identifying the previous accommodation sale; and

(vii) The buyer's signature and title.

**(5) Exchanges of fungible products.** Persons engaged in the selling and distributing of fungible products often enter into exchange agreements. An exchange is a sale regardless of whether it results in a profit because a transfer of the ownership of, title to, or possession of property for valuable consideration occurs. SMC 5.30.050. Exchanges are subject to the B&O tax unless otherwise exempt by law.

(a) Fungible product defined. Fungible products are products that lose their physical identity to the point that they cannot be distinguished from like-kind items when commingled. Examples of fungible products include gasoline, bulk oil products, grains, logs, wood chips, fruits, and vegetables.

(b) Exchange agreements. Under typical exchange agreements, a person is required to furnish products to another person selling and distributing the same products, sometimes receiving payment in-kind or with a substitute product at a later date. Exchange agreements may require the person to arrange for direct delivery from his or her vendor to the third party distributor. In some cases, actual title and/or possession of the product may pass directly from the vendor to the third-party distributor.

Persons exchanging fungible products often do so on a regular and continuing basis to cover shortages occurring because of a lack of storage or production facilities, and/or to effect savings in transportation costs. Exchanges may be carried as loans on the books of account (in which case the exchanges are often referred to as "inter-company loans"). Products acquired via an exchange may or may not be carried as regular inventory on the books of account.

(c) May an exchange of fungible products qualify as an accommodation sale? The fact that the product sold is a fungible product does not preclude a claim that the sale is exempt as an accommodation sale. However, such a claim will be recognized only if the requirements as set forth above in this rule are met.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
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a Washington municipality

By: _____
Dwight D. Dively, Director
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# State of Washington, King County

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PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 2:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209380)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-068



**Seattle Rule 5-068** **Pool purchases.**

**(1) Introduction.** This rule explains Seattle's business license tax exemption requirements with regard to pool purchases.

**(2) Definitions.**

(a) The term "pool purchase" means the joint purchase by two or more persons engaging in independent business activities, of commodities in carload or truck load quantities for the purpose of obtaining a purchase price or freight rate which is less than when purchased or delivered in smaller quantities.

(b) The term "principal member" means that member of the pool to whom the goods are charged by the vendor of the commodities purchased.

**(3) Deduction.** In computing tax liability of the principal member under Seattle Municipal Code chapter 5.45, there may be deducted from gross proceeds of sales the amount received by the principal member from other members of the pool of their proportionate share of the cost thereof of the commodities purchased.

(a) This deduction is allowed only when all of the following conditions are met:

(i) The amount received is included in gross proceeds of sales;

(ii) The pool purchase agreement was entered into prior to the time of placing the order for the commodities purchased;

(iii) The pool purchase agreement provides that each member shall accept a specific portion of the shipment; and

(iv) Division of the shipment is made prior to warehousing of the commodities by a member of the pool.

(b) In no event will a "pool purchase" deduction be allowed when an agreement relative to the amount of the share to be distributed to any member is made after the date of the purchase order, or where one member of a pool pays an amount for its portion in excess of the proportionate amount paid by another member.

Effective: May 15, 2007.

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-068

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209830 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

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CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 25, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

S..te of Washington, King Co.. .ty

# City of Seattle

**NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT**

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

Seattle Rule 5-000 Rules adopted.

Seattle Rule 5-002 Business license requirements.

Seattle Rule 5-007 Penalties.

Seattle Rule 5-008 Recordkeeping requirements.

Seattle Rule 5-009 Limitations on tax assessments.

Seattle Rule 5-033 When tax liability arises.

Seattle Rule 5-034 Finance charges, carrying charges, interest, and penalties.

Seattle Rule 5-037 Accounting methods.

Seattle Rule 5-039 Employees distinguished from persons engaging in business.

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Seattle Rule 5-068 Pool purchases.

Seattle Rule 5-125 Casual or isolated sales.

Seattle Rule 5-275 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.

Seattle Rule 5-276 Constructing and repairing of new or existing buildings or other structures upon real property.

Seattle Rule 5-500 Computer software.

Seattle Rule 5-501 Computer hardware.

Seattle Rule 5-502 Taxation of information services and computer related services.

Seattle Rule 5-804 Staffing businesses, staffing services.

Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-42'4**

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE

## DIRECTOR'S RULE

## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE

RULE 5-125

CITY CLERK

**Seattle Rule 5-125** **Casual or isolated sales.**

**(1) Generally.**

Any sales which are routine and continuous must be considered to be an integral part of the business operation and are not casual or isolated sales.

Furthermore, persons who hold themselves out to the public as making sales at retail or wholesale are deemed to be engaged in the business of selling, and sales made by them of the type of property which they hold themselves out as selling, are not casual or isolated sales even though such sales may not be made frequently.

In addition, the sale at retail by a manufacturer or wholesaler of an article of merchandise manufactured or wholesaled by the seller is not a casual or isolated sale even though the seller may make but one such retail sale.

**(2) Business license tax.**

The business license tax does not apply to casual or isolated sales pursuant to SMC 5.45.090 X.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-125**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle. Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

ss

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

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CT:NOTICE PROPOSED RULE

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04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

St. e of Washington, King Cou. .y

# City of Seattle

## NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

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Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

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Written comments should be mailed or delivered to:

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CI Y OF SEATTLE

## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-275

**Seattle Rule 5-275** **Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.**

CITY CLERK

**(1) Retailing.** Persons installing, cleaning, constructing, imprinting, decorating, beautifying, repairing or otherwise altering or improving tangible personal property of or for consumers are taxable under the retailing classification upon the gross proceeds received from the performance of such activities upon tangible personal property.

The following illustrates activities conducted upon tangible personal property which are taxable under the retailing classification:

(a) Laundering, dyeing and cleaning;

(b) Boat repairing;

(c) Shoe repairing and shining;

(d) Altering or repairing wearing apparel;

(e) Automobile repairing, washing and painting;

(f) Cleaning or repairing tangible personal property which is or has been attached to real property such as oil tanks, septic tanks, sewer systems, and sewer lines;

(g) Repairing of any tangible personal property, such as computers, radios, home appliances, machinery, watches, jewelry, and other items; and

**(2) Wholesaling.** Persons rendering any of the above activities for persons other than consumers are taxable under the wholesaling classification upon the gross proceeds of sales received for each such activity. Sales to persons of materials, which are resold as a part of an article of tangible personal property being repaired, altered or improved, are taxable under the wholesale classification. Therefore, upon the purchaser giving a resale certificate to the seller, the seller's gross proceeds from the following sales would be taxable under the wholesale classification:

(a) Sales of parts or paint to an automotive repairman;

(b) Sales of lumber, chandlery, etc., to a boat repairman;

(c) Sales of shoe findings, thread, nails, polish and dyes to a shoe repairman; and

(d) Sales of solder, wire, condensers, etc., to a radio or television repairman.

**(3)** Taxpayers subject to this rule must include within the gross proceeds of sales all charges for activities conducted upon such tangible personal property and all charges representing expenses recovered in connection with such activities, such as transportation, hotel, and restaurant, charges, etc.

**(4)** Persons residing outside of Seattle may ship articles of tangible personal property into Seattle to be repaired, cleaned or otherwise altered, and thereafter returned to them. The retailing business license tax applies to charges made for the labor and/or the materials used in the repair, cleaning or altering activities, and no interstate deduction is allowed.

**(5)** For taxability of warranties and maintenance agreements see Seattle Rule 5-133.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-275**

## DIRECTOR'S CERTIFICATION

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CITY OF SEATTLE,
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By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

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Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

# State of Washington, King County

## City of Seattle

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**AND OPPORTUNITY TO COMMENT**

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-276

**Seattle Rule 5-276** **Constructing and repairing of new or existing buildings or other structures upon real property (including property owned by governmental entities).**

**(1) Definitions.** As used herein:

(a) The term "prime contractor" means a person engaged in the business of performing for consumers, the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the entire work or for a specific portion thereof. The term includes persons who build, repair or improve streets, road, and other transportation infrastructure for governmental entities, or other consumers. The term includes persons who for governmental entities or other consumers contract for the construction or relocation of facilities of any public, private, or cooperatively owned utility or transportation entity including but not limited to water mains, telecommunication infrastructure, electrical infrastructure and sewer lines. The term includes persons who rent or lease equipment to property owners for use in respect to constructing, repairing, etc., buildings or structures upon such property, when the equipment is operated by the lessor.

(b) The word "subcontractor" means a person engaged in the business of performing a similar service as (1)(a) above for persons other than consumers, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to prime contractors or subcontractors for use in respect to constructing, repairing, etc., when such equipment is operated by the lessor. When equipment or other tangible personal property is rented without an operator to contractors, subcontractors or others, the transaction is a sale at retail (see SMC 5.30.050 B).

