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Seattle Rule 5-404

Sales of meals.

CITY CLERK

(1) Introduction. Generally, this rule explains Seattle's business license tax applications to the sales of meals. More specifically, this rule gives tax reporting information to persons who provide meals without a specific charge as well as an explanation as to how meals furnished to employees are taxed. Persons in the business of operating restaurants should also refer to Seattle Rule 5-405 and persons operating hotels, motels, boarding houses, or similar businesses should refer to Seattle Rule 5-720.

(2) Business license tax. The sales of meals and the providing of meals in consideration of services rendered are subject to tax as

follows:

(a) Retailing. The retailing business license tax applies as follows:

(i) Restaurants, cafeterias and other eating places. Sales of meals to consumers by restaurants, cafeterias, clubs, and other eating places are subject to the retailing tax. (See Seattle Rule 5-405 Restaurants, cocktail bars, taverns and similar businesses.)

(ii) Caterers. Sales of meals and prepared food by caterers are subject to the retailing tax when sold to consumers. "Caterer" means a person who provides, prepares, and serves meals for immediate consumption at a location selected by the customer. The tax liability is the same whether the meals are prepared at the customer's site or the caterer's site. The retailing tax also applies when caterers prepare and serve meals using ingredients provided by the customer. Persons providing a food service for others should refer to the subsection below entitled "Food service contractors."

(iii) Hotels, motels, bed and breakfast facilities, resort lodges and other establishments offering meals and transient lodging. Sales of meals by hotels, motels and other persons who provide transient lodging are subject to the retailing tax.

(iv) Boarding houses, American plan hotels, and other establishments offering meals and non-transient lodging. Sales of meals by boarding houses and other such places are subject to the retailing tax.

(A) Except for guest ranches and summer camps, when a lump sum is charged to non-transients for providing both lodging and meals, the fair market value of the meals is subject to the retailing tax. Unless accounts are kept showing the fair market value, the tax will be computed upon double the cost of the meals served. This cost includes the price paid for food and drinks served, the cost of preparing and serving meals, and all other incidental costs, including an appropriate portion of overhead expenses.

(B) It will be presumed that guest ranches and summer camps are not making sales of meals when a lump sum is charged for the furnishing of lodging, and meals are included.

(v) Railroad, dining car, ship, airplane, or other transportation company diners. Sales of meals by a railroad, dining car, ship, airplane, or other transportation company served at fixed locations in Seattle, or served upon the carrier itself while within Seattle, are subject to the retailing tax.

Where no specific charge is made for meals separate and apart from the transportation charge, the entire amount charged is deemed a charge for transportation and the retailing tax does not apply to any part of the charge.

(vi) Hospitals, nursing homes, and other similar institutions. The serving of meals by hospitals, nursing homes, sanitariums, and similar institutions to patients as a part of the service rendered in the course of business by such institutions is not a sale at retail, but rather, taxable under the applicable tax classification for the overall service rendered. However, many hospitals and similar institutions have cafeterias or restaurants through which meals are sold for cash or credit to doctors, visitors, nurses and other employees. These meals are subject to the retailing tax. Some of these institutions also have agreements where the employees are paid a fixed wage in payment for services rendered and are provided meals at no charge. The sales of meals to employees are subject to the retailing tax, including the value of meals provided at no charge to employees. Refer to the subsection below entitled "Meals furnished to employees." For retirement homes, a charge for meals served is subject to the retailing tax, even if included in a rental agreement, and even if meals are for the retirement home residents only.

(vii) School, college, or university dining rooms. Public schools, high schools, colleges, universities, or private schools operating lunch rooms, cafeterias, dining rooms, or snack bars for the exclusive purpose of providing students and faculty with meals or prepared foods are not considered to be engaged in the business of making retail sales of meals. However, if guests are permitted to dine with students or faculty in such areas, the sales of meals to the guests are retail sales.

(A) Unless the eating area is situated so that it is available only to students and faculty, the lunch room, cafeteria, dining room, or snack bar must have a posted sign stating that the area is only open to students and faculty. In the absence of such a sign, there will be a presumption that the facility is not exclusively for the use of students and faculty. The actual policy in practice in these areas must be consistent with the posted policy.

(B) If the cafeteria, lunch room, dining room, or snack bar is generally open to the public, all sales of meals, including meals sold to students, are considered retail sales.

(C) For some educational institutions, the meals provided to students are considered to be part of the charge for tuition and may not be subject to the business license tax. Public schools, high schools, colleges, universities, and private schools should refer to Seattle Rule 5-600 to determine whether the retailing business license tax applies to the sales of meals described above.

