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CITY CLERK

Seattle Rule 5-007

Penalties.

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 -	Penalty Rate	See subsections of this rule listed below.
Description		
Late payment of a return -		
Nine percent added when payment is not received by the due date, and increases if the tax due remains unpaid.	9/19/29%	(1)(a)
Unregistered taxpayer -		
Five percent added against unpaid tax when the Director discovers a taxpayer who has taxable activity but is not registered.	5%	(1)(b)
Substantially Underpaid Deficiency Assessment -		
Five percent added when: (i) a notice of underpayment or tax assessment is issued by the Director (ii) the taxpayer has paid less than eighty percent; and (iii) the amount of underpayment is at least One Thousand Dollars. This penalty also	5/15/25%	(1)(c)

increases if the tax

due remains unpaid.

Issuance of a Notice of Violation or Criminal Complaint -

Ten percent added when a notice of violation or criminal complaint is issued to collect unpaid tax. 10% (1)(d)

Disregard of specific written instructions -

Ten percent added when the Director has provided specific, written reporting instructions and tax is underpaid because the

instructions are not followed. 10% (1)(e)

Evasion -

Fifty percent added when tax is underpaid and there is an intentional effort to hide that fact. 50% (1)(f)

Nonassessable and assessable penalties.

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

Penalties in 1(e) and (f) are assessable penalties.

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

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

(i) *Will I avoid the penalty if I file my return without the payment?* The Director may refuse to accept any return which is not accompanied by payment of the tax shown to be due on the return. If the return is not accepted, the taxpayer is considered to have failed or refused to file the return.

Failure to file the return can result in the issuance of a notice of underpayment (NOU) or an assessment for the actual, or an estimated, amount of unpaid tax. Any NOU or assessment issued will include a late payment penalty starting at five percent, which will increase the longer tax remains unpaid. If the tax return is accepted without payment and payment is not made by the due date, the late payment of return penalty will apply.

(ii) *I didn't register and receive a business license tax certificate 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 tax certificate application to get your business license tax certificate. It is important for you to apply for and receive business license tax certificate before the department identifies you as an unregistered taxpayer without a business license tax certificate and contacts you about your business activities. Except as noted below, if a person engages in taxable activities without a business license tax certificate, but then applies for and receives a business license tax certificate prior to being contacted by the department, the business license tax certificate registration is considered voluntary. When a person voluntarily applies for and receives a business license tax certificate, the late payment of return penalty does not apply to those specific tax-reporting periods representing the time during which the person did not have a business license tax certificate.

(A) However, even if the person has voluntarily applied for and received a business license tax certificate as explained above, the late payment of return penalty will apply if the person:

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

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

(B) Even though circumstances, such as those listed in (5)(a)(iii)(A) above, may warrant retention of the late payment of return penalty, a person who has voluntarily applied for and received a business license tax certificate will not be subject to the unregistered taxpayer penalty (see subsection (b) below).

(b) Engaging in business without a business license tax certificate. 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 apply for and receive a business license tax certificate prior to being contacted by the Director. "Voluntarily apply for and receive a business license tax certificate" means to properly complete and submit a business license tax certificate application before any contact from the City of Seattle with respect to licensing or paying taxes.

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

As used in this section, "*substantially underpaid*" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the Director to be due for all taxes contained

in SMC chapters 5.35, 5.37, 5.40, 5.45, 5.48, and 5.52, included in, and for the entire period of time covered by, the Director's examination, and the amount of underpayment is at least one thousand dollars.

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

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

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

(i) A taxpayer is considered to have received specific written instructions when the Director has informed the taxpayer in writing of its tax obligations and specifically advised the taxpayer that failure to act in accordance with those instructions may result in the imposition of this penalty. The specific written instructions may be given as a part of a NOU, tax assessment, audit, determination, or closing agreement. The penalty applies when a taxpayer does not follow the specific written instructions, resulting in underpayment of the tax due. The penalty may be applied only against the taxpayer given the specific written instructions. However, the taxpayer will not be considered to have disregarded the instructions if the taxpayer has appealed the subject matter of the instructions and the Director has not issued its final instructions or decision.

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

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

(2) Statutory restrictions on imposing penalties.

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

(a) The penalties imposed for the late payment of a return, unregistered taxpayer without a business license tax certificate, 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 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 business license tax certificate renewals (regardless of type of tax or license) due for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

A taxpayer who applies for and receives a business license tax certificate 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.

DIRECTOR'S CERTIFICATION

I, Glen M. Lee, 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 Finance and Administrative Services.

DATED this 14 day of July 2016.