(c) The terms "prime contractor" and "subcontractor" include persons performing labor and services in respect to the moving of earth or clearing of land, cleaning, fumigating, razing, demolition, or moving of existing buildings or structures even though such services may not be done in connection with a contract involving the constructing, repairing, or altering of a new or existing building or structure as mentioned in 1(a) above.

(d) The term "buildings or other structures" means everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes but is not limited to buildings in the general and ordinary sense, roads, streets, and other transportation infrastructure including street lights, drainage systems, tanks, fences, conduits, culverts, railroad tracks, tunnels, overhead and underground transmission systems, monuments, retaining walls, piling and privately owned bridges, trestles, parking lots, and pavements for foot or vehicular traffic, runways, water systems, electrical systems, sewer systems, etc, whether owned by private or public entities.

(e) The term "constructing, repairing, decorating or improving of new or existing buildings or other structures" ("contracting"), in addition to its ordinary meaning, includes, but is not limited to:

(i) The installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation; the clearing of land and the moving of earth;

(ii) The term includes the sale of or charge made for all activities normally taxed under the service and other classification but rendered in respect to such constructing, repairing, etc. "Services rendered in respect to" means those services that are directly related to the constructing building, repairing, improving, and decorating of buildings or other structures and that are performed by the

person who is responsible for the performance of the constructing, building, repairing, improving, or decorating activity. For example, such service charges as engineering fees, architectural fees or supervisory fees are within the term when the services are included within a contract for the construction of a building or structure. The fact that the charge for such services may be shown separately in bid, contract or specifications does not establish the charge as a separate item in computing tax liability. (Refer to RCW 82.04.051 and the legislative intent following that section)

(f) The term "office" means a place where the contractor holds himself or herself out to the public for the regular transaction of business. An office has a mailing address and usually a telephone address, and serves as a location for the central administration of the contractor's business and contains general business records. A building or shelter on a construction site may constitute an office for purposes of allocating income between offices in Seattle and also elsewhere (see 4(c and d) below) when the on-site location has a resident supervisor, is used for a continuous period of at least six months, and the contractor hires employees or subcontractors and orders supplies and materials from the site.

**(2) Speculative builders.**

(a) As used herein the term "speculative builder" means one who constructs buildings for sale or rental upon real estate owned by him or her. The attributes of ownership of real estate for purposes of this rule include but are not limited to the following:

(i) The intentions of the parties in the transaction under which the land was acquired;

(ii) The person who paid for the land;

(iii) The person who paid for improvements to the land; and

(iv) The manner in which all parties, including financiers, dealt with the land.

The terms "sells" or "contracts to sell" include any agreement whereby an immediate right to possession or title to the property vests in the purchaser.

(b) Where an owner of real estate sells it to a builder who constructs, repairs, decorates, or improves new or existing buildings or other structures thereon, and the builder thereafter resells the improved property back to the owner, the builder will not be considered a speculative builder. In such a case that portion of the resale attributable to the construction, repairs, decorations, or improvements by the builder, shall not be considered a sale of real estate and shall be fully subject to retailing business license tax. It is intended by this provision to prevent the avoidance of tax liability on construction labor and services by utilizing the mechanism of real property transfers. (SMC 5.30.050 (B)(3)(c)).

(c) Amounts derived from the sale of real estate are exempt from the business license tax. (SMC 5.45.090 T). Consequently, the proceeds of sales by legitimate speculative builders of completed buildings are not subject to such tax.

(d) However, when a speculative builder sells or contracts to sell property upon which he is presently constructing a building, all construction done subsequent to the date of such sale or contract constitutes a retail sale and that portion of the sales price allocable to

construction done after the agreement shall be taxed accordingly. Consequently, the builder must pay business license tax under the retailing classification on that part of the sales price attributable to construction done subsequent to the agreement.

(e) Persons, including corporations, partnerships, sole proprietorships, and joint ventures, among others, who perform construction upon land owned by their corporate officers, shareholders, partners, owners, co-venturers, etc., are constructing upon land owned by others and are taxable as sellers under this rule, not as "speculative builders."

**(3) Business license tax.**

(a) Measure of tax. Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price.

Where no gross contract price is stated in any contract or agreement between the builder and the property owner, then the measure of business license tax is the total amount of construction costs, including any charges for licenses, fees, permits, etc., required for the construction and paid by the builder.

(b) Retailing. Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price. The retailing tax applies in respect to contracts for cleaning septic tanks or the exterior walls of buildings, as well as to earth moving, land clearing and the razing or moving of structures, cleaning up construction sites, whether or not such services are performed as incidents of a contract to construct, repair, decorate, or improve buildings or structures.

(c) Services. The service and other business license tax applies to charges made for interior design services, janitorial services and for the leveling of land used in commercial farming or agriculture.

**(4) Allocation of income.**

(a) Contracting or other activities defined in section 1(e) in Seattle. Every contractor is subject to business license tax measured by the gross proceeds of sales derived from construction, repairing or altering of buildings or other structures located within the City and/or from a public works contract with the municipal corporation of the City of Seattle. No deduction is allowed from the gross proceeds of sales for on-site construction activities in Seattle, or from a contract with the City of Seattle itself, because the contractor may maintain an office, incur expenses, or accomplish preparatory work outside Seattle.

(b) On or after January 1, 2008, any construction activity located outside Seattle is not subject to the Seattle business license tax. Constructing an item of tangible personal property within Seattle that will then be delivered outside of Seattle to be attached to real property will be subject to the manufacturing business license tax.

(c) Only office in Seattle. Prior to January 1, 2008, every contractor, who maintains an office within Seattle and not elsewhere, is subject to business license tax measured by:

(i) The gross proceeds of sales arising from "contracting" on all buildings or other structures or with the City of Seattle itself, in Seattle; and

(ii) The gross proceeds of sales administered or processed through the contractor's Seattle office even though the buildings or other structures may be located elsewhere in Washington.

The contractor may deduct from the gross proceeds of sales taxable under subsection (4)(c)(ii) (office inside Seattle; construction site outside) the proceeds of those sales which satisfy these criteria:

(A) The contractor derives the sales from "contracting" on buildings or other structures located in another Washington city:

(B) The contractor pays a business license fee or tax to the city where the buildings or other structures are located, and the fee or tax measured as a percentage of the contractor's proceeds of sales or gross receipts; and

(C) The proceeds of the sales, which are deducted in calculating the City tax, are used in determining the amount of taxes paid to the other Washington city.

(d) Offices in Seattle and elsewhere in Washington. Prior to January 1, 2008, a contractor, who maintains an office within Seattle and one or more office(s) elsewhere in the State of Washington, may allocate his or her gross proceeds of sales to reflect the business activity rendered at or through each business location.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-276**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

State of Washington, King County

# City of Seattle

**NOTICE OF PROPOSED RULE MAKING HEARING**

**AND OPPORTUNITY TO COMMENT**

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

Seattle Rule 5-000 Rules adopted.

Seattle Rule 5-002 Business license requirements.

Seattle Rule 5-007 Penalties.

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Seattle Rule 5-033 When tax liability arises.

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Seattle Rule 5-275 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.

Seattle Rule 5-276 Constructing and repairing of new or existing buildings or other structures upon real property.

Seattle Rule 5-500 Computer software.

Seattle Rule 5-501 Computer hardware.

Seattle Rule 5-502 Taxation of information services and computer related services.

Seattle Rule 5-804 Staffing businesses, staffing services.

Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

CF 308193

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-500

CITY CLERK

**Seattle Rule 5-500 Computer software.**

**(1) Introduction.** This rule explains the business license tax treatment of activities related to computer software, and computer software-related services. Such activities include, but are not limited to, selling, leasing, manufacturing, installing, repairing, and maintaining computer software, as well as developing, duplicating, configuring, licensing, downloading, and accessing computer software.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

**(2) Definitions.**

(a) Automatic data processing equipment. "Automatic data processing equipment" includes computers used for data processing purposes and their peripheral equipment.

(b) Computer software. "Computer software" is a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. "Computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software. Computer software does not include data. Computer software may be delivered either electronically or by tangible storage media.

(c) Custom software. "Custom software" is software created for a single person. The use of library files in software development does not preclude such software from being characterized as custom software, as long as the software is created for a single person. For purposes of this rule, "library files" are a collection of precompiled and frequently used routines that a software developer can use in developing the software. The nature of custom software does not change when ownership is transferred to a person with no rights retained by the transferor.

(d) Customizing prewritten computer software. "Customization of prewritten computer software" is any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person. "Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(e) Master copies of software. "Master copies of software" means copies of software from which a software developer, author, inventor, publisher, licensor, sub-licensor, or distributor makes copies for sale or license. Development of a master copy of software by a software developer, or a third party hired by the software developer, that is used to produce copies of software for sale or commercial or industrial use, is not a manufacturing activity. A third party charge for development of a master copy of software is a charge for custom software development and is subject to taxation under the service and other business activities classification.

