

Clerk File No. 309125

The City of Seattle – Legislative Department

Clerk File sponsored by: _____

Clerk File No. 309125

Department of Executive Administration
Director's Rules Nos. 5-005, 5-126, 5-277,
5-300, 5-536, 5-801, 5-900, 5-920, and 5-921
Implementing Seattle Business Tax
Ordinance.

Related Legislation File: _____

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

[Signature]
Date Filed with City Clerk

2-5-08

By

Committee Action:

Date	Recommendation	Vote

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

Full Council Action:

Date	Decision	Vote

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-005

FILED
CITY OF SEATTLE
2009 FEB -5 PM 12: 25

309125

Seattle Rule 5-005 Time payments.

CITY CLERK

- (1) **Time payments authorized.** All payments of taxes imposed under Title 5 of the Seattle Municipal Code are due and payable in accordance with the provisions contained therein. Payment of the full amount of tax, penalties, and interest due may be made in separate installments only when all of the following conditions are met:
 - (a) The taxpayer has made a good faith response to a debit note, demand letter, audit assessment or other request by the Director for payment prior to the taxpayer's request for partial payment; or the taxpayer's failure to respond is the result of events beyond the control of the taxpayer, as determined by the Director;
 - (b) The taxpayer has made a written request to pay all amounts due on a payment schedule; and
 - (c) The taxpayer agrees that the full amount of the tax, penalties and interest is due, including additional penalties that may become due as the case may be, as well as interest accruing until the date of final payment (see paragraph (3), below), and waives his or her right to contest the validity of the tax.

- (2) **Time payment agreements.** If the Director determines that a taxpayer meets all of the conditions in subsection (1) of this rule, the Director, for good cause, may enter into a time payment agreement with the taxpayer. The agreement shall be made on a form or in a format provided by the Department, and shall contain the following:
 - (a) The principal amount of license fees, tax, penalties, and interest to be financed;
 - (b) The date that the debt is to be fully paid, which in no case shall exceed two years measured from the date of first payment to the date of last payment (generally, the term is one year);
 - (c) The amount of each periodic payment;
 - (d) The due date of each periodic payment;
 - (e) A waiver of the taxpayer's right to contest the validity of the tax;
 - (f) A statement by the taxpayer that he or she will remain current with post-agreement tax obligations; and
 - (g) Any other terms and conditions that the Director considers reasonably necessary to effectuate collection of the tax.

- (3) **Interest and penalties.** Interest shall continue to accrue on the unpaid balance of any time payment agreement at the rate set forth in SMC 5.55.090 until paid in full. Scheduled payments received late are subject to additional penalties as set forth in SMC 5.55.110. Interest shall be calculated on the tax liability only.

- (4) **Application of payments.** The Director in all cases shall apply payments first against all license fees, then against penalties, then against accrued interest, and finally upon the tax.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-005

- (5) **Default.** The time payment agreement shall automatically terminate and the remaining balance of fees, taxes, penalties, and interest shall become immediately due and payable if the taxpayer defaults on his or her time payment agreement by:
- (a) Failing to timely make any scheduled payment in accordance with the payment schedule; or
 - (b) Failing to timely and fully pay any other obligation due the Department when and as they become due.

Effective: January 31, 2008.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-005


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 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

--SS.

217549
SEATTLE EXEC. SVCS-PURCHASING

No.

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.

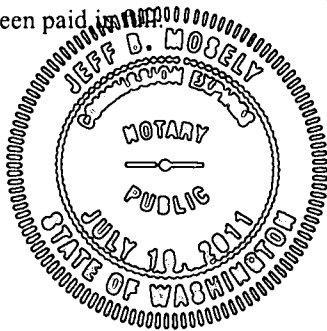
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROP RULE MAKING HEARI

was published on:

11/16/07

The amount of the fee charged for the foregoing publication is the sum of \$ 111.60, which amount has been paid in full.



Affidavit of Publication

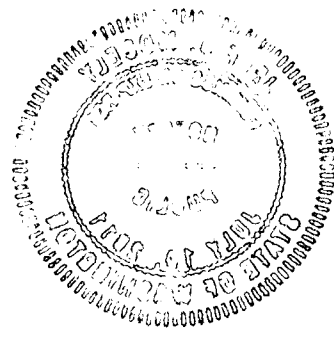
A handwritten signature in black ink, appearing to be "M. S. J.", written over a horizontal line.

Subscribed and sworn to before me on

11/16/07

A handwritten signature in black ink, appearing to be "H. B. Mosely", written over a horizontal line.

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 and amend an existing rule 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 or amendment and will become effective as of December 14, 2007:

- Seattle Rule 5-005 -- Time payments.
- Seattle Rule 5-126 -- Conditional and installment sales, method of reporting.
- Seattle Rule 5-277 -- Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial service.
- Seattle Rule 5-300 -- Telecommunications service, telephone business, and telephone service.
- Seattle Rule 5-536 -- Leases or rentals of tangible personal property; financing leases.
- Seattle Rule 5-801 -- Personal service, service activities.
- Seattle Rule 5-900 -- Admission tax for nightclubs
- Seattle Rule 5-920 -- Imposition of the employee hours tax
- Seattle Rule 5-921 -- Exemptions, deductions, and credits available under the employee hours tax.
- Seattle Rule 5-925 -- Parking tax computations.

PUBLIC HEARING AND COMMENT:
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:30 p.m. to 3:30 p.m., on Monday, December 10, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4080, 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) 884-5170, 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, November 16, 2007.
11/16(217549)

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-126

FILED
CITY OF SEATTLE
FEB -5 PM 12: 26

Seattle Rule 5-126

Conditional and installment sales, method of reporting.

CITY CLERK

- (1) Persons making conditional sales or other installment sales of tangible personal property must report the total selling price of such sales in the tax reporting period in which the sale is made.
- (2) A deduction from gross proceeds of sales as a credit loss is allowed to such sellers for the amount of the unpaid balance of the contract price on any installment sale if and when the property purchased is repossessed upon default by the buyer.

Effective: January 31, 2008.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-126

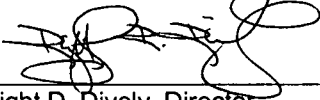
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DATED this 31ST day of January, 2008.

CITY OF SEATTLE,
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STATE OF WASHINGTON – KING COUNTY

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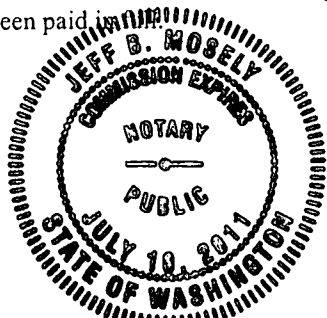
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Date of publication in the Seattle Daily
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11/16(217549)

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-277

FILED
CITY OF SEATTLE
2008 FEB -5 PM 12: 26

Seattle Rule 5-277 Clearing land, moving earth, cleaning, fumigating, razing, or moving existing buildings, and janitorial services.