CITY OF SEATTLE,

a Washington municipality

By: 

Glen M. Lee, Finance Director

Department of Finance and Administrative Services

Effective date: July 14, 2016

MEMORANDUM

TO: Monica Martinez Simmons, City Clerk

FROM: Glen Lee, Finance Director
Joseph Cunha, City Tax Administrator, and
Mark Watterson, Tax Audit Manager
License & Tax Administration

DATE: July 19, 2016

RE: The Official Published Notice:
**Director's Business Tax Rules amendments and adoption for SMC
Chapter 5.45 effective July 14, 2016**

FILED
CITY OF SEATTLE
2016 JUL 19 PM 3:41
CITY CLERK

Please file the attached paperwork concerning the following amended City of Seattle "Tax Rules":

- 5-002 Business License Requirements
- 5-003 Business license suspension and revocation
- 5-004 Transfer of business license
- 5-005 Time payments
- 5-007 Penalties
- 5-008 Recordkeeping requirements
- 5-009 Limitations on tax assessments
- 5-012 Refunds
- 5-030 Persons making sales through a direct seller's representative
- 5-034 Finance charges, carrying charges, interest and penalties
- 5-039 Employees distinguished from persons engaging in business
- 5-043 Engaging in business
- 5-064 Credit losses, bad debts, recoveries
- 5-127 Sales to, and by, the State of Washington, counties, cities, school districts and other municipal subdivisions
- 5-129 Tribes and Tribal members/Citizens
- 5-132 Leased departments
- 5-133 Warranties and maintenance agreements
- 5-404 Sales of meals
- 5-481 Motor carriers - Trucking
- 5-531 Sales of real property, standing timber, minerals, natural resources
- 5-901 Admission tax exemption

Please file the attached paperwork concerning the following adopted City of Seattle "Tax Rule":

5-193 Waterborne Transportation

An Affidavit of Publication for the "Notice of Proposed Rule Hearing and Opportunity to Comment" that went to the *Daily Journal of Commerce* for publication on May 27, 2016 is also included in this packet. The required public hearing was held on June 16, 2016 at 10:00 A.M. in Seattle Municipal Tower.

If we can provide any additional information, please let us know. You may contact Mark Watterson, Tax Audit Manager (206) 233-7095 for any questions.

STATE OF WASHINGTON -- KING COUNTY

--SS.

337883

No.

CITY OF SEATTLE:FINANCE&ADMIN

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.

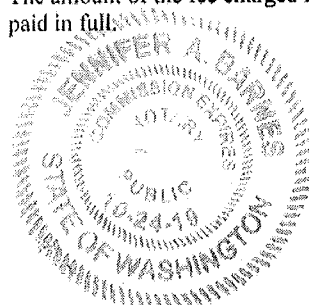
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROPOSED RULE MAKING

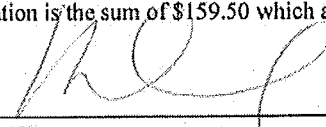
was published on


05/27/16

The amount of the fee charged for the foregoing publication is the sum of \$159.50 which amount has been paid in full.



Affidavit of Publication



05/27/2016 

Subscribed and sworn to before me on

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

NOTICE OF PROPOSED RULE MAKING HEARING AND OPPORTUNITY TO COMMENT

The Director of Finance, acting under the authority of Seattle Municipal Code Chapters 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License Tax Ordinances (Seattle Municipal Code Chapters 5.45 and 5.49). Please note that although these rules are applicable to SMC 5.45 and 5.49, 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 July 15, 2016:

Seattle Rule 5-002 Business license requirements

Seattle Rule 5-003 Business license suspension and revocation

Seattle Rule 5-004 Transfer of business license

Seattle Rule 5-005 Time payments

Seattle Rule 5-007 Penalties

Seattle Rule 5-008 Recordkeeping requirements

Seattle Rule 5-009 Limitations on tax assessments

Seattle Rule 5-012 Refunds

Seattle Rule 5-030 Persons making sales through a direct seller's representative

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

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

Seattle Rule 5-043 Engaging in business

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

Seattle Rule 5-127 Sales to, and by, the state of Washington, counties, cities, school districts and other municipal subdivisions

Seattle Rule 5-129 Tribes and tribal members/citizens

Seattle Rule 5-132 Leased departments

Seattle Rule 5-133 Warranties and maintenance agreements

Seattle Rule 5-193 Waterborne transportation

Seattle Rule 5-404 Sales of meals

Seattle Rule 5-481 Motor carriers - Trucking

Seattle Rule 5-531 Sales of real property, standing timber, minerals, natural resources

Seattle Rule 5-901 Admission tax exemption

PUBLIC HEARING AND COMMENT:
The Department of Finance and Administrative Services has scheduled a public hearing on the proposed rule changes for 10 a.m. to noon, on June 16, 2016. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4090, located at 700 Fifth Ave. 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 Finance and
Administrative Services

Attn: Mark Watterson, Tax Manager

License and Tax Administration

700 Fifth Ave. - Suite 4250

P.O. Box 34214

Seattle, WA 98124-4214

The public may inspect copies of the proposed rules at the License and Tax Administration offices, 700 Fifth Ave., Suite 4250. If you would like a copy of the proposed rules, please call (206) 235-3769, FAX (206) 684-5170, email: tax@seattle.gov, or submit a written request to the address above.

Glen Lee, Finance Director, Department
of Finance and Administrative Services

Date of publication in the Seattle Daily
Journal of Commerce, May 27, 2016.

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