(f) Prewritten computer software. "Prewritten computer software" is computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more

prewritten computer software programs or prewritten portions thereof does not result in custom software. However, configuration of prewritten computer software to work with other computer software does constitute customization of prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person, who is not the author or creator, modifies or enhances prewritten computer software, that person is deemed to be the author or creator only of the modifications or enhancements made. Prewritten computer software, or a portion thereof, that is modified or enhanced to any degree, remains prewritten computer software, even though the modification or enhancement is designed and developed to the specifications of a specific purchaser. Where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement will not be considered prewritten computer software.

(g) Retained rights. "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sub-licensor, or distributor.

(h) Royalties. "Royalties" are compensation for the use of intangible property including but not limited to intellectual property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. The true object of a transaction involving royalties is to grant an intangible right to reproduce and distribute copies of computer software for sale. It does not, however, include compensation for the licensing of prewritten computer software to the end user. The manner in which computer software is sold (e.g., volume of transactions, subscription license, term license, or perpetual license) or the manner in which payment amount is determined (e.g., fixed fee per copy, percentage of receipts, lump sum, etc.) does not alter the royalty nature of the transaction.

(i) Site license of prewritten computer software. "Site license of prewritten computer software" is a license which provides a consumer acquiring prewritten computer software with the right to duplicate prewritten computer software for use on its own computers, based on the number of computers, the number of workers using the computers, or some other criteria. A site license agreement may cover one site or multiple sites of a purchaser.

**(3) Taxation of custom software, software training, royalties, and customizing prewritten computer software.** The following activities are taxable under the service and other business activities classification:

(a) Creation of custom software. Gross income received for creating custom software in Seattle is subject to taxation under the service and other business activities classification.

(b) Duplication of custom software. Duplication of custom software for the same person, or by the same person for its own use, does not change the character of the custom software. Duplication of custom software for the same person, or by the same person for its own use, is not subject to taxation under the manufacturing classification, but is considered to be part of the sale of custom software and subject to taxation under the service and other business activities classification.

If a person duplicates custom software for sales to, or use by, another person other than the original purchaser, the software becomes prewritten computer software as defined in subsection (2)(f) of this section.

(c) Computer software training. Gross income received for training on the use of *custom* software is subject to taxation under the service and other business activities classification. Gross income received for training on the use of *prewritten* computer software is subject to taxation under the service and other business activities classification, if the charge for such training is separately stated from the sale of prewritten computer software. If the charge for software training is not separately stated from the sale of prewritten computer software, the entire charge is considered to be a sale of prewritten computer software subject to taxation under the retailing classification.

(d) Licensing computer software - royalties. Income received from charges in the nature of royalties for the licensing of computer software is taxable under the service and other business activities classification.

In determining royalties, the true object of the transaction is to grant an intangible right to reproduce and distribute copies of computer software for sale. In contrast, the true object of a site license is the sale to an end user of prewritten computer software for use on its computers. See subsections 2 (i), 4 (b)(ii) and 4 (c)(ii) of this rule for more information on site licenses.

For example, HG Computers, Inc., an original equipment manufacturer (OEM), acquires prewritten computer software from LL Software, Inc. for purposes of acquiring a license to reproduce and distribute the prewritten computer software, as part of a bundled computer hardware and software package to end users. LL retains all of its ownership rights to the software. Royalties received from granting intangible rights to reproduce and distribute prewritten computer software to HG are subject taxation under the service and other business activities classification.

(e) Customizing prewritten computer software. Gross income received for customizing prewritten computer software is subject to the service and other business activities classification. When a charge for customization of prewritten computer software is separately stated on an invoice or contract given to the purchaser, such customization is subject to taxation under the service and other business activities classification. If a charge for customization of prewritten computer software is not separately stated from a sale of prewritten computer software, the entire charge is considered to be a sale of prewritten computer software.

Customization of prewritten computer software does not include routine installation. "Routine installation" means the process of loading program files and installation files onto a computer. Routine installation does not include installation of the customized elements of prewritten computer software. When an invoice or contract contains a separately stated charge for routine installation and customization of prewritten computer software, routine installation is subject to taxation under the retailing classification. If a charge for routine installation is not separately stated from customization of prewritten computer software, the predominant nature of the charge determines the business license tax treatment of the charge.

For example:

(i) Golf Tee, Inc. needs financial modeling software that can tie into most of its existing computer systems. Golf Tee Inc. finds an industry-wide computer

software offered by PQR Computers, Inc. that, when modified, meets the requirements of Golf Tee Inc. PQR provides a separately stated charge to Golf Tee Inc. for customization of prewritten computer software performed. PQR is subject to taxation under the retailing classification for the sale of prewritten computer software. PQR, in addition, is subject to taxation under the service and other business activities classification for the customization of prewritten computer software.

(ii) Same facts as (i), except that, in addition, PQR provides a separately stated charge to Golf Tee Inc. for routine installation of prewritten computer software. This charge represents installation of only the prewritten portion of the software. PQR is subject to taxation under the retailing classification for the routine installation of the prewritten software.

**(4) Taxation of prewritten computer software.** The following explains the taxation of prewritten computer software:

(a) Wholesale sales of prewritten computer software. Gross proceeds from sales of prewritten computer software to persons other than consumers (e.g., sales for resale without intervening use) are subject to taxation under the wholesaling classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the wholesale nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

(i) *Wholesale sale versus royalty.* Sales of prewritten computer software constitute wholesale sales if the software is delivered to the reseller through tangible storage medium or any electronic means and the reseller, who has no right to reproduce the software for further sales, sells the same software to its customers. The true object of the wholesale sale is the sale of the software. On the other hand, income received for granting an intangible right to reproduce and distribute copies of prewritten computer software for sale constitutes royalties. The true object of the transaction that generates royalty income is the right to reproduce and re-license the software. See subsection (3)(d) of this rule for more information on royalties.

(b) Retail sales of prewritten computer software. Gross proceeds of sales of prewritten computer software to consumers are subject to taxation under the retailing classification, whether or not ownership or title passes to the buyer, and regardless of any express or implied restrictions upon the buyer. The method of delivery of prewritten computer software does not alter the retail nature of the transaction, whether it is through tangible storage media or any electronic means. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

(i) *Free prewritten software.* The use of prewritten computer software is not taxable, if it is provided free of charge, or if it is provided for temporary use in viewing information, or both. This exception from taxation is limited to prewritten computer software provided free of charge or for temporary use in viewing

information, such as free promotional software, donated software, free download of software, and software provided in beta testing to a third party free of charge.

(ii) *Retail sales of prewritten software under a site license*. Gross proceeds of sales of a site license to a consumer are subject to taxation under the retailing classification. Delivery or authorization of additional copies of prewritten computer software within Seattle will incur additional taxation under the retailing classification, regardless of the method of delivery. If the seller does not deliver any additional copies of the software to the buyer, then the sales occur when the sales agreements are made to purchase the additional copies, and the sales occur where the original copy or copies of prewritten computer software is delivered unless a better method of determining the delivery location can be made. Delivery of software manuals and backup copies of prewritten computer software does not alter the delivery of the actual copy of prewritten computer software to be used by the buyer in determining when and where the sale takes place.

For example:

(A) GH Computers, Inc. sells at retail a multiple site license of its prewritten computer software to Quick, Inc. GH is located outside Seattle, while Quick is located in Seattle and in other states and outside the U.S. The desktop software is licensed on an unlimited basis, which means that there are no restrictions of its use by Quick. The software is delivered to Quick outside Seattle. Quick then electronically duplicates the softwa e and distributes the software to all of its 500 employees, of which 100 employees are located in Seattle. The software is electronically downloaded into the desktop computers of all employees and is immediately put into use. If GH has nexus with Seattle, business license tax is due under the retailing classification on the 100 copies of prewritten computer software used in Seattle.

(B) Same facts as (D), except that under the original site license agreement, Quick is entitled to reproduce, distribute, and use up to 500 copies of the desktop software. Then Quick merges with another company, and additional copies are needed for the use of its new employees. Quick, therefore, subsequently purchases 100 additional copies of the software from GH under the same site license agreement. No additional copies of the software are delivered to Quick in fulfilling this new agreement. Quick distributes additional copies of the software it electronically downloads to its 100 new employees, of which 50 employees are located in Seattle. If GH has nexus with Seattle, business license tax is due under the retailing classification on the 50 additional copies of prewritten computer software used in Seattle.

(c) Manufacturing of prewritten computer software. Persons engaged in manufacturing prewritten computer software in the city are subject to taxation under the manufacturing classification upon the value of the products. See Seattle Rule 5-044 (Value of products) and 5-111 (Manufacturing, processing for hire, fabricating). Manufacturers of prewritten computer software who sell their products at retail or wholesale in the city are also subject to taxation under either the retailing or wholesaling classification, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications and may claim a

multiple activities tax credit (MATC). See WAC 458-20-19301 (Multiple activities tax credits) for detailed information about the MATC. The mere development of the master software program is not a manufacturing activity.