- (1) **Introduction.** This rule provides City of Seattle B&O tax reporting guidance for the preparation of business tax returns for the following:
- (a) Persons engaged in performing well drilling, or engaged in performing contracts for the grading or clearing of land or the moving of earth if such activities do not involve the building, repairing or improving of any streets, roads, etc. which are owned by a municipal corporation or political sub division of the state or by the United States (See SR 5-279);
 - (b) Persons engaged in installing, repairing, altering, improving, constructing or decorating new or existing real property;
 - (c) Persons engaged in performing contracts which involve the cleaning, fumigating, razing, or moving of existing buildings or structures; and persons performing janitorial services.
- (2) **Retailing classification.** The definition of "retail sale" includes, but is not limited to, the sale of or charge made for labor and services consisting of the following activities:
- (a) Installing, repairing, altering, imprinting, improving, constructing, or decorating new or existing buildings or other such structures under, upon, or above real property of or for consumers.
 - (b) The clearing of land, grading of land, well drilling, and the moving of earth except for the mere leveling of land used in commercial farming or agriculture.
 - (c) The cleaning, fumigating, razing, or moving of existing buildings or structures, but not the charge made for janitorial services (gross proceeds derived from janitorial services shall be reported under the service and other business classification. See paragraph (4), below).
 - (d) The cleaning of exterior walls of buildings, the cleaning of septic tanks, special clean up jobs required by construction, fires, floods, etc., painting, papering, repairing, furnace, or chimney cleaning, snow removal, sandblasting, or the cleaning of plant or industrial machinery or fixtures.
- The gross receipts derived from such retail sales shall be reported under the retailing classification. Persons contracting to perform the activities in this section (2) for municipal corporations or political subdivisions of the state or the federal government shall also report the gross receipts from such activities under the retailing classification.
- (3) **Wholesaling classification.** Persons engaging in the activities listed in (2) above as a subcontractor and not for a consumer or governmental entity shall report the gross receipts from such activities under the wholesaling classification.
- (4) **Service and other business classification.** Gross receipts from contracts to perform janitorial services, the mere core drilling and testing of soil samples, the mere leveling of land for agriculture purposes, and labor or services rendered in connection with environmental remedial action shall be reported under the service and other business classification.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-277

- (5) **Janitorial services defined.** The term "janitorial services" includes activities performed regularly and normally by commercial janitorial service businesses. Generally, these activities include the washing of interior and exterior window surfaces, floor cleaning and waxing, the cleaning of interior walls and woodwork, the cleaning in place of rugs, drapes and upholstery, dusting, disposal of trash, and cleaning and sanitizing bathroom fixtures.

Effective: January 31, 2008.

THE CITY OF SEATTLE
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RULE 5-277

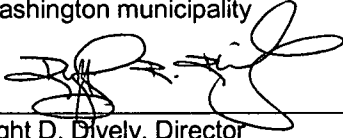
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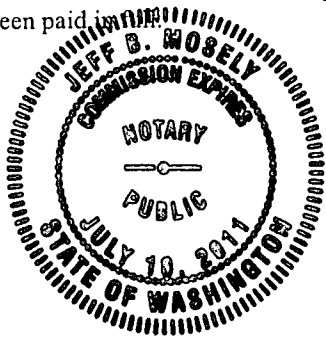
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11/16(217549)

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

FILED
CITY OF SEATTLE
2018 FEB -5 PM 12: 26
CITY CLERK

Seattle Rule 5-300 Telecommunications service, telephone business, and telephone service.

(1) **Introduction.** This rule explains the taxation of persons engaged in telephone business, including the rendering of telecommunications services or other electronic data transmission services to customers in Seattle. Generally, telecommunications service, telephone business, or telephone service includes, but is not limited to, ancillary services, data transmission, mobile telecommunication services, voice over internet protocol (VOIP), pager services, and any other transmission of electronic signals or data over lines, fiber, cable, or through the air. Persons engaged in "telecommunication services", "telephone business", or rendering "telephone service" are taxable under the telephone utility classification of the Seattle business utility tax, on total gross revenues, as described herein. This rule also includes how telecommunication services, or telephone business is sourced, and the taxation of bundled services.

(2) **Definitions**

(a) **"Ancillary services"** mean services that are associated with the provision of telephone services, telephone business, or telecommunications services, including but not limited to directory assistance, vertical service, caller ID, Call waiting, and voice mail services.

(b) **"Bundled transactions"** means the sale of two or more services, where (1) the services are otherwise distinct and identifiable, and (2) the services are sold for one non-itemized price.

(c) **"Call-by-call basis"** means any method of charging for telephone services where the price is measured by individual calls.

(d) **"Cellular telephone service"** is a voice or data telephone/telecommunications system based in whole or substantial part on wireless radio communications, whether or not the communications are subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. Cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service.

Examples of such services are paging and beeper services, mobile radio services, wireless services including cellular roaming services, and air-to-ground telephone service. Mobile telecommunications services do not only include transmission services for voice communications but also include transmissions of other types of content including data or video as in text messaging.

(e) **"Communications Channel"** means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(f) **"Competitive telephone service"** means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made.

(g) **"Customer Channel Termination Point "** for purposes of a private line communication service, means the location where the customer either inputs or receives the communications.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

- (h) **"Internet access provider (IAP)"** is an entity that provides individuals and internet service providers access to the internet. An IAP has the equipment and the telecommunication line access required to create a point of presence (POP) on the internet for individuals within a geographic area. The IAP controls the assignment of domain names and other identifying characteristics which provide a specific address to each person using the internet. Generally, individuals and small businesses receive their POP through their internet service providers who in turn received the POP from an IAP.
- (i) **"Internet service"** means a service that includes computer processing applications that provide the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of homepage, internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical sub-network called the World Wide Web.
- (j) **"Mobile telecommunications services"** means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:
- (i) Both one-way and two-way radio communications services;
 - (ii) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
 - (iii) Any service for which a license is required in a personal communications service under part 24 of Section 20.3, Title 47 Code of Federal Regulations ("CFR") (1999).
- "Mobile telecommunications service" is commonly referred to as cellular telephone or wireless service.
- (k) **"Place of primary use"** means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
- (l) **"Post-paid calling service"** means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service.
- (m) **"Prepaid calling service"** means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount. For example, calling cards purchased at a retail outlet are a "prepaid calling service."

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

- (n) **"Private communication service"** commonly referred to as "private line" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points. This includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. Virtual private network services, frame relay services, and dedicated access lines are examples of private communications services.
- (o) **"Telecommunication services", "telephone business", or "telephone services"** are broadly defined terms, and synonymous to each other, and mean the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. It includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added.

Telecommunication services also includes ancillary services that are associated with or incidental to the provision of telecommunication services including, but not limited to, conference bridging, detailed telecommunications billing, directory assistance, vertical service, or voice mail services, all as defined in RCW 82.04.065.

Telecommunication services, telephone business, or telephone services also includes those activities previously used to define telephone business such as the providing by any person of access to a local telephone network, local telephone network switching service, toll service, cellular or mobile telephone service, pager service or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes the provision of cooperative or farmer line telephone services or association operating exchanges. The term also includes the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

"Telecommunication services", "telephone business," or "telephone service" does not include the providing of competitive telephone service, data processing and information services, providing of cable television service, or other providing of broadcast services by radio or television stations.

