

Clerk File No. 310905

The City of Seattle – Legislative Department

Clerk File sponsored by: _____

Clerk File No. 310905
Department of Executive Administration
Director's Rule No. 5-901, implementing
Seattle Business Tax Ordinance relating to
an exemption from the admission tax for
qualifying music venues.

Related Legislation File: _____

Date Introduced and Referred:	To: (committee):
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action:	Disposition: <i>Filed</i>

Committee Action:

Date	Recommendation	Vote

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

Full Council Action:

Date	Decision	Vote

Date Filed with City Clerk

By

CF No.310905

Title:Department of Executive Administration
Director's Rule No. 5-901, implementing Seattle
Business Tax Ordinance relating to an exemption
from the admission tax for qualifying music venues.

Date Filed with City Clerk:20100622

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CITY OF SEATTLE

THE CITY OF SEATTLE
DIRECTOR'S RULE

IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-901

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Seattle Rule 5-901 **CITY CLERK** Admission tax exemption for Music Venues.

Introduction. SMC 5.40.028 provides for an exemption from the admission tax for qualifying music venues. This rule sets forth: (1) definitions (2) criteria to qualify for the music venue exemption; (3) cancellation of exemption certificate (4) appeal rights (5) record keeping requirements; and (6) examples.

Once a music venue secures a certificate of exemption, admission tax as imposed in SMC Section 5.40.020 shall not be charged to any person paying for admission to any such exempt premises or location. If a promoter or other person hosts or presents live music at a qualified tax exempt music venue, then all admission charges are exempt from the admission tax under SMC 5.40.020. Venues and others hosting or promoting at an exempt music venue will still be subject to the other Seattle business taxes in accordance with Title 5 of the Seattle Municipal Code.

- (1) **Definitions.** For purposes of this rule and SMC Chapter 5.40.028, the following definitions will apply:
- (a) "Live Music" means an active performance of music by an individual or individuals who, at the time of and during the performance, creates music or engages in an audible form of artistic expression, other than, or in addition to, any pre-recorded music, for an audience through the use or manipulation of voice, instruments, or electronic or computerized equipment.
 - (b) "Music Venue" means any place, premise or location where live music is hosted or presented to the public, including but not limited to all hallways, bathrooms and other adjoining areas or the areas accessible to the public during the premises' or location's hours of operation. An outdoor location does not qualify as a music venue for purposes of this definition.
 - (c) "Violation" means a legally binding final decision, order, citation, or other finding of violation entered by any court, adjudicative body or government agency against any legal owner, operator, manager, or employee of the premises or location, or any other person hosting or presenting live music at the premises or location.
 - (d) "Promoter" means any individual, sole proprietorship, partnership, corporation, association, or other public or private organization of any character other than the owner or operator of the music venue that promotes, hosts, presents, operates, or sponsors any event, special offer, performance, or other activity or occurrence for which admission is charged at a music venue.
 - (e) "Complete application." For purposes of the application effective date, a complete application means the submission of a fully executed Music Venue Exemption Application, along with a copy of a certificate of occupancy.
 - (f) "Certificate of Occupancy." For buildings constructed after 1957, the requirement for a Certificate of Occupancy exists for all admissions tax exemption applications. For buildings constructed before 1957, a letter from the Department of Planning and Development specifying the occupancy load for the establishment is required.