(i) *Duplication of prewritten computer software.* Duplication of prewritten computer software in Seattle for sales to, or use by, more than one person is subject to taxation under the manufacturing classification upon the value of products. Duplication of prewritten computer software outside Seattle is not subject to taxation under the manufacturing classification regardless of where software development takes place.

Duplication of prewritten computer software in Seattle is subject to taxation under the manufacturing classification only if the prewritten computer software is delivered from the seller to the purchaser by means of tangible storage media which is retained by the purchaser. (Refer to SMC 5.30.035 H.)

When a software developer contracts with a third party to duplicate prewritten computer software, the parties must take into account the value of all tangible and intangible materials or ingredients, including the software code, when determining the relative value of all materials or ingredients furnished by each party. If the third party furnishes less than 20% of the total value of all materials or ingredients that become a part of the produced product, then the third party is presumed to be a processor for hire and the software developer is presumed to be a manufacturer. See Seattle Rule 5-111 (Manufacturing, processing for hire, fabricating) for more information.

(ii) *Duplication of prewritten computer software by a person under a site license.* The seller of a site license is subject to taxation under the manufacturing classification for its own duplication of prewritten computer software in Seattle. A purchaser of a site license, however, is not subject to taxation under the manufacturing classification for the duplication of prewritten computer software in Seattle for its own use, pursuant to a site license agreement with the seller.

5. **Key to activate computer software.** A key, or an enabling or activating code, may be required in some instances to activate computer software and put the software into use, and the key may be delivered to a purchaser after the software is already delivered and in possession by the same purchaser. In such instances, the entire sale of computer software occurs when both the key and the software are delivered to the purchaser. The sale takes place where the software is delivered to the purchaser. If the software delivery location is unavailable to the vendor because the software was delivered by a third party, then the sale takes place where the key is delivered. There is no separate sale of the key from the software, regardless of how such sale may be characterized by the vendor or by the purchaser.

For example:

JKL Computers, Inc., an in-state business, sells at retail prewritten computer software to Customer R. JKL delivers the software to R in Seattle. The prewritten computer software, however, cannot be activated without a key. JKL subsequently delivers the key in Seattle to R for a separate price. JKL is subject to taxation under the retailing classification on the entire sale of the software including the separate charge for the key. The entire sale takes place in Seattle (where the software is delivered) when both the software and the key are delivered to R. There is no separate sale of the key, regardless of the fact that JKL delivers the key to R for a separate charge. It also makes no difference if the key was delivered outside of Seattle.

6. **Server license and client access license for the server software.** The server license, paid for at the time the server is purchased, grants the buyer the right to install the server software on the buyer's computer. The client access license (CAL) grants the buyer the right to access the server software. The client access license is not computer software and is not downloaded into the buyer's computer.

Sales of server licenses and client access licenses are treated as part of the sale of the server software, even if the charges are separately stated. The sales take place where the server software is delivered to the buyer.

For example:

(a) ZZ Computers, Inc., a Seattle business, sells at retail server software to Customer Q. ZZ delivers the server software to Q in Seattle. ZZ also provides Q with client access licenses allowing Q the right to access the server software from its personal computers. Q's server is located in Seattle, but all of Q's personal computers are located outside of Seattle. The sale of server software to Q is subject to taxation under the retailing classification.

(b) Same facts as (i), except that ZZ sells at retail two types of prewritten computer software to Customer Q. One is server software, and the other one is client software (which is different from client access licenses). ZZ delivers the server software to Q in Seattle where Q's server is located. ZZ delivers the client software to Q outside Seattle where all of Q's personal computers are located. Sales of client software and server software to Q are separately charged. Only the sale of server software to Q is subject to the retailing tax.

**(7) Other activities associated with computer software.**

(a) Installing or uninstalling computer software. Gross income received for installing or uninstalling custom software is subject to taxation under the service and other business activities classification.

Gross proceeds of sales for routine installation or the uninstalling of prewritten computer software are subject to taxation under the retailing classification. Routine installation of prewritten computer software includes charges for labor and services with respect to the installation, such as travel for the routine installation of the software.

(b) Repairing, altering, or modifying computer software. Repair of prewritten computer software for more than one person may be distributed as a fix or patch by tangible storage media or electronically in the nature of software upgrades and updates. The sale of prewritten computer software upgrades and updates are a sale of prewritten computer software subject to taxation under the retailing classification.

Alteration or modification of prewritten computer software performed for a specific person is subject to taxation under the service and other business activities classification. Such alteration or modification of prewritten computer software for a specific person constitutes customization of prewritten computer software.

Alteration or modification of custom software is subject to taxation under the service and other business activities classification.

For example:

(i) STU Computers, Inc., a Seattle service provider, is hired by Customer B to perform fixes via remote access on its prewritten computer software in Seattle. STU is performing alteration or modification of prewritten computer software for a specific person in Seattle and is subject to taxation under the service and other business activities classification. Customer B may be located within Seattle or outside of Seattle and the alteration would still be taxable to STU Computers, Inc.

(ii) VW Computers, Inc., a Bellevue service provider, is hired by Customer C to perform fixes via remote access on its prewritten computer software located in Seattle. VW's facility is located in Bellevue. VW is not subject to B&O tax, because the alteration or modification occurs outside of Seattle.

(c) Maintaining computer software. Computer software maintenance agreements typically include, but are not limited to, support activities such as telephone consulting, help desk services, remote diagnostic services, and software upgrades and updates.

(i) *Tax treatment of computer software maintenance agreement in general.* Stand alone computer software maintenance agreements that include telephone consulting, help desk services, remote diagnostic services, and other professional services sold in Seattle, are taxable under the service and other business activities classification. See Seattle Rule 5-133 (Warranties and maintenance agreements) for information about extended warranties.

Stand alone sales of updates or upgrades to prewritten computer software in Seattle are retail sales of tangible personal property subject to taxation under the retailing classification.

(ii) *Prewritten computer software maintenance agreement with mixed elements.* The sale of a prewritten computer software maintenance agreement that includes professional service components such as telephone consulting and retail components such as upgrades and updates of prewritten computer software is a retail sale subject to taxation under the retailing classification.

In cases where the charges for the professional service component(s) and the retail component(s) are separately stated within a prewritten computer software maintenance agreement or invoice, then each activity is taxed according to the nature of the activity.

(iii) *Maintenance agreement on custom software and customized elements of prewritten computer software.* Sales of maintenance or support services relating to custom software or the customized elements of prewritten computer software are subject to taxation under the service and other business activities classification. Such services, including upgrades and updates, are rendered with respect to the custom or customized software and take on the underlying character and taxability of the custom or customized software.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-500**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14TH day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209860 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

State of Washington, King County

# City of Seattle

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Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue - Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-501

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**(1) Introduction.** This rule explains the business license tax treatment of activities related to computer hardware. Such activities include, but are not limited to, selling, leasing, manufacturing, installing, repairing, and maintaining computer hardware.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

**(2) Definitions.**

(a) Computer. A "computer" is an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions. Examples of a computer include, but are not limited to, mainframe computer, laptop, workstation, and desktop computer. "Computer" also includes automatic data processing equipment, which is a computer used for data processing purposes. "Computer" does not include any peripheral devices.

(b) Computer system. A "computer system" is a functional unit, consisting of one computer and associated computer software, whereas a computer network is two or more computers and associated computer software that uses common storage. A computer system may include peripheral devices.

(c) Computer hardware. "Computer hardware" includes, but is not limited to, the mechanical, magnetic, electronic, or electrical components of a computer system such as towers, motherboards, central processing units (CPU), hard disc drives, memory, as well as internal and external peripheral devices such as compact disk read-only memory (CD-ROM) drives, compact disk rewriteable (CD-RW) drives, zip drives, internal and external modems, wireless fidelity (Wi-Fi) devices, floppy disks, compact disks (CDs), digital versatile disks (DVDs), cables, mice, keyboards, printers, monitors, scanners, web-cameras, speakers, and microphones.

**(3) Taxation of computers, computer systems, and computer hardware.**

(a) Retail and wholesale sales. Gross proceeds of sales of computers, computer systems, and computer hardware to persons are subject to taxation under the wholesaling or retailing classifications, as the case may be. Sales to consumers are retail sales and sales to persons who resell the equipment are wholesale sales. Separately stated charges for custom programming installed with the associated computer system software are subject to taxation under the service and other business activities classification.

(b) Manufacturing computers, computer systems, and computer hardware. Persons engaged in manufacturing computers, computer systems, and computer hardware in Seattle are subject to taxation under the manufacturing classification upon the value of the products. See Seattle Rule 5-044 (Value of products) and 5-111 (Manufacturing, processing for hire, fabricating). Manufacturers of computers, computer systems, and computer hardware who sell their products at retail or wholesale in Seattle are also subject to taxation under either the retailing or wholesaling classifications, as the case may be. In such cases the manufacturer must report under both the "production" (manufacturing) and "selling" (wholesaling or retailing) classifications and may claim a multiple activities tax credit (MATC).