- (p) **"Toll service"** means the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.
- (q) **"Voice over Internet Protocol (VOIP)"** is an internet protocol telephony term for a set of facilities used to manage the delivery of voice information over the internet. VOIP involves sending voice information in digital form and in discrete packets using internet protocols (addressing) rather than by using the traditional circuit-committed protocols of the public switched telephone network (PSTN).
- (3) **Business Utility Tax.** Persons engaged in providing "telecommunications services", "telephone business", or "telephone service" are taxable based upon the gross proceeds of sales under the telephone utility classification per SMC 5.48. Telecommunication services are taxable services regardless of whether they are provided via land line, microwave, wireless, cable, fiber or similar technologies and include local, long distance, mobile, 800 or other services designated as toll

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free services. Telecommunication services also includes enhanced or value added services such as voice mail, caller Id, call waiting, message indicators, etc. The following list are examples of charges made to customers which are part of the gross charge for telephone services and are included in the measure of the Seattle telephone utility tax regardless of whether such charges are separately itemized. This list is not all inclusive.

- (a) Connection and disconnection charges;
- (b) Reconnect charges;
- (c) Local telephone number portability charge;
- (d) Minimum or fix rate charges; commonly referred to as non-usage charges;
- (e) Telecommunication nonrecurring and recurring charges;
- (f) City of Seattle utility tax, or any other taxes or charges that do not qualify as trust taxes;
- (g) Late charges; and
- (h) VOIP charges.

The use of a coin-operated telephone by means other than coins is taxable under the telephone utility tax.

(4) Business License Tax.

- (a) Retailing. The retailing business license tax applies to competitive telephone service and is measured by the gross proceeds of sales of such competitive telephone service to customers. The tax shall be measured by total gross proceeds of sales to customers in accordance with the provisions of SMC 5.45.080, or SMC 5.45.081. The retailing business tax applies to sales of telecommunications service paid for by inserting coins in coin-operated telephones. The gross receipts from such sales should be reported under the retailing classification of the business license tax and should be excluded from the measure of the telecommunication service utility tax.

The following are examples of activities taxable under the retailing or wholesaling business license taxes depending on whether the purchaser is a consumer or reseller, respectively.

- (i) Sales of all items included in the definition of "Competitive Telephone Service".
 - (ii) Installation or maintenance of wiring or equipment at a customer's premises;
 - (iii) Sales of tangible personal property, such as phones; and
 - (iv) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.
- (b) Wholesaling. Gross income derived from charges to another telecommunications company for resale, as defined in RCW 80.04.010, for connecting fees, switching charges, carrier access, or other telephone service charges relating to intrastate toll telephone services, or for access to charges for, interstate services, are to be reported under the wholesaling classification. Items listed under the retailing classification in

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subsection (4)(a) above when sold to entities for resale to the end consumer are to be reported under the wholesaling classification.

- (c) Service and other business activities classification. Persons engaged in telecommunication services, telephone business or rendering telephone services are taxable under the service and other business activities classification of the business license tax on their activities of selling directory advertising, services for the generation of specialized billing reports, data processing and information services, billing and collection services provided to a third party, and internet access services. The gross receipts derived from engaging in such activities shall be reported under the service and other business classification.
- (5) **Deductions.** There may be deducted from the total gross income upon which the business license tax or utility tax is computed:
- (a) Amounts derived from business which the City is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the state, or the Charter of the City;
- (b) Any amounts collected by the taxpayer as an excise tax (trust funds) and remitted to the taxing authority, including but not limited to the leasehold excise tax, retail sales and use tax. (See Seattle Rule 5-065 for a list of taxes that may be deducted.)
- (c) Charges for the provision of interstate telephone service. The taxpayer is responsible for maintaining proper documentation and proof to establish the interstate charge. The taxpayer must be able to separately identify that portion of telecommunication services or telephone business which qualifies as interstate calls and services.
- (d) Amounts, as applied only to cellular telephone service companies who keep their regular books of account on an accrual basis, for credit losses actually sustained and written off by a taxpayer as a result of cellular telephone service business.
- (6) **Sourcing Rules.** This section provides general sourcing rules for the provision of telecommunication services, telephone business, or telephone service for purposes of the City of Seattle telephone utility tax.
- (a) Sourced to the place of primary use.
- (i) Mobile telecommunications services are sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act (P.L. 106-252), passed by Congress in 2002. This includes cellular phone service charges that are computed on a flat monthly charge. This also includes any VOIP charges that are computed on a flat monthly basis when the service provider cannot provide documentation to show that the service originated or was delivered at a location other than the customer's place of primary use.
- (ii) The sale of an ancillary service, such as voice mail, caller ID etc., is sourced to the customer's place of primary use.
- (b) Sourced to where service is provided.
- (i) Telecommunication services sold on a call-by-call basis shall be sourced to (A) the tax jurisdiction in which the call originates and terminates or (B) the tax jurisdiction in which the call either originates or terminates and in which the

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service address is also located. For example, if a customer places a phone call from Seattle to a person in Bellevue, and the customer's service address is Seattle, then the call is sourced to Seattle.

- (ii) Revenue received as a charge for a telephone call made by using a prepaid calling service shall be sourced to the origination point of the telecommunications signal, when first identified by either (A) the telecommunication service provider's telecommunications system, or (B) information received by the telecommunication seller from its telephone service provider, where the system used to transport such signals is not that of the telecommunication seller. Where the taxpayer's equipment or system is unable to identify the origination point to enable sourcing as indicated above in this subsection, the taxpayer shall contact the Director for reporting instructions.

For purposes of the City of Seattle telecommunications utility tax, the telecommunication provider whose name is on the prepaid calling card will be deemed to be the provider of the telephone service and treated as a telephone business and subject to the Seattle utility tax. Gross receipts from retail sales of prepaid cards by other than telecommunication or telephone phone businesses shall be reported under the retail classification of the business license tax.

For example, Telecommunications Company A sells prepaid calling cards containing Company A's name on the face of the prepaid calling card to retail store XYZ. XYZ sells Company A's prepaid calling cards to its customers. Telecommunications Company A is deemed to be the telecommunication or telephone business, and its gross income from providing the telecommunication service will be subject to the Seattle utility tax. XYZ will be subject to the Seattle business license tax under the retail classification on the sale of the prepaid calling card to its customers.

- (iii) Gross receipts for the charge for a telephone call using a post-paid calling service shall be sourced to the origination point of the telecommunications signal, when first identified by either (A) the telephone service provider's telecommunications system, or (B) information received by the telecommunication seller from its wholesale telephone service provider, when the system used to transport the signals is not that of the telecommunication seller.

- (c) A sale of private communication service (private line, frame relay etc.), is sourced as follows:

- (i) Service for a separate charge related to a customer channel termination point is sourced to the jurisdiction in which the customer channel termination point is located. For purposes of a private communication service, a customer channel termination point is the location where the customer either inputs or receives the communications.

Example: company A maintains a private line in Seattle and has ancillary charges related to their customer channel termination points in Seattle. These charges are sourced to Seattle for purposes of the Seattle utility tax.

- (ii) Service charges where all customer termination points are located entirely within one jurisdiction will be sourced to that jurisdiction in which the customer channel termination points are located.

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For example, company Z provides company XYZ with a private line. Company XYZ has four offices which are all located within Seattle. Company Z will source all gross income from providing the private line to company XYZ to Seattle for purposes of the Seattle utility tax.

- (iii) A service charge for a private line located in more than one jurisdiction is sourced to each jurisdiction based on the percentage of private line termination points in each jurisdiction divided by the total number of private line termination points. If the private line termination points are both within and without the state, the same sourcing rule applies.

