

Clerk File No. 310909

## The City of Seattle – Legislative Department

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

Clerk File No. 310909

Department of Executive Administration  
Director's Rule No. 5-007, implementing  
Seattle Business Tax Ordinance relating to  
penalties.

Related Legislation File: \_\_\_\_\_

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

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.310909

Title:Department of Executive Administration  
Director's Rule No. 5-007, implementing Seattle  
Business Tax Ordinance relating to penalties.

Date Filed with City Clerk:20100622

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

FILED  
CITY OF SEATTLE

10 JUN 22 PM 4:09

CITY CLERK

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

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

The penalty types and rates addressed in this subsection are:

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

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

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

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

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

- (i) *Will I avoid the penalty if I file my return without the payment?* The Director may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return. Failure to file the return can result in the issuance of a notice of underpayment (NOU) or an assessment for the actual, or an estimated, amount of unpaid tax. Any NOU or assessment issued will include a late payment penalty starting at five percent, which will increase the longer tax remains unpaid. If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.
- (ii) *I didn't license my business with the Director when I started it, and now I think I was supposed to be paying taxes! What should I do?* You should fill out and send in a business license application to get your business licensed. It is important for you to license before the department identifies you as an unlicensed taxpayer and contacts you about your business activities. Except as noted below, if a person engages in taxable activities while unlicensed, but then licenses prior to being contacted by the department, the license is considered voluntary. When a person voluntarily licenses, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person was unlicensed.
- (A) However, even if the person has voluntarily licensed as explained above, the late payment of return penalty will apply if the person:
- (1) Engaged in evasion or misrepresentation with respect to reporting tax liabilities or other tax requirements; or

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

- (2) Engaged in taxable business activities during a period of time in which the person's previously open tax reporting account had been closed.
  - (B) Even though circumstances, such as those listed in (5)(a)(iii)(A) above, may warrant retention of the late payment of return penalty, a person who has voluntarily licensed will not be subject to the unlicensed taxpayer penalty (see subsection (b) below).
- (b) Unlicensed taxpayer. SMC 5.55.110 D imposes a five percent penalty on the tax due for any period of time where a person engages in a taxable activity and does not voluntarily license prior to being contacted by the Director. "Voluntarily license" means to properly complete and submit a business license application before any contact from the City of Seattle with respect to licensing or paying taxes.
- (c) Substantially underpaid deficiency assessment. SMC 5.55.110 B adds a five percent deficiency penalty to an assessment if the Director determines that any tax has been "substantially underpaid," as defined below.

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

If payment of the tax amount due and the five percent deficiency penalty due is not received by the due date specified in the notice, or any extension thereof, the deficiency penalty shall be increased to fifteen percent of the amount of the tax owing; and if payment of the tax amount due and the fifteen percent deficiency penalty due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, the penalty shall be increased to twenty-five percent of the amount of the tax due. No penalty so added shall be less than five dollars.
- (d) Issuance of a notice of violation or criminal complaint. If the Director issues a notice of violation or criminal complaint pursuant to SMC 5.55.110 C for the collection of any fee, tax, increase, or penalty, an additional penalty will immediately be added in the amount of ten percent of the amount of the tax due, but not less than ten dollars.
- (e) Disregard of specific written instructions. If the Director finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting of tax liabilities, an additional penalty of ten percent of the additional tax found due will be imposed because of the failure to follow the instructions pursuant to SMC 5.55.110 E.
  - (i) A taxpayer is considered to have received specific written instructions when the Director has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in the imposition of this penalty. The specific written instructions may be given as a part of a

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

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

- (ii) The penalty will not be applied if the taxpayer has made a good faith effort to comply with specific written instructions.
- (f) **Evasion.** If the Director finds that all or any part of the deficiency resulted from an intent to evade the tax due, a penalty of fifty percent of the additional tax determined by the Director to be due will be added. The evasion penalty is imposed when a taxpayer knows a tax liability is due but attempts to escape detection or payment of the tax liability through deceit, fraud, or other intentional wrongdoing. An intent to evade does not exist where a deficiency is the result of an honest mistake, miscommunication, or the lack of knowledge regarding proper accounting methods. The Director has the burden of showing the existence of an intent to evade a tax liability through clear, cogent and convincing evidence. The evasion penalty only applies to the specific taxes that a taxpayer intended to evade. To the extent that the evasion involved only specific taxes, the evasion penalty will be added only to those taxes. The evasion penalty will not be applied to those taxes which were inadvertently underpaid.
- (2) **Statutory restrictions on imposing penalties.** Depending on the circumstances, the law may impose more than one type of penalty on the same tax liability. However, those penalties are subject to the following restrictions:
  - (a) The penalties imposed for the late payment of a return, unlicensed taxpayer, substantial underpayment assessment, and issuance of a notice of violation or criminal complaint (see subsection (1)(a) through (d) of this rule) may be applied against the same tax concurrently, each unaffected by the others, up to their combined maximum rates. Application of one or any combination of these penalties does not prohibit or restrict full application of other penalties authorized by law, even when they are applied against the same tax.
  - (b) The Director may impose either the evasion penalty (subsection (1)(f) of this rule) or the penalty for disregarding specific written instructions (subsection (1)(e) of this rule), but may not impose both penalties on the same tax.
- (3) **Waiver or cancellation of penalties.** SMC 5.55.120 authorizes the Director to waive or cancel penalties under limited circumstances.
  - (a) **Circumstances beyond the control of the taxpayer.** The Director will waive or cancel any penalty imposed under SMC 5.55.110 if the failure to pay the tax by the due date was the result of circumstances beyond the control of the taxpayer.

