

Clerk File No. 310908

# The City of Seattle – Legislative Department

Clerk File sponsored by: \_\_\_\_\_

Clerk File No. 310908  
Department of Executive Administration  
Director's Rule No. 5-043, implementing  
Seattle Business Tax Ordinance relating to  
engaging in business.

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>

June 22, 2010  
**Date Filed with City Clerk**

Janet Polata  
**By**

## Committee Action:

Date	Recommendation	Vote

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

## Full Council Action:

Date	Decision	Vote

# CF No.310908

Title:Department of Executive Administration  
Director's Rule No. 5-043, implementing Seattle  
Business Tax Ordinance relating to engaging in  
business.

Date Filed with City Clerk:20100622

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

FILED  
CITY OF SEATTLE

10 JUN 22 PM 4:09

**Seattle Rule 5-043**      **Engaging in Business**

CITY CLERK

- (1) **Tax imposed on engaging in business.** Seattle Municipal Code Chapter 5.45 imposes an excise tax upon the privilege of "engaging in business activities" within Seattle. The tax is measured by the value of products, gross proceeds of sales, or gross income derived in whole or in part from such business activities. The amount of tax is determined by multiplying the measure of the tax by the applicable rate. The measure and the rate that apply to a business activity is determined by the tax classification of the activity.
- (2) **Definitions.**
- (a) The term "engaging in business activity" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.
- (b) The terms "office" and "place of business" are defined in SMC 5.30.040.
- (3) **Business activities on which tax is imposed.** The definition of engaging in business is broad and extends to all activities performed with the object of gain, benefit or advantage with which Seattle has nexus.
- (a) Gain, benefit or advantage. A person is engaged in business if it performs activities with the object of gain, benefit, or advantage to the person. The gain, benefit or advantage may be indirect. The activity need not actually result in any gain, benefit, or advantage, as long as any of those were its object.
- (b) Nexus. A person has created nexus with Seattle if, whether itself or through others acting on its behalf, it:
- (i) is physically present in the City; or
- (ii) endeavors to maintain a share of the market within the City; or
- (iii) avails itself of the economic benefits of the City.
- Once a person has established nexus, a person is presumed to continue in business in Seattle as long as the person continues to generate gross proceeds of sales, gross income, or value resulting from the original nexus generating activity.
- (c) No physical presence required. A person may be engaged in business activities in Seattle whether or not it has an office, other place of business, or any other physical location in the City. A person is engaged in business activities in Seattle if it seeks to maintain a share of the market in the City or otherwise avails itself of the economic benefits of the Seattle market by directing its activities at that market.
- (4) **Examples of engaging in business activities.** The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" above. The City expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the tax under the law and the constitutions of the United States and the State of Washington. Without being all inclusive, any one of the

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

following activities conducted within the City by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license:

- (a) Owning, renting, leasing, maintaining, or having the right to use, or using, in connection with a business activity, tangible personal property, intangible personal property, or real property permanently or temporarily located in the City;
- (b) Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the City in which business activities are conducted;
- (c) Soliciting sales;
- (d) Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance;
- (e) Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf;
- (f) Installing, constructing, or supervising installation or construction of, real or tangible personal property;
- (g) Soliciting, negotiating, or approving franchise, license, or other similar agreements;
- (h) Collecting current or delinquent accounts;
- (i) Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials;
- (j) Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property;
- (k) Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians;
- (l) Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings;
- (m) Training or recruiting agents, representatives, independent contractors, brokers or others domiciled or operating on a job in the City, acting on its behalf, or for customers or potential customers;
- (n) Investigating, resolving, or otherwise assisting in resolving customer complaints;
- (o) In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place;

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

- (p) Delivering goods in vehicles owned, rented, leased, used, or maintained by the person who sold the goods or another acting on its behalf; and
  - (q) Accepting or executing a contract within the City and the goods and services are provided or delivered in the City.
- (5) **Safe harbor for persons engaging in certain business activities.** SMC 5.30.030 allows a person to engage in certain business activities in Seattle without being required to obtain a business license or pay tax.
- (a) Activities allowed without business license or tax payment. A person may perform one or more of the following business activities without licensing and paying tax to Seattle, provided that it engages in no other business activities in or with the City. If, in addition to the activities in this subsection (5)(a), a person performs one or more of the business activities listed in subsection (4), or another business activity, the person must register and pay tax.
    - (i) Meeting with suppliers of goods and services as a customer.
    - (ii) Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.
    - (iii) Attending meetings, such as trainings, board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf.
    - (iv) Renting tangible or intangible property as a customer when the property is not used in the City.
    - (v) Attending, but not participating in, a "trade show." Persons participating at a trade show shall review the City's trade show ordinance, SMC Chapter 6.20.
    - (vi) Conducting advertising through the mail.
    - (vii) Soliciting sales by phone from a location outside the City.
    - (viii) Accepting or executing a contract with the City when:
      - 1. The aggregate value of all City contracts with the person during the calendar year is Five Thousand Dollars (\$5,000) or less and the person is engaged in no other business within the City; or
      - 2. The person's only source of revenue consists of contracts with the City for neighborhood planning purposes, sister city associations, or Arts Commission grants, and is less than the taxable threshold amount provided in SMC Section 5.55.040D.

**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-043**

- (b) Delivery by common carrier. A seller located outside the City merely delivering goods into the City by means of common carrier is not required to register and obtain a business license provided that it engages in no other business activities in or with the City. If, in addition to delivering goods by common carrier, a seller performs one or more of the business activities listed in subsection (4), or another business activity, the person must register and pay tax.

Effective: July 15, 2005  
Amended: January, 2009, 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 19<sup>th</sup> day of June 19, 2010.

CITY OF SEATTLE,  
a Washington municipality

By: \_\_\_\_\_

  
Glen Lee, Acting Finance Director  
Department of Executive Administration

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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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 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

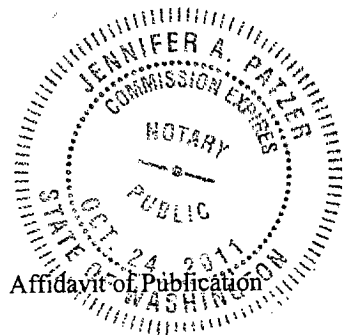
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

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.



*[Signature]*  
\_\_\_\_\_  
Subscribed and sworn to before me on  
05/26/10 *[Signature]*  
\_\_\_\_\_  
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 rules 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 5.40 (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)