For example, Company TT provides Company SW with a private line. SW has offices located throughout Washington and Oregon. The private line crosses multiple jurisdictions and connects all of company SW's offices. SW has 25 private line termination points located in Washington including 10 located in Seattle. SW has another 15 private line termination points located in Oregon. Company TT bills Company SW a single amount for providing the private line. SW will source 25% (10/40) of the private line charge to Seattle. Service charges for private lines that are subject to federal interstate tariffs will be considered an interstate charge.

- (7) **Bundled Transactions.** If a bundled transaction includes telecommunications or telephone services, and also internet services, the telecommunication utility tax will be calculated using the total price for the bundled products, unless the telecommunication seller can document from its books and records the portion of the sales price that represents the internet services. Telecommunication sellers, who as a part of their regular business practices, account separately in their books and records for the sales of the different products included in a bundled price, should only include in the measure of the utility tax the sales price allocated to the taxable telecommunications or telephone services in the bundled transaction. The separated non-telecommunication charge would be subject to the business license tax. Sellers must use a reasonable method of allocation. Sellers that do not separately account for bundled products in their books and records must include the whole non-itemized price in the measure of the utility tax.

Effective: January 31, 2008.

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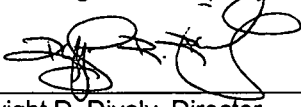
DIRECTOR'S CERTIFICATION

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 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

--SS.

217549
SEATTLE EXEC. SVCS-PURCHASING

No.

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.

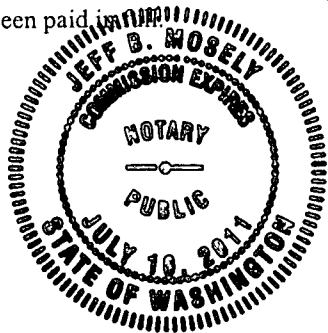
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROP RULE MAKING HEARI

was published on:

11/16/07

The amount of the fee charged for the foregoing publication is the sum of \$ 111.60, which amount has been paid in full.



[Handwritten signature]

Subscribed and sworn to before me on

11/16/07

[Handwritten signature]

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 Chapters 5.30 and 5.55, proposes to adopt new rules and amend an existing rule 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 or amendment and will become effective as of December 14, 2007:

- Seattle Rule 5-005 -- Time payments.
- Seattle Rule 5-126 -- Conditional and installment sales, method of reporting.
- Seattle Rule 5-277 -- Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial service.
- Seattle Rule 5-300 -- Telecommunications service, telephone business, and telephone service.
- Seattle Rule 5-536 -- Leases or rentals of tangible personal property; financing leases.
- Seattle Rule 5-801 -- Personal service, service activities.
- Seattle Rule 5-900 -- Admission tax for nightclubs
- Seattle Rule 5-920 -- Imposition of the employee hours tax
- Seattle Rule 5-921 -- Exemptions, deductions, and credits available under the employee hours tax.
- Seattle Rule 5-925 -- Parking tax computations.

PUBLIC HEARING AND COMMENT:
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:30 p.m. to 3:30 p.m., on Monday, December 10, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4080, 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.bizlctx@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, November 16, 2007.

11/16(217549)

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CITY OF SEATTLE

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Seattle Rule 5-536

Leases or rentals of tangible personal property; financing leases.

CITY CLERK

- (1) **Introduction.** This rule explains the application of the Seattle business license tax ordinance to persons who rent or lease tangible personal property or rent equipment with an operator. The leasing or renting of tangible personal property to consumers and the rental of equipment with an operator to consumers is defined as a retail service pursuant to SMC 5.30.040 P(8), and generally taxable under the retailing classification. However each instance will be taxed depending on the specific services rendered.
- (2) **Definitions.** As used herein:
- (a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to, and use of, tangible personal property for a consideration. When "lease," "leasing," "lessee," or "lessor" are used in this rule, these terms include rentals as well, though not specifically stated.
 - (b) The terms "leasing" or "lease" mean the act of granting to another the right of possession to and use of tangible personal property for a consideration for a set term with the intent that the property will revert back to the lessor at the conclusion of the term. "Leasing" and "lease" do not include a "financing lease", as defined in (2)(g) below. A lease of tangible personal property does not arise unless the lessee actually takes possession of the property and exercises dominion and control over it. Persons may not lease tangible personal property to themselves since they are not granting to another the right of possession.
 - (c) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.
 - (d) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for the act with the end consumer. A subcontractor is generally responsible for performing the work to contract specification and determines how the work will be performed. In purchasing subcontract services, the prime contractor is primarily purchasing the knowledge, skills, and expertise of the subcontractor to perform the task, as distinguished from the mere operation of the equipment.
 - (e) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such cases, the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. Though not controlling, persons who rent equipment with an operator typically bill on the basis of the amount of time the equipment was used.
 - (f) The term "true lease" (often referred to as an "operating lease") refers to the act of leasing property to another for consideration with the property under the full and complete dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.
 - (g) The term "financing lease" (often referred to as a "capital lease") involves the transfer of property for a stated period of time with ownership transferring to the transferee at the conclusion of the contract for a nominal or minimal payment. The transaction is

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structured as a lease, but generally is considered to be an installment sale and taxed as such. The presence of some or all of the following factors indicates a "financing lease":

- (i) The lessee is given an option to purchase, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");
- (ii) The lessee acquires equity in the property;
- (iii) The lessee is required to bear the entire risk of loss;
- (iv) The lessee pays all the charges and taxes imposed on ownership;
- (v) There is a provision for acceleration of payments; or
- (vi) The property was purchased specifically to lease to this lessee.

- (3) Lease of equipment with an operator, contractors and subcontractors.** A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises full and complete dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property, and will be treated as a prime contractor or subcontractor.

Persons renting "equipment with an operator" to others will have that transaction recognized as a lease or rental of tangible personal property only when:

- (a) The agreement between the parties is designated as an outright lease or rental, without reservations; and
- (b) The lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

This last requirement is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned employee. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

- (4) Engaging in Business in Seattle.**

- (a) Prior to January 1, 2008, lessors who lease tangible personal property from an office located within the city are subject to tax measured by the gross proceeds from all of the leases attributable to that office unless the leased property is received and used by the

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lessee outside the state of Washington or in another Washington city with an eligible gross receipts tax that has priority to tax the activity.

After January 1, 2008, lessors who lease tangible personal property from an office located within the city and deliver the equipment to a place outside the city for use outside the city will not be subject to tax on that lease activity. If equipment is then subsequently used within Seattle, the use of the equipment within Seattle is subject to the tax and the measure of the tax shall be that portion of the revenue received from using the leased equipment within Seattle.

- (b) Lessors located outside Seattle who knowingly lease tangible personal property for use in Seattle are subject to the business license tax. "Knowingly" means that the lessee has indicated that the property will be used inside the city or the lessee's physical address is a Seattle address. It is presumed that a lessee having a physical Seattle address will use the property in Seattle unless the lessor proves the lessee's intent to use the equipment or item outside the city. Apportionment of tax liability based on the degree of use in the city of leased property may be required in the case of lessors located outside the state of Washington or outside of Seattle after January 1, 2008 where it is clear that the property will be used both inside and outside Seattle.
- (c) Lessors located outside the city who lease tangible personal property will not be subject to business license tax if all of the following conditions are met:
 - (i) The tangible personal property is not located in the city at the time the lessee first receives possession of it;
 - (ii) The lessor has no reason to know that the property will be used by the lessee in the city;
 - (iii) The lease agreement does not require the lessee to notify the lessor of any subsequent movement of the property; and
 - (iv) The lessor has no reason to know that the property may have been moved into the city.