A request for a waiver or cancellation of penalties should contain all pertinent facts and be accompanied by such proof as may be available. The taxpayer bears the burden of establishing that the circumstances were beyond its control

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

and directly caused the late payment. The request should be made in the form of a letter.

The circumstances beyond the control of the taxpayer must actually cause the late payment. Circumstances beyond the control of the taxpayer are generally those which are immediate, unexpected, or in the nature of an emergency. Such circumstances result in the taxpayer not having reasonable time or opportunity to timely file and pay. Circumstances beyond the control of the taxpayer include, but are not necessarily limited to, the following.

- (i) Erroneous written information given to the taxpayer by a department employee caused the delinquency. A penalty will not be waived when it is claimed that erroneous oral information was given by a department employee. The reason for not cancelling the penalty in cases of oral information is because of the uncertainty of the facts presented, the uncertainty of the instructions or information imparted by the department employee, and the uncertainty that the taxpayer fully understood the information given. Reliance by the taxpayer on incorrect advice received from the taxpayer's legal or accounting representative is not a basis for cancellation of a penalty.
  - (ii) The delinquency was directly caused by death or serious illness of the taxpayer, or a member of the taxpayer's immediate family. The same circumstances apply to the taxpayer's accountant or other tax preparer, or their immediate family. This situation is not intended to have an indefinite application. A death or serious illness which denies a taxpayer reasonable time or opportunity to obtain an extension or to otherwise arrange timely filing and payment is a circumstance eligible for penalty waiver.
  - (iii) The delinquency was caused by the destruction by fire or other casualty of the taxpayer's place of business or business records.
  - (iv) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the taxpayer's employee or other persons contracted with the taxpayer, which the taxpayer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place.
- (b) **Waiver of the late payment of return penalty.** The late payment of return penalty (see subsection (1)(a) above) associated with the first thirty days after the due date may be waived either as a result of circumstances beyond the control of the taxpayer or after a twenty-four month review of the taxpayer's reporting history, as described below. Late payment penalties due when the payment is more than 30 days late after the due date will not be waived under the twenty-four month review.
- (i) If the late payment of return penalty is assessed on a return but is not the result of circumstances beyond the control of the taxpayer, the penalty will still be waived or canceled if the taxpayer has timely filed and paid **all** tax returns and license renewals (regardless of type of tax or license) due for a period of twenty-four months immediately preceding the period

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

covered by the return for which the waiver is being requested.

A taxpayer who licenses to engage in business with the department, and engages in business activities for a period less than twenty-four months after licensing, is eligible for the waiver if the taxpayer had no delinquent tax returns for any periods prior to the period covered by the return for which the waiver is being requested. Therefore, the taxpayer's very first return due can qualify for a waiver under the twenty-four month review provision.

- (ii) A return will be considered timely for purpose of the waiver if there is no tax liability for the period for which the return is filed.
- (iii) A twenty-four month review is only valid when considering waiver of the late payment of return penalty described in subsection (1)(a) above, and for those payments made within the thirty day period after the due date. The twenty-four month review process cannot be used as justification for a waiver of interest, assessment penalty, or any penalty other than the late payment of return penalty described above.

Effective: June 19, 2010

Supersedes rule adopted May 15, 2007.

**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



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

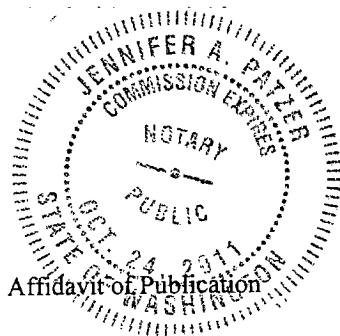
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

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.



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)