(viii) Fraternities and sororities. Fraternities, sororities, and other groups of individuals who reside in one place and jointly share the expenses of the household including expense of meals are not considered to be making sales when meals are furnished to members.

(b) Wholesaling. Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling classification. Sellers must obtain resale certificates from their customers to support the resale nature of any transaction.

(c) Service and other business activities. Private schools, which do not meet the definition of "educational institutions," operating lunch rooms, cafeterias, or dining rooms for the exclusive purpose of providing meals to students and faculty are subject to the service business license tax on the charges to students and faculty for meals. (See Seattle Rule 5-600 for definitions of the terms "private school" and "educational institution.") Persons managing a food service operation for a private school should refer to the subsection below entitled "Food service contractors."

(3) Sales by persons having a food and beverage worker's permit. Retail vendors who are required by law to have a food and beverage service worker's permit pursuant to RCW 69.06.010 are subject to the retailing tax on sales of prepared food products. This includes, but is not limited to, sales of sandwiches prepared or chicken cooked on the premises, deli trays, home delivered pizzas, etc...

(4) Food service contractors. The term "food service contractor" means a person who operates a food service at a kitchen, cafeteria, dining room, or similar facility owned by an institution or business. Food service contractors may manage the food service operation on behalf of the institution or business, or may actually make sales of meals or prepared foods.

(a) Sales of meals. Food service contractors who sell meals or prepared foods to consumers are subject to the retailing business license tax upon their gross proceeds of sales. For example, the operation of a cafeteria which provides meals to employees of a manufacturing or financial business is generally a retail activity. The food service contractor is considered to be making retail sales of meals, whether payment for the meal is made by the employees or the business, unless the business itself is reselling the meals to the employees.

In all cases where the meals are prepared at off-site facilities not owned by the institution or business, the food service contractor is considered to be making sales of meals and the retailing business license tax applies to the gross proceeds of sale, or gross income for sales to consumers.

(b) Food service management. The gross proceeds derived from the management of a food service operation are subject to the services and other business activities business license tax. These tax reporting provisions apply whether the staff actually preparing the meals or prepared foods is employed by the institution or business hiring the food service contractor, or by the food service contractor itself. If the food service contractor merely manages the food service operation on behalf of an institution or business, that institution or business is considered to be selling meals or providing the meals as a part of the services the institution or business renders to its customers. These institutions and businesses should refer to the subsection (2) above to determine their business license tax liabilities.

Food service management includes, but is not limited to, the following activities:

(i) Food service contractors operating a cafeteria or similar facility which provides meals and prepared food for employees and/or guests of a business, but only where the business owning the facility is the one actually selling the meals to its employees.

(ii) Food service contractors managing and/or operating a cafeteria, lunch room, or similar facility for the exclusive use of students or faculty at an educational institution or private school. The educational institution or private school provides these meals to the students and faculty as a part of its educational services. The food service contractor is managing a food service operation on behalf of the institution, and is not making retail sales of meals to the students, faculty, or institution. Sales of meals or prepared foods to guests in such areas are, however, subject to the retailing business license tax. (Refer also to subsection above entitled "School, college, or university dining rooms.")

(iii) Food service contractors managing and/or operating the dietary facilities of a hospital, nursing home, or similar institution, for the purpose of providing meals or prepared foods to patients or residents thereof. These meals are provided to the patients or residents by the hospital, nursing home, or similar institution as a part of the services rendered by the institution. The food service contractor is managing a food service operation on behalf of the institution, and is not considered to be making retail sales of meals to the patients, residents, or institution. Meals sold to doctors, nurses, visitors, and other employees through a cafeteria or similar facility are, however, subject to the retailing business license tax. (Refer also to the subsection above entitled "Hospitals, nursing homes, and other similar institutions.")

(c) The following examples explain the application of the business license tax to typical situations involving food service contractors managing a food service operation. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) GC Inc. is a food service contractor managing and operating an on-site cafeteria for B College. This cafeteria is operated for the exclusive use of students and faculty. However, guests of students or faculty members are allowed to use the facilities. All monies collected in the cafeteria are retained by B College. College B pays GC's direct costs for managing and operating the cafeteria, including the costs of the unprepared food products, employee salaries, and overhead expenses. GC also receives a management fee.

GC Inc. is managing a food service operation. The measure of tax is the gross proceeds received from B College. GC Inc. may not claim a deduction on account of cost of materials, salaries, or any other expense. The gross proceeds are subject to the service business license tax. B College is considered to be making retail sales of meals to the guests. B College should refer to Seattle Rule 5-600 to determine whether the retailing business license tax applies.