Notification by the lessee to the lessor of a change in billing address to Seattle is presumed to constitute reason to know that the leased property may have been moved into Seattle.

(5) Business license tax.

- (a) Leases of equipment without an operator or other tangible personal property to consumers are subject to the retailing classification.
- (b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is specifically classified under another tax classification. Where a specific tax classification applies to the activity performed by the equipment and operator, the activity is subject to the business license tax (or utility tax) according to the classification of the such activity. In the case of building construction, it will be presumed that the rental of equipment with an operator to a prime contractor is a retail sale unless the operator has sole responsibility for

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performing construction in accordance with contract specifications and assumes control over how the work will be performed, in which case the wholesaling classification applies.

- (c) Persons who furnish equipment with an operator under circumstances not giving rise to a lease, are subject to the business license tax according to the classification of the activities they perform with the equipment. For example, a person operating equipment to load and unload ships is taxable under the service and other business activities classification because loading and unloading ships is classified as a service and other type business. A person operating equipment to construct a building for a consumer is taxable under the retailing classification because building construction for a consumer is classified as a retail sale.
- (d) A bailment is not subject to the business license tax since there is no consideration received for the use of the equipment.
- (e) Persons who receive gross income from "financing leases" are taxable under the retailing or wholesaling classification on the "sale" of the equipment. The tax is due on the entire purchase price at the time of sale (when the financing lease is signed). This is the same method as used for installment sales. (See Seattle Rule 5-126 Conditional and Installment sales, method of reporting.)
- (f) The following examples show how the tax would be applied to certain situations.
 - (i) Gross income received by a subcontractor from a prime construction contractor for providing equipment with an operator where the prime contractor directs the subcontractor's work in the paving of a parking lot as part of the construction of a building would be reported by the subcontractor under the retailing classification. Where the subcontractor has the responsibility to perform the work in accordance with contract specifications and has sole responsibility to determine how the work will be performed the gross income would be reported under the wholesaling classification.
 - (ii) A contractor performing work in accordance with contract specifications making a charge to a city for use of equipment and operator in the construction of a publicly owned road would be taxable under the retailing classification.
 - (iii) Gross income for the loading of a vessel using equipment with an operator would be reported under the service and other business activities classification.
 - (iv) Gross income from transporting property for hire by motor vehicle, including leasing or renting motor carrier equipment with driver, is generally reported under the motor carriers transporting freight for hire classification.
 - (v) A customer rents scaffolding and the seller is responsible for providing a technician to setup, move, and dismantle it. The customer also assumes dominion or control over the scaffolding by determining who will use the scaffolding and by controlling the use of the scaffolding. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer. The rental is subject to the retailing classification.

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- (vi) ABC Crane is hired to supply a crane and operator to lift an air conditioning unit from the ground and hold it in place on the roof of a six-story building while the prime construction contractor bolts the unit down. ABC Crane's operator retains control over the crane. ABC Crane has no responsibility to attach wiring, plumbing, or otherwise make the unit operational. ABC Crane is renting equipment with an operator since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere.

- (vii) ABC Crane is hired by a prime contractor to install a neon sign on the side of a new six-story building which is being constructed. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract specification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate is obtained. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator as in example (vi) above.

- (viii) XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

Effective: January 31, 2008.

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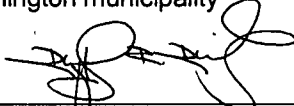
DIRECTOR'S CERTIFICATION

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 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

--SS.

217549
SEATTLE EXEC. SVCS-PURCHASING

No.

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.

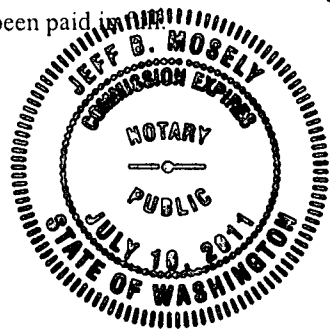
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROP RULE MAKING HEARI

was published on:

11/16/07

The amount of the fee charged for the foregoing publication is the sum of \$ 111.60, which amount has been paid in full.



[Handwritten Signature]

Subscribed and sworn to before me on

11/16/07

[Handwritten Signature]
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 Chapters 5.302 and 5.55, proposes to adopt new rules and amend an existing rule 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 or amendment and will become effective as of December 14, 2007:

- Seattle Rule 5-005 -- Time payments.
- Seattle Rule 5-126 -- Conditional and installment sales, method of reporting.
- Seattle Rule 5-277 -- Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial service.
- Seattle Rule 5-300 -- Telecommunications service, telephone business, and telephone service.
- Seattle Rule 5-536 -- Leases or rentals of tangible personal property; financing leases.
- Seattle Rule 5-801 -- Personal service, service activities.
- Seattle Rule 5-900 -- Admission tax for nightclubs
- Seattle Rule 5-920 -- Imposition of the employee hours tax
- Seattle Rule 5-921 -- Exemptions, deductions, and credits available under the employee hours tax.
- Seattle Rule 5-925 -- Parking tax computations.

PUBLIC HEARING AND COMMENT:
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:30 p.m. to 3:30 p.m., on Monday, December 10, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4080, 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, November 16, 2007.

11/16(217549)

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-801

FILED
CITY OF SEATTLE

2008 FEB -8 AM 10:44

CITY CLERK

Seattle Rule 5-801 **Personal services, service activities.**

(1) Seattle Municipal Code Section 5.45.050 imposes a business license tax upon every person for the privilege of engaging in business within the city of Seattle. Persons engaged in a specifically named business activity classified within SMC 5.45.050 are subject to the corresponding tax rate set forth in the code, which is applied to the value of products, gross proceeds of sale, or gross income of the business. The business license tax classifications set forth in SMC 5.45.050 are as follows: extracting, manufacturing and processing for hire, manufacturing flour or wholesaling grain, wholesaling, retailing, tour operators, printing and publishing, motor carriers transporting freight for hire, and service and other business activities. All business activities which are not specifically identified in the code as reportable under any of these tax classifications, and all services not specifically classified elsewhere in the code are reportable under the service and other business activities classification.

(2) Personal or professional services defined. The term "personal or professional services," as used herein, refers generally to the activity of rendering services to persons as distinct from making sales of tangible personal property or the providing of services which have been defined in the code as a "retail service," "sale" or "sale at retail." (See SMC 5.30.040 or 5.30.050.)

Examples of persons rendering personal or professional services include accountants, aerial surveyors and map makers, agents, athletes contracting to provide professional services, ambulances, appraisers, architects, attorneys, barbers, baseball clubs and other sports organizations, beauty shop owners, brokers, chemists, chiropractors, collection agents, court reporters, dentists, detectives, employment agents, engineers, financiers, funeral directors, hospitals, janitors, kennel operators, laboratories, landscape architects, loan agents, medical service providers, motor carriers other than freight haulers, music teachers, orchestra or band leaders contracting to provide musical services, physicians, real estate agents, school bus operators, schools, stenographers, warehouses, teachers, theaters, undertakers, veterinarians, and persons engaged in other similar professions or services.

(3) **Business license tax.**

(a) Persons engaged in rendering personal or professional services, or any business activity other than, or in addition to, those for which a specific rate is provided in SMC 5.45.050, are taxable under the service and other business activities classification upon the gross income from such business.