(i) Separately stated charges for custom programming involved with the associated computer software are not subject to taxation under the manufacturing classification.

(ii) Separately stated charges for computer software sold and installed after the sale of a computer system are not subject to taxation under the manufacturing classification.

(iii) The combining of a computer system with certain peripheral devices is considered a packaging activity not subject to taxation under the manufacturing classification, when the following occurs:

(A) The peripheral devices remain in the original packaging;

(B) The person does not attach its own label to the peripheral devices;

(C) The person maintains a separate inventory of the peripheral devices for sale apart from the sale of the computer system; and

(D) The charge for the sale of peripheral devices is separately stated from the charge for the sale of computer system.

(c) Examples.

(i) ABC Computers, Inc., a Seattle manufacturer, manufactures and sells computer systems at retail. ABC sells a computer system to Customer X for one flat charge. The computer system includes a disk drive, memory, CPU, keyboard, mouse, monitor, and bundled prewritten computer software. ABC is subject to taxation under the retailing classification on the sale to Customer X. In addition, ABC is subject to taxation under the manufacturing classification on the sale. ABC is entitled to claim a multiple activities tax credit.

(ii) ADE Computers, Inc. a Seattle manufacturer, manufactures and sells computer systems at retail to customers in Seattle. ADE sells to Customer Y a computer system with certain peripheral devices at separate charges. The computer system without the peripheral devices consists of a disk drive, memory, CPU, and bundled prewritten computer software. The peripheral devices include a keyboard, mouse, and monitor. All peripheral devices remain in the original packaging of the manufacturers. ADE does not attach its own label to the peripheral devices. Finally, ADE maintains a separate inventory of the peripheral devices for sale apart from the sale of ADE's computer systems. ADE is subject to taxation under the retailing classification on the sales of the computer system, including the peripheral devices. ADE is subject to taxation under the manufacturing classification on the sale of the computer system, excluding the peripheral devices. ADE is entitled to claim a multiple activities tax credit. ADE is not subject to taxation under the manufacturing classification on the sale of the peripheral devices, because the combining of a computer system with the peripheral devices in this case constitutes merely packaging activities.

(iii) AFG Computers, Inc., a Seattle manufacturer, manufactures and sells computer systems at retail. AFG sells a computer system to Customer Z. As part of the sale of the computer system, Z purchases from AFG, under a separate and optional sales package, prewritten computer software developed by a third party software developer. AFG installs the prewritten computer software to Z's

computer as part of the sale. AFG is subject to taxation under the retailing classification on the sale of the computer system, including the prewritten computer software. Also, AFG is subject to taxation under the manufacturing classification on the entire sale. AFG is entitled to claim a multiple activities tax credit.

(iv) Same facts as (iii), except that AFG sells and installs the prewritten computer software to Z after Z purchases the computer system. AFG is subject to taxation under the retailing classification on the sale of the computer system and the prewritten computer software. Also, AFG is subject to taxation under the manufacturing classification on the sale of the computer system. AFG is entitled to claim a multiple activities tax credit. AFG is not subject to taxation under the manufacturing classification on the sale of the prewritten computer software, because no manufacturing activity occurs for installation of the software by AFG after the sale of the computer system. If AFG developed and installed custom software on Z's computer after the sale of the computer, the custom software sale is subject to taxation under the service and other business activities classification.

(v) ALM Computers, Inc. purchases used computers. ALM replaces a built-in CD-ROM drive with a CD-RW drive and adds a zip drive, additional memory, and an upgraded CPU before selling the computer to Customer W. ALM is engaged in manufacturing activity with respect to that computer and therefore subject to taxation under the manufacturing tax classification.

(vi) AJK Computers, Inc. acquires damaged computers for refurbishment and sale. AJK removes damaged hardware components and replaces them with new components without upgrading these components. Refurbishing computers belonging to AJK Computers is a manufacturing activity. If AJK Computers, Inc was refurbishing or repairing computers belonging to clients, it would not be a manufacturing activity. In this case, the repair billing would be subject to taxation under the retailing classification.

(d) **Taxation of other activities associated with computer hardware.**

(i) *Installing computer hardware.* Gross proceeds of sales for installing computer hardware are subject to taxation under either the wholesaling or retailing classification. See Seattle Rule 5-275 (Installing, cleaning, repairing or otherwise altering or improving personal property of consumers) for more information.

(ii) *Repairing or maintaining computer hardware.* Gross proceeds of sales for repair or maintenance of computer hardware are subject to taxation under either the wholesaling or retailing classification. Repair of computer hardware in Seattle for consumers is subject to taxation under the retailing classification. See Seattle Rule 5-275 (Installing, cleaning, repairing or otherwise altering or improving personal property of consumers) for more information. Also, see Seattle Rule 5-133 (Warranties and maintenance agreements) for information about repair performed as part of a warranty or maintenance agreement.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-501**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

# City of Seattle

## NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

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Seattle Rule 5-068 Pool purchases.

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Seattle Rule 5-276 Constructing and repairing of new or existing buildings or other structures upon real property.

Seattle Rule 5-500 Computer software.

Seattle Rule 5-501 Computer hardware.

Seattle Rule 5-502 Taxation of information services and computer related services.

Seattle Rule 5-804 Staffing businesses, staffing services.

Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-502

**Seattle Rule 5-502** **Taxation of information services and computer related services.**

**(1) Introduction.** This rule explains the business license tax and utility tax treatment of activities related to information services and computer-related services.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

**(2) Definitions.**

(a) Application Service Provider. "Application Service Provider", "ASP" means a provider that generally offers customers electronic access to applications on the ASP's server. An ASP generally does not provide computer software for customers to download. ASP, however, may provide downloadable codes in order for customers to access its applications on its server that are only incidental to the services provided to customers.

(b) Data processing services. "Data processing services" include, but is not limited to, word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also include the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.

(c) Data warehousing service. "Data warehousing service" means the service of a provider offering server space for a customer to store its data and to access, retrieve, or use the data as needed.

(d) Information services. "Information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium.

"Information services" does not include, however, any sale of standard information available to any customer that is delivered through any tangible storage medium or through electronic download. The sale of such standard information available to any customer is considered a retail sale of tangible personal property subject to taxation under the retailing classification. "Information services" does not include telephone business as defined under Seattle Municipal Code 5.30.060.

(e) Internet. "Internet" means the myriad collection of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by electronic transmissions through electronic or radio infrastructure.

(f) Internet access provider. 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet.

(g) Internet service. "Internet service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, hosting of information for retrieval over the internet, and other services as part of a package of services offered to users. The

term 'internet service' does not include telecommunications services. See Seattle Rule 5-300 for more information regarding telecommunications services.

(h) Intranet service. "Intranet service" means the service of providing a private or intra-company network used by a person to facilitate the sharing or accessing of internal information by the person's employees or other authorized parties.

(i) Network system support. "Network system support" activities include analyzing and interpreting problems using diagnostic software, monitoring network to ensure network availability to users, and performing network system configurations. Network system support activities may be performed through remote telephone support or onsite consulting.

(j) Proprietary subscriber network. "Proprietary subscriber network" means proprietarily or corporately owned network in which its services are available to the public for fees. Proprietary subscriber network does not include intranets.

(k) Website development service, website hosting service. "Website development service" means the design and development of a website provided by a website developer to a customer. "Website hosting service" means the service of a provider offering server space to host a customer's website.

**(3) Taxable activities under the service and other business activities classification of the Business License Tax.**

(a) Sales of information services. The gross income received for providing information services is subject taxation under the service and other business activities classification. Gross income from providing standard information that is available to all customers is subject to taxation under the retailing classification. The maintaining of a place of business or a server within Seattle creates taxing responsibility for Seattle tax purposes.

Below are some examples of taxing information services:

(i) XY Statistical Data, Inc. maintains an information supplying operation located in Seattle and sells statistical data at the specific request of each customer. XY does not compile such statistical information to be available for all customers. Instead, each customer submits its own request of the statistical information based on its needs. XY compiles, analyzes, and summarizes the statistical information it gathers and sends the information to customers in a tangible medium. XY is subject to taxation under the service and other business activities classification for the sales of statistical information because XX is providing an information service at the specific request of each customer.

(ii) YY Statistical Data, Inc. maintains an information supplying operation located in Seattle and sells standardized statistical data to customers. Any customer would receive the same standardized statistical data through electronic download. Customer W purchases standardized statistical data from YY. YY is subject to taxation under the retailing classification on the sale of tangible personal property. Standardized statistical data is considered to be tangible personal property whether it is delivered in hard copy or through electronic download or transmitted in any other way.

(iii) ZZ Statistical Data, Inc. maintains an information operation in Seattle and allows its customers to perform online research of statistical information through its

database. ZZ bills its customers a monthly fee for having online access to the database for research. Its customers may or may not download the information onto their computers. ZZ is subject to taxation under the service and other business activities classification for providing information services to its customers.