(2) **Criteria to qualify for the music venue exemption**

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- The venue fails to maintain the proper records needed to file the required quarterly report form used to substantiate the operational test.
- The venue fails, during any quarterly period, to meet the operating criteria. In the event a venue does not meet the 3 days per week and 16 individual performances per week criteria for an entire quarter, it may still retain its exemption under the 80% rule. If a venue can show that it has at least 31 live performances and 166 individual performances for an entire quarter, it meets the 80% rule. If a venue falls below the 80% rule for two consecutive quarters, the Director will terminate the admissions tax exemption until the venue is able to demonstrate that they can meet the operating criteria for the music venue exemption. The music venue may reapply for the music venue exemption but must show that they met the operating criteria during the 30 day period prior to the re-application. The admissions tax will be due for each quarterly period in which the operating criteria are not met. The Department will work with the venue owners to secure the necessary admission tax forms and payment of the admission tax.
- The venue becomes delinquent with any Seattle business license or tax obligations. The Director will send out a notice of delinquency and will provide 45 days from the date of issuance of the notice of delinquency for the venue to cure the delinquency.
- The person who obtained the certificate of exemption no longer conducts or operates the premises or location that is the subject of the exemption. New owners or operators are required to reapply for the certificate of exemption.

The director will issue a formal letter of revocation cancelling the music venue admission tax exemption certificate where applicable.

(4) Appeal rights

Any person whose certificate of exemption has been cancelled or any person whose application for a certificate of exemption has been denied may contest the finding by filing a written request for hearing with the Hearing Examiner within ten (10) days after the mailing of the notice of cancellation or notice of denial of exemption. If the person who received the notice of cancellation or notice of denial files a written request for hearing within the prescribed period, the Hearing Examiner shall schedule and conduct a hearing in accordance with the applicable Hearing Examiner rules.

(5) Record keeping for Exempt Music Venues.

A form shall be filed with the Director on a quarterly basis by each person to whom a certificate of exemption has been issued, and shall provide information sufficient to verify that during the corresponding quarter, the premises or location was in compliance with the requirements of the operational criteria in Subsections B 2 and 3 of this SMC 5.40.028. The quarterly reports shall be filed on a regular calendar quarter and shall be due 30 days from the end of the calendar quarter. The quarterly reports are required to be filed by all music venues that have secured a certificate of exemption from the Seattle admission tax. Failure to file the quarterly report may result in a revocation of the certificate of exemption.

Backup documentation to support the operating data submitted with the quarterly report shall be attached.

The form and addendum are available at
<http://www.seattle.gov/rca/taxes/ADMITAX/ExemptionMusicVenues.htm>

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All backup data shall be maintained pursuant to SMC 5.55.060. All businesses are required to keep books and records necessary to substantiate the tax liability, deductions and exemptions of the business for a period of five (5) years after filing a tax return.

Each exempt music venue is still responsible for the record keeping requirements in accordance with Seattle rule 5-900. The admission charges received at an exempt music venue are exempt from the Seattle admission tax, but are still subject to the Seattle Business and Occupation tax. Therefore, adequate records are still required to track admissions data for the Seattle Business and Occupation tax reporting requirements. In the event a taxpayer cannot meet the criteria for music venue tax exemption, they will be responsible for remitting the Seattle Admission Tax. Therefore, it is imperative to maintain records to substantiate admission revenue in accordance with Seattle rule 5-900. In the event that records have not been maintained, the City of Seattle will estimate the tax obligation due.

(6) Examples

- A. Company A operates a live music venue. Company A submits its application for the music venue admission tax exemption to the City of Seattle. Company A has provided its certificate of occupancy showing a capacity of 600, and a fully executed music venue exemption application. A review of their account indicates that they are current with all Seattle business license and tax obligations, and they have not obtained any violations of law. The effective date of the music venue exemption will be the date the fully executed application was received by the City of Seattle.
- B. Company A has been operating under their certificate of exemption for the past 9 months. Company A has filed the quarterly report for the first two quarters, and has demonstrated their ability to meet the operating criteria under SMC 5.40.028. When filing their quarterly report for the third quarter, Company A reveals that they did not meet the operating criteria or the 80% rule during the third quarter. Company A is responsible for reporting and paying the Seattle admission tax on all admission charges during the third quarter. Company A will have to meet the operating criteria during the fourth quarter, or they will lose their admission tax exemption certificate.
- C. Company B operates a live music venue. Company B has had a valid admissions tax exemption for one year. During the second quarter after receiving their exemption certificate, Company B was cited for three violations of law. During the first quarter of their second year, Company B is issued a violation of law. Company B's exemption certificate will be cancelled the date the fourth violation is issued. Company B will not be able to reapply for an admission tax exemption certificate for one year from the date of the fourth violation.