(b) The service and other business activities classification does not apply to persons engaged in the business of cleaning, repairing, improving, altering, etc., the tangible personal property of others, such as automobiles, houses, jewelry, computers, refrigerators and machinery repairs, laundry, or dry cleaners. Also, it does not include certain personal and professional services specifically included within the definition of the term "retail service", or "sale at retail" in SMC 5.30.040 or 5.30.050, such as amusement and recreation businesses of a participatory nature (See Seattle Rule 5-700 *Amusement, recreation, and physical fitness services.*); abstract, title insurance and escrow businesses, credit bureau businesses and automobile parking and storage garage businesses. Furthermore, it does not include persons who render services to others in the capacity of employees as distinguished from independent contractors. (See Seattle Rule 5-039 *Employees distinguished from persons engaging in business.*)

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RULE 5-801

- (c) There must be included within gross income amounts reported for tax all fees for services rendered and all charges recovered for expenses incurred in connection with the services rendered, such as transportation costs, lodging, meals, and telecommunications charges, etc.

- (d) Persons engaged in a personal service business and selling articles of tangible personal property apart from the rendition of personal services shall report those sales separately under the retailing or wholesaling classification--whichever applies.

Effective: January 31, 2008.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-801

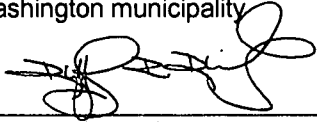
DIRECTOR'S CERTIFICATION

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 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

--SS.

217549
SEATTLE EXEC. SVCS-PURCHASING

No.

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:PROP RULE MAKING HEARI

was published on:

11/16/07

The amount of the fee charged for the foregoing publication is the sum of \$ 111.60, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

11/16/07

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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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, November 16, 2007.

11/16(217549)

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-900

FILED
CITY OF SEATTLE
2018 FEB -5 PM 12: 27
CITY CLERK

Seattle Rule 5-900 Admission tax for nightclubs.

- (1) **Introduction.** This rule sets forth: (1) approved methods for counting the number of admissions to nightclubs; (2) record keeping requirements; (3) the use of complimentary admissions; and (4) clarification regarding the responsibility to collect and remit the admission tax.
- (2) **Definitions.** For purposes of this rule and SMC Chapter 5.40, the following definitions will apply:
- (a) "Nightclub" means any business open to the public in which liquor is served between the hours of 10:00 p.m. and 6:00 a.m., except where service of liquor is incidental to an event that is not open to the public, and collects an admission charge as defined in SMC 5.40.010.
 - (b) "Nightclub operator" means any individual, sole proprietorship, partnership, corporation, association, or other public or private organization of any character with responsibility for operation of a nightclub.
 - (c) "Promoter" means any individual, sole proprietorship, partnership, corporation, association, or other public or private organization of any character that promotes, operates, or sponsors any event, special offer, performance, or other activity or occurrence for which admission is charged at a nightclub.
 - (d) "Venue" means any place or premises where a nightclub is conducted or operated, including but not limited to all hallways, bathrooms and other adjoining areas or the premises accessible to the public during the nightclub's hours of operation.
- (3) **Tracking admissions.** This section sets forth approved methods for accurately counting the number of nightclub admissions currently approved by the Department of Executive Administration for tax reporting purposes.
- (a) Approved methods of tracking. The following counting methods are approved by the Director:
 - (i) Serially numbered or reserve seat tickets;
 - (ii) Turnstile;
 - (iii) Cash register tapes; and
 - (iv) Counting methods pre-approved by the Director specific to a venue or event.
 - (b) Failure to use an approved counting method. Failure to use a counting method contained in this rule or otherwise approved by the Director shall be a violation of SMC Chapter 5.40 and subject to penalties set forth in SMC Chapter 5.55.
- (4) **Record keeping for admissions.**
- (a) Spreadsheet. Every person, including but not limited to a nightclub operator, promoter, sponsor, venue owner, or any person contractually related to such nightclub operator, promoter, sponsor, venue owner or other person that operates or conducts any place for entrance to which an admission charge is made shall be jointly and severally responsible

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-900

for maintaining a spreadsheet to report the number of admissions for each day or evening activity or event. Such spreadsheet shall contain the following information:

- (i) Date;
- (ii) Time admissions started and ended;
- (iii) Standard ticket price;
- (iv) Beginning and ending ticket numbers or turnstile numbers;
- (v) Promotions (such as ladies night, VIP admissions, free admissions before a certain time, etc.). If more than one promotion is in effect during an event, enter number of tickets and ticket prices for each promotion on separate lines;
- (vi) Number of free admissions associated with joint cover charges;
- (vii) Number of complimentary admissions;
- (viii) Total number of admissions; and
- (ix) Total number of paid admissions.

Sample Spreadsheet:

Date	Time Admissions Started and Ended	Standard Ticket Price	Beg. Ticket No.	Ending Ticket No.	Promotions Offered During this Period (# of tickets, ticket price for each promotion)	# of Free Admissions (joint cover admissions)	# of Complimentary Tickets	Total Admissions	Total Paid Admissions

- (b) Reporting of joint admissions by participating nightclubs. Nightclubs participating in a joint admission program shall maintain a separate daily log that records the number of joint admission tickets sold by that nightclub, and the number of free admissions provided to customers who purchased a joint admission ticket at another participating nightclub.
- (c) Promoter information. Nightclub operators, sponsors, and venue owners, must identify the promoter(s) of each event. The business record for each event coordinated by a promoter must include the promoter's legal name (not industry nickname or alias), current address, telephone number, and name and dates of the event. This information must be made available to the Director upon request. Where no promoter is identified, but admission is charged for entry into a nightclub, the nightclub operator shall be presumed to be the promoter.

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DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-900

- (d) Period for keeping business records. Pursuant to SMC 5.55.060, all businesses are required to keep books and records necessary to substantiate the tax liability of the business for a period of five (5) years after filing a tax return. To achieve this, each nightclub operator, sponsor, venue owner, and promoter must include in its business records examples of all coupons, tickets, advertisements for promotional admissions, or such other materials necessary to complete and substantiate its tax return. Such materials should be organized and maintained by event.

(5) Complimentary Admission.

Pursuant to SMC 5.40.053, anyone who is admitted free of charge to any nightclub or venue for any event for which other persons pay an admission charge shall pay an admission tax measured by the full admission charge. However, the full admission charge may be adjusted under the following circumstances for purposes of calculating the measure of the tax:

- (a) Free admission promotion for general classifications. When a nightclub owner or promoter allows certain general classifications of the public to enter the nightclub free of charge such as women, members of the armed forces, or senior citizens, and such promotion is publicly advertised, admission taxes will not be assessed on such promotional admissions.
- (b) 2 for 1 promotions for the general public. Admission tax will be assessed on the price of 1 ticket.
- (c) Coupons. Nightclubs may accept coupons that allow reduced admissions if such coupons are accessible to the general public. Admission tax will be assessed on the reduced price of admission only when a qualifying coupon is used.
- (d) Passes. Nightclub owners may also sell monthly or yearly passes to frequent general public customers and the admission tax will be assessed on the selling price of the passes. (The passes may not be for a nominal amount and the sale of such passes must be tracked and accounted for in the business's accounting records.)

Admission from all such promotions or passes must be clearly tracked on the daily record sheet as required by Section 4 of this rule. Generally, performers or people assisting in the performance or activity may enter the event without paying an admission charge and no tax will be assessed on such admission.