(iv) WW Travel, Inc. maintains an information operation within Seattle and provides information services online to its customers. WW bills its customers a monthly fee for having online access to a travel reservation system that includes a charge for dedicated telephone lines. WW is subject to taxation under the service and other business activities classification for providing information services in Seattle. The provider of dedicated telephone lines to WW must pay Seattle's telephone business utility tax on the sale of telephone or telecommunications service to WW. WW is the consumer of the telephone business services.

(v) VV Telephone, Inc. maintains an operation within Seattle and provides a satellite-based tracking and communications system that includes instant messaging and position reporting between its customer's vehicles in transit and their dispatch centers. Both the vehicles and the dispatch centers are operated by VV's customers and information is both generated and received by VV's customers. VV is subject to Seattle's telephone business utility tax on the sale of network telephone service in Seattle. This is not a sale of information services. The true object of the transaction is the transmission of data between the vehicles and the dispatch centers through VV's telecommunications system.

(b) Sales of data processing services. Gross income received for data processing services are subject to taxation under the service and other business activities classification.

(c) Sales of Internet services. Gross income received for Internet services, including proprietary subscriber network services, are subject to taxation under the service and other business activities classification.

The following are some examples of the taxation of Internet services.

(i) LOA, Inc. is an Internet service provider that provides customers with access to the Internet. LOA does not furnish any telephone lines to its customers. LOA maintains Internet operations within Seattle. Customer Q is charged a monthly Internet access fee from LOA for access to the Internet. LOA is subject to taxation under the service and other business activities classification for the monthly Internet access fee charged to Q.

(ii) Same facts as (i), except that LOA provides customers with access to the Internet using its own telephone lines. Customer Q, located in Seattle, is charged a combined monthly fee for access to the Internet using LOA's telephone lines. LOA is subject to Seattle's telephone utility tax for the combined fee. However, if LOA separates out the Internet service charge from the telephone line usage charge, then LOA would report the telephone line usage charge under the telephone classification of Seattle's utility tax and the Internet service charge would be reportable under the service and other business activities classification of the business license tax.

(iii) DD Computers, Inc. provides access to information through its website for which it charges the users a fee. DD maintains its website in Seattle. DD charges Customer Z, an out-of-state customer, a transaction fee to use DD's website to

search and retrieve real estate appraisal information. DD is not providing Internet service because DD is not an ISP and does not provide customers with access to the Internet. DD, however, is providing Z access to its website for informational search and retrieval, which is subject to taxation under the service and other business activities classification.

(d) Sales of network system support services. Gross income received for network system support services are subject to taxation under the service and other business activities classification.

(e) Sales of remote access to applications provided by application service providers (ASPs). Gross income received for providing remote access to applications on the ASP's servers is subject to taxation under the service and other business activities classification when the service is performed in Seattle.

For example:

BE Games, Inc. offers a variety of games online to its customers for a monthly subscription fee. BE Games operates its business within Seattle. BE Games is subject to taxation under the service and other business activities classifications on its subscription fees received.

(f) Sales of website development or hosting services. Gross income received for website development or hosting services are subject to taxation under the service and other business activities classification.

(g) Sales of online advertising services. Gross income received for online advertising services are subject to taxation under the service and other business activities classification.

For example:

BB.com, Inc. is located in Seattle and engaged in the business of selling souvenir items through the Internet. BB.com also provides online advertising services for third parties. Income received for online advertising services on its website is subject to taxation under the service and other business activities classification.

(h) Sales of data warehousing services. Gross income received for data warehousing services are subject to taxation under the service and other business activities classification.

For example:

HH Recovery, Inc. provides substitute computer systems in Seattle so that its customers may access HH Recovery's computer facilities for disaster recovery purposes or for unplanned computer system failures. Customer K pays a monthly subscription fee for this service. HH is subject to taxation under the service and other business activities classification on the sale of data warehousing services to K.

(4) **Sales of intranet services are subject to the telecommunications services or telephone business utility tax.** Gross proceeds of sales of Intranet services in Seattle are sales of telephone business activities as such term is defined under SMC 5.30.060, and as such subject to Seattle's telephone business utility tax. See Seattle Rule 5-300 (Telephone business, telecommunications, and telephone service.) for more information.

(5) **Distinguishing between sales of tangible personal property and sales of information services.** In deciding under which business license tax classification to report, the taxpayer must determine whether the true object of a sale is the sale of tangible personal property or the sale of information services. If services are performed such that the only tangible personal property in the transaction is the paper or medium on which the information is printed or carried, the activity constitutes the rendering of a service, and the transaction is taxable under the service and other business activities classification. If, on the other hand, the true object of a sale is the sale of tangible personal property, the transaction is taxable under the retailing classification.

Retail sales of downloaded music, videos, books, and other written works are sales of tangible personal property subject to taxation under the retailing classification. The downloaded music, videos, books, and other written works are tangible personal property because they are electronic representations of items that would be tangible personal property if they were delivered in "hard copy" form. These are not one-of-a-kind products; they are meant to be mass produced and distributed.

The following are some examples:

(a) ML Computers, Inc. maintains its operation in Seattle and sells online music to customers. Customers purchasing the music online may download the music and keep the downloaded music in perpetuity. Customer H, a customer located within Seattle, purchases music online from ML. The sale to customer H is subject to the retailing business license tax.

(b) Same facts as (a), except that customers can only keep the downloaded music as long as they maintain their periodic subscription. Once the subscription ends, the right of ML's customers to listen to the music ends. ML is subject to taxation under the retailing classification on the sale of downloaded music.

(c) Same facts as (a), except that customers cannot download the music and can only listen to the music once. ML is subject to taxation under the service and other business license tax classification because ML is providing a service to H for listening to music online.

(d) Same facts as (a), except that customers cannot download the music and can listen to an unlimited amount of music as long as the subscription is maintained. ML is subject to taxation under the service and other business activities classification because ML is providing a service to H for listening to music online.

(e) OST, Inc., a Seattle business, organizes customer records for microfiche and sells the microfiche to its customers. OST charges Customer J for the purchase of the microfiche based on the number of sheets of microfiche made. The microfiche is tangible personal property. OST delivers the microfiche to J in Seattle. OST is subject to taxation under the retailing classification on the sale of microfiche in Seattle. OST is also subject to taxation under the manufacturing classification and may subsequently take a multiple activities tax credit (MATC).

(f) Same facts as (e), except, OST organizes customer records for J and sends the summarized data directly into J's computers. OST charges J a fixed monthly fee for its work. OST is subject to taxation under the service and other business activities classification because OST is providing data processing service to J.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-502**

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DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
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# STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

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CT:NOTICE PROPOSED RULE

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Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

Affidavit of Publication

State of Washington, King County

# City of Seattle

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**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR'S RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-804



**Seattle Rule 5-804** **Staffing business, staffing services.**

**(1) Introduction.** This rule explains the business license tax responsibilities of businesses engaged in the business of providing staffing services.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

**(2) Definitions.**

(a) Staffing business. "Staffing business" is a business engaged in the activity of providing staffing services.

(b) Staffing services. "Staffing services" means services consisting of a person:

(i) Recruiting and hiring its own employees to provide short term or temporary help for others businesses and organizations;

(ii) Finding other organizations that need the services of its employees;

(iii) Assigning its employees on a temporary basis to perform work at, or services for, other organizations to support or supplement the organizations' work force, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the client; and

(iv) Customarily attempting to reassign the employees to other organizations when they finish each assignment.

**(3) Business activities assigned by staffing businesses.** Business activities generally assigned by staffing businesses to its employees, include but are not limited to, services rendered with respect to the following:

(a) Construction (both custom and speculative);

(b) Customer software design and implementation;

(c) Manufacturing and light industrial activities;

(d) Professional services including medical and clerical;

(e) Janitorial and repair services; and

(f) Other skilled and unskilled labor.

**(4) Business license tax.**

(a) The gross income received by a staffing business is subject to Seattle's business license tax, and possibly Seattle's utilities tax. The appropriate business license tax classification is determined by the activities that the employee engages in for the staffing business' client. It is the staffing business' responsibility to determine or identify the appropriate business license tax classification prior to dispatching its employee to its client and to report to the Director accordingly.

The staffing business should not assume that they should report its employee's activities under the same classification under which its client reports. It is the activity of each employee and the employee's relationship to the client or consumer that determines the tax classification, not the client's reporting classification.

(b) When an assigned employee provided by a staffing business to a client provides more than one activity then the following applies:

(i) The different activities may be taxable under separate tax classifications.

(ii) If the staffing business separates the amounts it charges the client by activities, the separated charges are reported under the appropriate tax classifications.

(iii) If the staffing business does not separate its charge to the client, the charge is reported under the classification of the predominant activity.

(iv) For purposes of this rule, "predominant activity" for two employee activities is when more than 50% of the worker's time is spent working in one tax classified activity.

(v) For purposes of this rule, "predominant activity" for more than two employee activities is the activity at which the employee spends the greatest amount of time.