Effective: June 19, 2010.

DIRECTOR'S CERTIFICATION

I, Glen Lee, Acting Finance Director 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 Executive Administration.

DATED this 19th day of June 19, 2010.

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RULE 5-900

CITY OF SEATTLE,
a Washington municipality

By:



Glen Lee, Acting Finance Director
Department of Executive Administration

STATE OF WASHINGTON – KING COUNTY

--SS.

255258
CITY OF SEATTLE:REVENUE &

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.

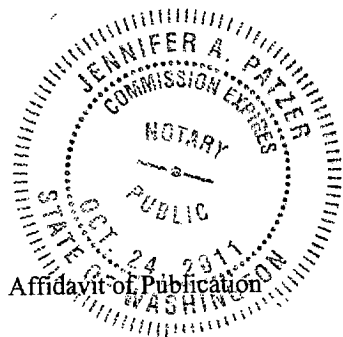
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

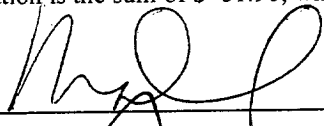
CT:PROPOSED RULE MAKING

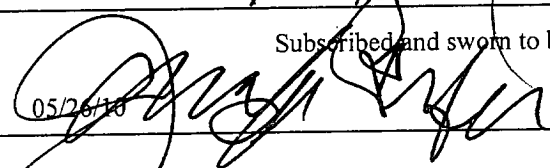
was published on

05/26/10

The amount of the fee charged for the foregoing publication is the sum of \$ 81.90, which amount has been paid in full.





Subscribed and sworn to before me on
05/26/10 

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 5.40 (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 June 19, 2010:

Seattle Rule 5-007 Penalties; Seattle Rule 5-043 Engaging in Business; Seattle Rule 5-046 Valuing affiliated or controlled transactions; Seattle Rule 5-125 Casual or isolated sales; Seattle Rule 5-901 Music Venue admission tax exemption

PUBLIC HEARING AND COMMENT

The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 12:30 p.m. to 2:30 p.m. on Tuesday, June 15, 2010. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4070, 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: Joseph A. Cunha, Tax Manager 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) 233-7820, FAX (206) 684-5170, email: joseph.cunha@seattle.gov, or submit a written request to the address above.

Glenn Lee, Acting Finance Director,
Department Executive Administration

Date of publication in the Seattle Daily
Journal of Commerce, May 26, 2010.

5/26(255258)

FILED
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10 JUN 22 PM 4: 09
CITY CLERK

MEMORANDUM

TO: Carol Shenk, City Clerk

FROM: Denise Movius, Director
Joseph Cunha, Tax Manager
Revenue & Consumer Affairs

DATE: June 21, 2010

RE: The Official Published Notice:
**Director's Business Tax Rules updates and adoption for SMC Chapter
5.45, and 5.55
Effective June 19, 2010**

Please file the attached paperwork concerning the City of Seattle "Tax Rules" 5-007(amended) Penalties, 5-043(amended), Engaging in Business, 5-046(new) Valuing the measure of the tax for business activities between related, controlled, or affiliated persons, 5-125(amended) Casual or isolated sales, 5-901(new) Admission tax exemption for Music Venues.

An Affidavit of Publication for the "Notice of Proposed Rule Hearing and Opportunity to Comment" that went to the *Daily Journal of Commerce* on May 25, 2010 for publication on May 26, 2010 is also included in this packet. The required public hearing was held on June 15, 2010 at 12:30 P.M. in Seattle Municipal Tower. No one attended the hearing so the sign in sheet is blank.

If we can provide any additional information, please let us know. You may contact Joseph Cunha, at 233-7820 for any questions.