(6) Responsibility to collect and remit admission taxes.

- (a) Prior to commencement of the business, any person conducting or operating a nightclub to which an admission charge is to be imposed shall file an application for a certificate of registration with the Director to conduct or operate such nightclub pursuant to SMC Chapter 5.40.
- (b) Any person, including any nightclub operator, promoter, sponsor, venue owner, or anyone contractually related to such nightclub operator, promoter, sponsor, or venue owner who receives any payment for any admission charge on which a tax is levied under SMC chapter 5.40 shall collect the amount of the tax from the person making the admission payment at the time payment is made. The person receiving payment shall remit the same to the Director, and the admission tax collected under SMC Chapter 5.40 shall be deemed held in trust by the person required to collect the same until remitted to

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-900

the Director. Any person who is responsible but fails to collect the admission tax, or who collects the tax but fails to remit the tax to the Director, shall be liable to the City for the amount of such tax.

Thus, for example, if the legal owner of a premises that is used as a nightclub possesses any right of control over the operation or conduct of the nightclub, the legal owner shall be jointly and severally responsible for collecting, accounting for, or paying the admission tax even if another person such as a nightclub operator, promoter, employee, manager, or another person actually performs the function of collecting, accounting for, or paying the admission tax. On the other hand, if the legal owner of a premises that is used as a nightclub leases the premises to another person (the lessee) where the lease agreement grants to the other person the absolute right of control and occupancy of the premises during the term of the lease or rental agreement, the owner of the premises shall not be responsible for collecting, accounting for, or paying the admission tax. In such a case the lessee is the nightclub operator and will be liable for the tax.

- (c) If any person liable for the tax is a corporation, limited liability company or partnership, and fails to remit the admission tax collected or owed to the City, the officers and directors of such corporation, members of such limited liability company, or partners of such partnership are deemed to have control over or supervision of the receipt of admissions charges and shall be jointly and severally liable as individuals for the admission tax.

Effective: January 31, 2008.

**THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-900**

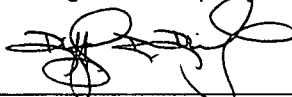
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DATED this 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

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217549
SEATTLE EXEC. SVCS-PURCHASING

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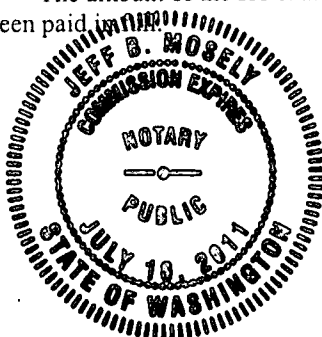
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CT:PROP RULE MAKING HEARI

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[Handwritten Signature]

Subscribed and sworn to before me on

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residing in Seattle

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State of Washington, King County

City of Seattle

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11/16(217549)

THE CITY OF SEATTLE
DIRECTOR RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-920

FILED
CITY OF SEATTLE
2008 FEB -6 PM 3: 32

Seattle Rule 5-920 **Imposition of the employee hours tax.**

CITY CLERK

- (1) **Introduction.** Effective July 1, 2007, an employee hours tax is imposed on persons engaging in business activities within Seattle. This rule explains the imposition of the tax and who is responsible to report and pay the tax.
- (2) **Definitions.** For purposes of this rule and SMC chapter 5.37 the following definitions apply:
- (a) "Business" means any person engaging in business as defined in SMC 5.30.030.
 - (b) "Employee" means any individual 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, and includes partners and officers of the business. A business' payroll includes the payroll of any related company that acts as a paymaster for the related entities.
 - (c) "Employee hours" means all paid hours credited to the employee including any overtime, but does not include paid vacation and paid sick leave hours.
 - (d) "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.
 - (e) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise and the United States or any instrumentality thereof.
- (3) **Imposition of the employee hours tax.** The employee hours tax is levied on every person for the act or privilege of engaging in business activities within the city, and is measured by the number of employee hours worked within the city during the calendar year. The tax is imposed upon the business, and not upon the employee. Employees whose hours are subject to the tax include, but are not limited to, the following:
- (a) Employees based in Seattle;
 - (b) Employees based elsewhere entering Seattle to conduct business activities (regardless of whether the employer has a single office elsewhere or multiple office locations);
 - (c) Employees of contractors constructing building or other structures within Seattle;
 - (d) Employees working both within and without the city for those hours worked within Seattle; and
 - (e) Full-time employees, part-time employees, temporary employees, and employees who where not employed for the full reporting period on their hours worked within Seattle.

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For purposes of calculating the tax under the Alternative Full Time Equivalent (FTE) Calculation Method under SMC 5.37.030 C (see (4)(b) below), employee hours for employees who do not work all of their

THE CITY OF SEATTLE
DIRECTOR RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-920

FILED
CITY OF SEATTLE
2008 FEB -5 PM 12: 27

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 - (a) "Business" means any person engaging in business as defined in SMC 5.30.030.
 - (b) "Employee" means any individual 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, and includes partners and officers of the business. A business' payroll includes the payroll of any related company that acts as a paymaster for the related entities.
 - (c) "Employee hours" means all paid hours credited to the employee including any overtime, but does not include paid vacation and paid sick leave hours.
 - (d) "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.
 - (e) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the State of Washington, corporation, limited liability company, association, society or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise and the United States or any instrumentality thereof.
- (3) **Imposition of the employee hours tax.** The employee hours tax is levied on every person for the act or privilege of engaging in business activities within the city, and is measured by the number of employee hours worked within the city during the calendar year. The tax is imposed upon the business, and not upon the employee. Employees whose hours are subject to the tax include, but are not limited to, the following:
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THE CITY OF SEATTLE
DIRECTOR RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-920

hours within Seattle or don't work enough hours to meet the full-time employee requirement set forth in this section would be calculated as if the person were a part-time employee.

- (4) **Computing the tax.** There are two methods that can be used to compute the tax.
- (a) The employee hours method. The tax amount is equal to the total employee hours worked within Seattle, excluding vacation and sick leave hours, and excluding the hours of those employees that qualify for the non-single occupancy commute deduction, multiplied by \$0.01302.
 - (b) The alternative full-time equivalent (FTE) method. The amount of tax is equal to the total number of full-time employees (less those deductible for qualifying for commute deduction) and the number of part-time FTEs working in Seattle multiplied by \$25 (\$12.50 for 2007). The number of part-time FTEs is computed by dividing the total number of hours (excluding vacation and sick leave hours, and the hours of those employees that qualify for the non-single occupancy commute deduction) worked in Seattle by part-time employees, or by employees who work both within and outside of Seattle, divided by 1,920 hours (960 hours for 2007).
 - (c) Once a method is selected, the business must report using the same method for future periods unless a change is approved by the director.
- (5) **Deductions, exemptions and credit available.** See Seattle Rule 5-921 for deductions and exemptions available under the employee hours tax. A credit of up to \$50 is allowed against any employee hours tax owing. This is the equivalent of two full time employees working within Seattle for a year. The credit can not be larger than the tax amount owing.
- (6) **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) A business located outside of Seattle sends sales representatives to visit businesses located within Seattle. The employees do not qualify for the non single-occupancy vehicle deduction. The hours of such employees are subject to the tax. Due to the credit provisions of up to \$50, the number of hours that the sales representatives work in Seattle must total more than 3,840 hours (2 FTEs X 1,920 hours) before any tax is due.
 - (b) A construction business located outside Seattle has 15 employees that work on a construction job in Seattle for 6 months. Since these employees do not qualify for the non single-occupancy-vehicle deduction and have not worked for a full year within the city, they should be treated as part-time employees for employee hours tax purposes. Their work hours, less any vacation and sick leave hours, should be totaled and divided by 1,920 to obtain the number of FTEs. Any fractional FTE should be rounded up to the next highest number. Tax is then due on that number of FTEs multiplied by \$25, or due on the total taxable employee hours multiplied by \$0.01302.
 - (c) KLM Bank has offices within and without Seattle. The majority of employees in Seattle work only in the Seattle offices. Since KLM Bank is headquartered outside Seattle, management employees visit, driving in single occupancy vehicles and work in the Seattle offices or branches from time to time. KLM Bank owes the employee hours tax on the number of employees working full time in Seattle and on the hours the outside management employees work within Seattle. Likewise Seattle employees that visit and work other KLM Bank offices or branches located outside of Seattle may deduct their work hours.