(ii) DF Food Service contracts with Hospital A to manage and operate Hospital A's dietary and cafeteria facilities. DF is to receive a per meal fee for meals provided to Hospital A's patients.

DF Food Service retains all proceeds for sales of meals to physicians, nurses, and visitors in the cafeteria.

The gross proceeds received from Hospital A, in regards to the meals provided to the patients are derived from the management of a food service operation. These proceeds are subject to the service business license tax. However, DF is making retail sales of meals to physicians, nurses, and visitors in the cafeteria. DF Food Service must pay retailing business license tax on the gross proceeds derived from the cafeteria sales.

(5) Meals furnished to employees. Sales of meals to employees are sales at retail and subject to the retailing business license tax. This is true whether individual meals are sold, whether a flat charge is made, or whether meals are furnished as a part of the compensation for services rendered.

(a) Where a specific and reasonable charge is made to the employee, the measure of the tax is the selling price.

(b) Where no specific charge is made, the measure of the tax will be the average cost per meal served to each employee, based upon the actual cost of the food.

(c) Where meals furnished to employees are not recorded as sales, the tax due shall be presumed to apply according to the following formula for determining meal count unless rebutted under particular circumstances substantiated by the business:

(i) Those employees working shifts up to five hours, one meal; and

(ii) employees working shifts of more than five hours, two meals.

(6) Sales of meals, beverages, and food at prices including sales tax. Persons who advertise and/or sell meals, alcoholic or other beverages, should refer to Seattle rule 5-405 (Restaurants, cocktail bars, taverns, and similar businesses), and Seattle Rule 5-130 (Selling price--Advertised prices including sales tax) and may exclude the amount of sales tax so collected from the gross revenue reported for business license tax purposes. The taxability of persons operating class H licensed restaurants is specifically addressed in Seattle Rule 5-405.

(7) Gratuities. Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price subject to tax. However, mandatory additions to the price by the seller whether labeled service charges, tips, gratuities or otherwise must be included in the selling price and are subject to the retailing classification of the business license tax.

(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 results of other situations must be determined after a review of all of the facts and circumstances.

(a) ABC Hospital operates a cafeteria and sells meals to physicians and to persons who are visiting patients in the hospital. Meals are also provided to its employees at no charge. However, there is no accounting for the number of meals consumed by the employees. Payroll records do record the number of hours worked. On average, employees working shifts of up to five hours consume one meal while those working shifts of more than five hours consume two meals.

ABC Hospital is subject to retailing business license tax on the gross proceeds derived from the sales of meals to physicians and visitors. The retailing tax also applies to the value of the meals consumed by ABC's employees. The value subject to tax is determined by the average cost of meals consumed by the employees, based upon the actual cost of the food items, multiplied by the number of meals as determined through a review of the payroll records. While the presumption is that employees working shifts of up to five hours consume one meal with those working shifts of five to eight hours consuming two, this presumption may be rebutted under particular circumstances.

(b) X operates a boarding house and provides lodging and meals to ten non-transient residents. Each resident is charged a lump sum to cover both lodging and meals with no accounting for a fair market value for the meals. X is making retail sales of meals to its residents. Retailing business license tax is due on the value of the meals served. This value must be computed as double the cost of the meal, including the cost of the food and drink ingredients, costs of meal preparation, and other costs associated with the meal preparation such as overhead expenses.

(c) Y Motor Inn contracts with Z Company to provide catering services for a function to be held at the motor inn. During discussions concerning the services to be provided, Z Company is informed that a 15% gratuity is generally recommended. Z Company negotiates the gratuity percentage to 10% and signs a catering contract stating that the agreed gratuity will be added. The gratuity charged to Z Company is subject to the retailing tax. This is not a voluntary gratuity since it is required to be paid as a condition of the contract. Gratuities are not considered to be part of the selling price when they are strictly voluntary.

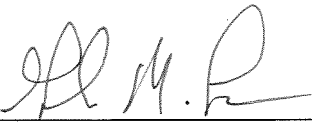
DIRECTOR'S CERTIFICATION

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.

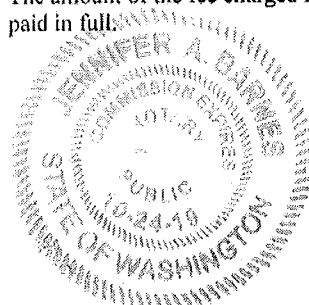
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROPOSED RULE MAKING

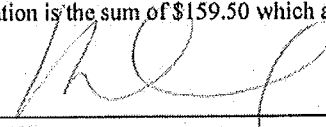
was published on


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 5.40). Please note that although these rules are applicable to SMC 5.45 and 5.40, 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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