(vi) When two or more employees engaged in different activities are assigned to one client, the charge for each employee is reported based on the predominant activity of each individual employee.

(c) Examples.

(i) A business operating a retail store is taxable under the retailing tax classification. If the staffing business provides a receptionist for the retail store's office, the gross income received for the receptionist's services is subject to the service and other business activities classification. The service and other business activities classification applies because the receptionist is not providing retailing services.

(ii) A staffing business supplies an employee to help a prime construction contractor. If the employee provides construction and repair services to repair the contractor's building then the activity would be retail and the staffing business must report under retailing. If the employee provides construction and repair service to repair a building that the contractor is repairing for another person then the activity would be reported under the wholesaling classification.

(iii) The assigned employee in (ii) above has a commercial driver's license and is only occasionally required to drive the client's truck within Seattle to pick up a load of gravel (an activity subject to the service and other business activities classification). The employee also spends about one hour per day helping in the office. The predominant activity is the wholesaling activity of performing construction work because the greatest amount of time is spent performing wholesaling construction work. The staffing business has not segregated charges for the other lesser activities. In this case, the staffing business reports the gross amount charged to the client under the wholesaling classification.

(iv) Same facts as in subsection (iii) above, except the staffing business also provides a receptionist to the client (general contractor.) As demonstrated in subsection (iii), the staffing business is subject to the wholesaling tax on the gross amount charged to the client for work done by the employee engaged in construction work. However, the staffing business is subject to the service and other business activities tax classification on the gross amount charged to the client for the receptionist's work. The service and other business activities tax classification is the proper classification notwithstanding the client reports under the wholesaling classification for its construction activities.

**(5) Exemptions and Deductions.** SMC 5.45.090, SMC 5.45.100, and SMC 5.48.070 provide limited exemptions and deductions from Seattle's business license tax and utility tax. The requirements of each specific exemption or deduction must be met to qualify for the exemption or deduction.

Bad debts on which tax has been paid and which have been written off for federal tax purposes may be deducted from the gross income for business license tax purposes.

Exemptions, deductions, and special tax rates that may apply to the client do not automatically also apply to the staffing business. For example, gross income received by licensed nonprofit adult family homes is exempt from the business license tax. However, the gross income received by a staffing business from assigning a health care worker to the licensed nonprofit adult family home is fully taxable under the service and other business activities classification of the business license tax.

A staffing business cannot deduct gross income it receives for employee payroll expenses. Its employees are in fact its employees and they are not independent contractors working for the staffing business's clients. (Refer to Seattle Rule 5-039.) Bona fide advancements or reimbursements may be deducted pursuant to SMC 5.45.040 C.

**(6) Documentation.** The staffing business must keep documentation showing what services its assigned employees performed. All available information should be recorded concurrently with the assignment of the employee and the charge for the service. It is important that the client's labor and skill requirements are detailed upfront as much as possible prior to dispatch.

Documentation may be in the form of a copy of a client order or other documented request by a client for an employee. The documentation must state the specific work to be performed, and/or the employee skills requested by the client. If the client's request comes in by telephone, the staffing business should ask exactly what type of services are required and write them down on an order form, or as a memo to the client's file. The employee can also provide a written explanation of the services actually performed. Documentation to support the business license tax classification must be sufficiently detailed to support the classification reported. If, subsequent to filing a return, it is later determined that income has been incorrectly classified, amended returns should be submitted to the Director to make the appropriate adjustment.

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR'S RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-804**

## DIRECTOR'S CERTIFICATION

I Dwight D. Dively, Director of the Department of Finance of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance.

DATED this 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By: _____
Dwight D. Dively, Director
Department of Finance

## STATE OF WASHINGTON – KING COUNTY

--ss.

209880 No. MAKING HEARING

CITY OF SEATTLE:REVENUE &

## Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of $ 139.50, which amount has been paid in full.

JENNIFER A. PATZER NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES OCT. 24, 2007

Subscribed and sworn to before me on

04/11/07

Notary public for the State of Washington, residing in Seattle

St. e of Washington, King Cou.. y

# City of Seattle

## NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.45). Please note that although these rules are applicable to SMC 5.45, the individual rules may also apply to other chapters of the City's Tax Code, including, but not limited to, SMC 5.30 (Definitions), SMC 5.32 (Revenue Code), SMC 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

Seattle Rule 5-000 Rules adopted.

Seattle Rule 5-002 Business license requirements.

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Seattle Rule 5-500 Computer software.

Seattle Rule 5-501 Computer hardware.

Seattle Rule 5-502 Taxation of information services and computer related services.

Seattle Rule 5-804 Staffing businesses, staffing services.

Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

PUBLIC HEARING AND COMMENT: The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth Avenue. All interested persons are invited to present data, views, or arguments, with regard to the proposed rules, orally at the hearing, or in writing at or before the hearing.

Written comments should be mailed or delivered to:

**Department of Executive Administration Attn.: Mel McDonald, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue – Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214**

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

**Dwight D. Dively, Director, Department of Finance**

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

4/11(209880)

# THE CITY OF SEATTLE
## DIRECTOR RULE
## IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
### RULE 5-921

**Seattle Rule 5-921** **Exemptions, deductions and credits available under the employee hours tax.**

**(1) Introduction.** Effective July 1, 2007, an employee hours tax is imposed on persons engaging in business activities within Seattle. This rule explains the exemptions, deductions, and credits available to businesses when computing and reporting the employee hours tax.

**(2) Definitions.** For purposes of this rule and SMC chapter 5.37 the following definitions apply:

(a) "Carpool" means two or more persons over the age of 16 who live and work near one another or share at least 50% of a common route to and from work.

(b) "Commute Trip Reduction (CTR) Law". RCW 70.94.527 and SMC 25.02 provide state and local requirements for certain employers to develop, implement and promote programs that reduce the number of SOV (as defined below) commutes made by their employees.

(c) "Employee" means any person who performs work, labor, or services for a business and is on the business' payroll, and who performs any part of their duties within the City of Seattle. This includes all full-time, part-time, and temporary employees or workers on the business' payroll. A business' payroll includes the payroll of any related company that acts as a paymaster for the related entities.

(d) "Employee hours" means all paid hours credited to the employee including any overtime, but does not include paid vacation and paid sick leave hours.

(e) "Full-time employee" means an employee who works at least one thousand nine hundred and twenty (1,920) hours in a calendar year.

(f) "Non-motorized commute modes and work practices" means commuting by bicycle, walking, using compressed work weeks, participating in tele-working, or flexible schedules that reduce the number of commutes.

(g) "Part-time employee" means an employee who works less than one thousand nine hundred and twenty (1,920) hours in a calendar year.

(h) "Payroll" means the regular remuneration by a business to the individuals who perform work, labor, services, or make other similar contributions for the business. Payroll includes, but is not limited to, salaries, wages, or other draws or distributions made to employees, officers, partners, or members of Limited Liability Companies and Professional Limited Liability Companies as compensation for their labor and services.

(i) "Single-Occupancy-Vehicles" or ("SOV") means a motor vehicle occupied by one (1) employee for commute purposes, excluding motorcycles.

(j) "Statistically significant commuter survey" means results of a survey of employee commutes administered as prescribed, using an instrument approved or provided by the City, County, or State, and data that was tabulated and summarized independently.

(k) "Vanpool" means a passenger van that is registered with a state, regional or local transit agency program that is used to transport five (5) or more persons to and from work.

**(3) Exemptions from the employee hours tax.** The following are exempt from the employee hours tax:

(a) Any business having annual worldwide gross income of fifty thousand dollars ($50,000) or less.

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

(i) Insurance businesses and their agents as defined by the Revised Code of Washington (RCW) 48.01.050 and 48.17.010, respectively, and whose total revenue is exempt from the business license tax per Seattle Municipal Code (SMC) 5.45.

(ii) Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.36.010 and exempted under RCW 82.36.440.

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

(iv) Federal and state government agencies and subdivisions (except the City of Seattle).

Businesses listed in (i), (ii), and (iii) and other such businesses may conduct activities not preempted by federal or state statutes or regulations. Employees of such businesses engaged in non-preempted activities shall have the applicable portion of their hours subject to the employee hours tax.

(c) Persons employing domestic servants or gardeners, maintenance or repair persons in or around a private home.

(d) Religious or charitable organizations engaging volunteers and other persons to provide services in return for only aid or sustenance.

**(4) Non Single-Occupancy-Vehicle Deductions.** When computing the employee hours tax, a business may deduct the number of hours (or number of employees if using the alternative full-time equivalent calculation method) for those employees who use alternatives to driving alone (SOV) as their regular commute mode of transportation. For purposes of calculating this deduction, "regular" means 80% or more of their commute trips. When computing the 80% requirement, a telecommuting day or a day working at home will count as one roundtrip commute. Any employee not meeting the 80% requirement will have **all** work hours included in the tax due calculation. Likewise, any employee who meets the 80% requirement will have **all** work hours deducted from the tax due calculation.