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- (7) **Estimation of hours.** Businesses located outside the city whose employees travel into Seattle shall track the number of employee hours worked in Seattle. If the tracking of these transitory hours is difficult, a **reasonable** estimation method based on a test period and then projected for the annual period may be employed to calculate the taxable employee hours.

Effective January 31, 2008.

**THE CITY OF SEATTLE
DIRECTOR RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-920**


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 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

--SS.

217549
SEATTLE EXEC. SVCS-PURCHASING

No.

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.

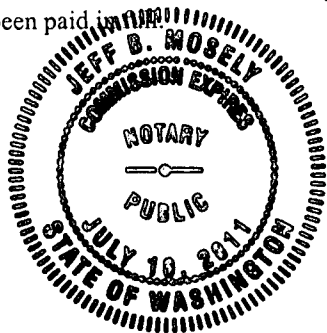
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROP RULE MAKING HEARI

was published on:

11/16/07

The amount of the fee charged for the foregoing publication is the sum of \$ 111.60, which amount has been paid.



Subscribed and sworn to before me on

11/16/07

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 Chapters 5.02 and 5.55, proposes to adopt new rules and amend an existing rule for implementing the Seattle Business License Tax Ordinance (Seattle Municipal Code, Chapter 5.46). 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 or amendment and will become effective as of December 14, 2007:

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- Seattle Rule 5-900 -- Admission tax for nightclubs
- Seattle Rule 5-920 -- Imposition of the employee hours tax
- Seattle Rule 5-921 -- Exemptions, deductions, and credits available under the employee hours tax.
- Seattle Rule 5-925 -- Parking tax computations.

PUBLIC HEARING AND COMMENT:
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:30 p.m. to 3:30 p.m., on Monday, December 10, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4080, 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, November 16, 2007.

11/16(217549)

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

FILED
CITY OF SEATTLE

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Seattle Rule 5-921

Exemptions, deductions and credits available under the employee hours tax.

CITY CLERK

- (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 Seattle Municipal Code ("SMC") Chapter 5.37 the following definitions apply:
- (a) "Carpool" means an arrangement whereby two or more persons over the age of 16 who share at least 50% of a common route to and from work in a single vehicle.
 - (b) "Commute Trip Reduction (CTR) Program" means a program to develop, implement and promote programs that reduce the number of Single Occupancy Vehicle (SOV) (as defined below) commutes made by employees, implemented by an employer as required under Revised Code of Washington ("RCW") 70.94.527 and SMC 25.02.
 - (c) "Employee" means any individual who performs work, labor, or services for a business, who 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 telecommuting 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 motorized vehicle (including motorcycles) that transports only one (1) person.
 - (j) "Statistically significant commuter survey" means a survey of employee commutes administered as prescribed, using a survey instrument approved or provided by the City, County, or State.
 - (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.

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(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 eighty thousand dollars (\$80,000) or less. This is a different threshold measurement from the threshold used for the business license tax pursuant to SMC 5.55.040.
- (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 that are not preempted from taxation by federal or state statutes or regulations. Businesses engaged in non-preempted activities are subject to the employee hours tax based on the portion of employee hours in which employees are engaged in performing the non-preempted activities.

- (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 in a Single Occupancy Vehicle (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 counts as one roundtrip commute. Any employee not meeting the 80% requirement must have **all** work hours included in the tax measure. Likewise, any employee who meets the 80% requirement may 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, ferries, and trains (Sounder);
- (b) Registered vanpools;
- (c) Carpools; and
- (d) Non-motorized commute modes and work practices.

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- (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 be 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 the year of the claimed deduction, such as a qualifying Commuter Trip Reduction (CTR) Program survey, or completed survey instruments and reports provided to or by the State of Washington. The surveys are proof only in the year in which the survey is conducted, if not conducted every year. Employees not completing the survey or providing other acceptable certification during a particular year will be deemed to be commuting by driving alone or in a single occupancy vehicle.
 - (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.* A statement by an employee certifying 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. The maximum credit for 2007 will be the full fifty dollars (\$50.00). 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 taxpayers should include only those hours worked after July 1 to compute the employee hours tax for 2007. The number of hours should be multiplied by \$.01302. If using the alternative full-time equivalent calculation method, taxpayers should 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, taxpayers should 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 is required to implement an approved Commuter Trip Reduction (CTR) program under SMC Chapter 25.02. 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

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also has 20 employees who walk or ride bikes to and from work. ZZ Corp may have the employees sign a statement certifying 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 calculated by multiplying the hours of the 110 employees who do not qualify for the deduction--by the hourly tax rate. Alternatively, if KLM Corp chooses to use the alternative "per employee calculation" the tax is calculated by multiplying the 110 employees who do not qualify for the deduction by the \$25 per employee rate, or 110 times \$25. A credit of \$50 would be available to KLM Corp, and may be 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
<i>Employee hours tax due after \$50 credit.</i>	<i>\$2,700</i>

- (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

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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 25 part-time
Employees ineligible for the non SOV deduction.		50 full-time 20 part-time
No. of work hours subject to tax --	50 full-time 20 part-time	100,000 hours 10,750 hours
Employee hours tax due before credit	(110,750 hours X \$0.01302)	\$1,441.97
<i>Employee hours tax due after \$50 credit.</i>		<i>\$1,391.97</i>

(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
<i>Employee hours tax due after \$50 credit.</i>		<i>\$1,350</i>

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
<i>Employee hours tax due after \$50 credit.</i>		<i>\$282.01</i>

(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
<i>Employee hours tax due after \$50 credit.</i>		<i>\$287.50</i>

(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 \$100,000, which is more than the minimum threshold of \$80,000. 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

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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)
<i>Employee hours tax due.</i>	\$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)
<i>Employee hours tax due.</i>	\$0

This version supersedes the previous SR 5-921, which took effect May 15, 2007.

Effective: January 31, 2008.

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


DIRECTOR'S CERTIFICATION

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DATED this 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
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STATE OF WASHINGTON – KING COUNTY

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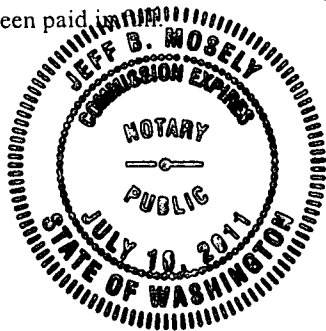
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