Examples of alternatives to the SOV commute mode of transportation include:

(a) Public transportation such as buses (metro and community transit), light rail, and trains (Sounder);

(b) Registered vanpools;

(c) Carpools; and

(d) Non-motorized commute modes and work practices.

(5) **Proof of deduction.** In order to obtain the non-SOV deduction, an employer must retain proof of its employees' use of alternative commute modes of transportation, including but not limited to, information to substantiate the 80% commute trip requirement to meet this deduction.

The following are examples of the types of information that an employer can use to substantiate the deductions claimed:

(a) *Records of public transit pass purchases by the employer and/or employee.* These may in the form of payroll records of employee deductions or records of the employer's purchase of public transportation fare media.

(b) Records of carpool and vanpool registrations and applicable employee deductions.

(c) Raw data and reports from statistically significant commuter surveys performed within two years of the claimed deduction, such as the Commuter Trip Reduction Law survey, which includes instruments and reports provided by the State of Washington.

(d) Tax records used to satisfy the IRS for deductions or credits claimed from federal taxes for providing transportation benefits.

(e) *Employee certification of commute mode.* Certification forms must state that the employee qualifies for the non-SOV deduction by using an alternative commute mode(s), as detailed in section 4 of this rule, eighty (80%) or more of the time. The certification form must also indicate the type of alternative commute mode(s) used and must be signed by each employee who qualifies for the deduction.

(6) **Tax credit available.** Pursuant to SMC 5.37.030 G a business reporting an employee hours tax shall be entitled to a credit of up to fifty dollars ($50.00) from the amount of the tax due for each year. No credit shall be more than the amount of the tax owed for each tax year.

(7) **2007 partial year.** The employee hours tax is only applicable after July 1, 2007, therefore include only those hours worked after July 1 to compute the employee hours tax for 2007. Multiply the number of hours by $.01302. If using the alternative full-time equivalent calculation method, divide the employee hours worked after July 1 by 960 hours rather than the 1920 hours that would be used for a full year's computation. For 2007 only, multiply the resulting full-time equivalents by $12.50.

(8) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) XYZ Corp. has more than 200 employees and participates in the Commuter Trip Reduction (CTR) program. As a requirement of the CTR program, the company must survey its employees to find out how they commute to work. The survey completed by the employees may suffice as proof of how many employees qualify for the deduction for mass transit or an alternative mode of transportation as listed above.

(b) ZZ Corp. purchases bus passes for any employee who takes the bus to and from work. The number of bus passes purchased may be used as proof for the deduction. ZZ Corp also has 20 employees who walk or ride bikes to and from work. ZZ Corp may have the employees sign a statement that they use an alternative human powered mode of transportation as proof for the deduction.

(c) KLM Corp. has 200 employees. 100 employees commute to work in SOVs. 75 other employees have documentation that they take some sort of public transportation (bus, light rail, train or register vanpool) and meet the 80% commute trip requirement. An additional 15 employees have certified that they walk or ride their bikes to work for at least 80% of their commutes. The remaining 10 employees take public transportation, bike, or participate in telecommuting, or compress their work-week schedule, however, they do not meet the 80% requirement. KLM Corp owes the employee hours tax on the hours of the 110 employees who do not qualify for the deduction--multiplied by the per hour rate, or if KLM Corp is using the alternative "per employee calculation" then 110 employees do not qualify for the deduction, or 110 times $25. A credit of $50 would be available to KLM Corp, and deducted from the tax owing. Using the *alternative "full-time equivalent" calculation method*:

| | |
|---|---|
| Total no. of employees. | 200 |
| Employees who commute using a qualifying transportation mode and are eligible for the non SOV deduction. | 90 |
| Ineligible employees. | 110 |
| Employee hours tax due before credit. (110 X $25) | $2,750 |
| *Employee hours tax due after $50 credit.* | *$2,700* |

(d) ABC Corp. has 100 full-time employees and 25 part-time employees. 50 of the full-time employees commute to work in SOVs. The total work hours of these 50 employees totals 100,000 hours. The other full-time employees can document that they use public transportation, vanpools, carpools, or by using non-motorized commutes and work practices 80% of the time and are therefore, eligible for the non SOV deduction.

Of the 25 part-time employees, 5 can show that they commute at least 80% of their commutes using public transportation, vanpools, carpools, non-motorized commute modes, or qualifying work practices. The employee hours from these 5 part-time employees are deducted when computing the employee hours tax or when computing the alternative full-time equivalent calculation method. 5 employee "heads" would be deducted. The rest of the part-time employees do not meet the 80% requirement. The total work hours of these ineligible part-time employees totals 10,750 hours.

To compute the tax for these 20 non-qualifying part-time employees, ABC Corp would multiply the 10,750 hours by the $.01302 tax rate ($139.97). Using the alternative calculation method, ABC Corp would divide the 10,750 by 1,920 hours to calculate the number of full-time employee equivalents (5.6 employees) and then round up to the nearest whole number (6) and multiply that number by $25 ($150).

The tax on the full-time employees would be the total number of hours worked by those 50 employees commuting in SOVs (100,000), multiplied by the $.01302 tax rate ($1,302), or 50 employees multiplied by $25 if using the alternative method ($1,250). A tax credit of $50 is deducted by ABC Corp to arrive at their total tax liability. The tax calculations would be as follows:

(i) *Employee hours tax calculation method.*

| | | |
|---|---|---|
| Total No. of employees. | | 100 full-time<br>25 part-time |
| Employees ineligible for the non SOV deduction. | | 50 full-time<br>20 part-time |
| No. of work hours subject to tax -- | 50 full-time<br>20 part-time | 100,000 hours<br>10,750 hours |
| Employee hours tax due before credit (110,750 hours X $0.01302) | | $1,441.97 |
| *Employee hours tax due after $50 credit.* | | *$1,391.97* |

*(ii) Alternative "full-time equivalent" calculation method.*

| | |
|---|---|
| Convert ineligible part-time employees to full-time employee equivalents (FTEs) and round up to the nearest whole number. | 10,750/1,920 =6 |
| No. of ineligible full-time employees. | 50 |
| Total No. of ineligible employees. | 50 + 6 = 56 |
| Employee hours tax due before credit | 56 X $25 = $1,400 |
| *Employee hours tax due after $50 credit.* | *$1,350* |

Tax difference between calculation (i) and (ii) results from the number of hours worked by 50 full-time employees being more than 1,920 work hours per employee (2,000 per full-time employee). Method (ii) assumes a 1,920 work hours per year ($25/$0.01302).

(e) In 2007, the MMM company had 25 full-time employees that were ineligible for the non SOV deduction and therefore all of their work hours were subject to the employee hours tax. After July 1, 2007, these 25 workers worked a total of 25,500 hours, excluding vacation time and sick leave. The tax calculations would be as follows:

*(i) Employee hours tax calculation method.*

| | |
|---|---|
| 25,500 hours multiplied by $0.01302 = | $332.01 |
| *Employee hours tax due after $50 credit.* | *$282.01* |

*(ii) Alternative "full-time equivalent" calculation method.*

| | |
|---|---|
| 25,500 hours divided by 960 hours (rounded up) = | 27 FTEs |
| 27 FTEs multiplied by $12.50 = | $337.50 |
| *Employee hours tax due after $50 credit.* | *$287.50* |

(f) Acme Company is a small business with an owner (sole proprietor) and two part-time employees working in the company. Acme's worldwide gross revenues for 2009 were $80,000, which is more than the minimum threshold of $50,000. The owner worked full-time (2,000 hours), and the two part-time employees worked a total of 2,570 hours, excluding vacation and sick leave hours. The owner commutes by bus to work and meets the 80% commute trip requirement, however the part-time employees drive their SOVs and are ineligible for the non SOV deduction. The tax calculations would be as follows:

(i) *Employee hours tax calculation method.*

| | |
|---|---|
| 2,570 hours multiplied by $0.01302 = | $33.46 |
| Less credit of up to $50 | ($33.46) |
| *Employee hours tax due.* | *$0* |

*(ii) Alternative "full-time equivalent" calculation method.*

| | |
|---|---|
| 2,570 divided by 1920 (rounded up) = | 2 FTE |
| 2 FTE multiplied by $25 = | $50 |
| Less credit of up to $50 tax owing | ($50) |
| *Employee hours tax due.* | *$0* |

Effective: May 15, 2007.

**THE CITY OF SEATTLE**
**DIRECTOR RULE**
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**
**RULE 5-921**

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CITY OF SEATTLE,
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By: _____
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NOTICE: IF THE DOCUMENT IN THIS FRAME IS LESS CLEAR THAN THIS NOTICE IT IS DUE TO THE QUALITY OF THE DOCUMENT.

## STATE OF WASHINGTON – KING COUNTY

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209880 No. MAKING HEARING
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residing in Seattle

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St.. .e of Washington, King Cou..y

# City of Seattle

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4/11(2098P0)