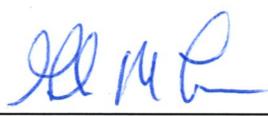
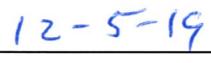
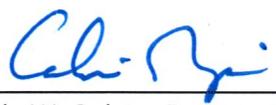




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**Director's Rule Template**

Department:  <b>City of Seattle</b> <b>Department of Finance and Administrative Services</b>	Rule No: <b>Seattle Rule 5-032</b>	Supersedes: <b>Seattle Rule 5-032</b>
	Publication: <b>November 5, 2019</b>	Effective: <b>January 1, 2020</b>
Subject: <b>Measure of Tax - Service and Other Business Activities.</b>	Code and Section Reference(s): <b>SMC 5.45.050 F, 5.45.081 and 5.45.100 P</b>	
Approved:   <hr/> Division Director	 <hr/> Date	
 <hr/> Business Unit Officer / City Finance Director	 <hr/> Date	
 <hr/> Calvin W. Goings, Department Director	 <hr/> Date	

**1. Purpose**

This rule is complementary to Seattle Rule 5-045. This rule updates text to add a new section for measure of tax for service and other business activities after Dec. 31, 2019. Retains the measure of tax for service and other business activities prior to Jan. 1, 2020.

**2. Rule**

Gross income derived from service and other business activities taxed under SMC 5.45.050.F after January 1, 2008, shall be apportioned to the City by multiplying the apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two (2).

**3. Definitions**

- **“Commercial Domicile”** has the same meaning as “domicile” as defined in RCW 35.21.855 and means the principal place from which the trade or business of the taxpayer is directed and managed. A taxpayer has only one domicile (or commercial domicile).

## Seattle Rule 5-032

### Measure of Tax - Service and Other Business Activities

- (1) **Measure of the tax.** The measure of the tax is gross income of the business. Persons who earn income that falls within the service and other business activities classification, pursuant to SMC 5.45.050 (F), must include in the Seattle tax base all gross income made possible in whole or in part by the person's Seattle business activities. A person may have Seattle gross income whether or not they have an office or place of business in the City.
- (2) **Assignment of gross income to Seattle.** This section instructs taxpayers which part of their gross income of the business will be assigned to the City of Seattle as taxable. Once the amount subject to tax in Seattle is determined according to this section, then the credit or deductions contained in sections 5 and 8 below may be calculated, if applicable.
- (a) **The following applies to gross income received prior to Jan. 1, 2008.**
- (i) Office or place of business in Seattle. A person who has an office or place of business in Seattle and not elsewhere must include in the measure of the tax all gross income of the business made possible in whole or in part by business activities rendered by, generated from, or attributable to the office or place of business located within the City. If a person has no office or other place of business except in Seattle, all of the person's gross income is presumed to have been made possible in whole or in part by business activities performed at the taxpayer's Seattle office or place of business.
  - (ii) No office or place of business in Seattle. A person engaging in business activities in the City who does not have an office or place of business in Seattle must include in the measure of the tax the gross income of the business attributable, in whole or in part, to business activities performed in the City.
  - (iii) Office or place of business both inside and outside of Seattle. A person who maintains an office or place of business in Seattle and elsewhere:
    - (A) shall be taxable on that portion of their gross income of the business that is derived from business activity rendered by, generated from, or attributable to the office or place of business located within the City; and

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(B) shall allocate to the City and be taxable on the gross income of the business from business activities performed in the City but supported by the office or place of business located outside the City, where the business activity performed in the City is a significant factor in making or holding the market for the goods sold, and the service was performed/rendered to customers in Seattle.

**(b) The following applies beginning Jan. 1, 2008 through Dec. 31, 2019:**

Gross income derived from activities taxed under the services and other classification shall be apportioned to the City by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service-income factor and the denominator of which is two.

- (i) The payroll factor is a fraction, the numerator of which is the total amount paid in the city during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the city if:
  - (A) The compensated individual is primarily assigned within the city;
  - (B) The compensated individual is not primarily assigned to any place of business for the tax period and that individual performs 50% or more of his or her service for the tax period in the city; or
  - (C) The compensated individual is not primarily assigned to any place of business for the tax period, does not perform 50% or more of his or her service in any city, and resides in the city.
- (ii) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the city during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the city if:
  - (A) The customer location is in the city; or
  - (B) The income-producing activity is performed in more than one location and a greater proportion of the service-income-producing activity is performed in the city than in any other location, based on costs of performance, and the taxpayer is not taxable at the customer location; or

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- (C) The service-income-producing activity is performed within the city, and the taxpayer is not taxable in the customer location.
  - (iii) If the allocation and apportionment provisions of this subsection do not fairly represent the extent of the taxpayer's business activity in the city or cities in which the taxpayer does business, the taxpayer may petition for, or the tax administrators may jointly require, in respect to all or any part of the taxpayer's business activity, that one of the following methods be used jointly by the cities to allocate or apportion gross income, if reasonable:
    - (A) Separate accounting;
    - (B) The use of a single factor;
    - (C) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in the city; or
    - (D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.
  - (c) **The following applies beginning Jan. 1, 2020:** Gross income derived from activities taxed under the services and other classification shall be apportioned to the City by multiplying the apportionable income by a fraction, the numerator of which is the payroll factor plus the service income factor and the denominator of which is two (2).
    - (i) The payroll factor is a fraction, the numerator of which is the total amount paid for compensation in the City during the tax period by the taxpayer and the denominator of which is the total compensation paid everywhere during the tax period. Compensation is paid in the City if:
      - (A) The individual is primarily assigned within the City;
      - (B) The individual is not primarily assigned to any place of business for the tax period and the employee performs 50% or more of his or her service for the tax period in the city; or
      - (C) The individual is not primarily assigned to any place of business for the tax period, the individual does not perform 50% or more of his or her service in any city, and the employee resides in the city.
- Per SMC 5.45.081.H "Individual" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.

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- (ii) The service income factor is a fraction, the numerator of which is the total service income of the taxpayer in the City during the tax period, and the denominator of which is the total service income of the taxpayer everywhere during the tax period. Service income is in the City if the customer location is in the City.
- (iii) **Income Factor Denominator – Excluded Income.** Gross income of the business from engaging in an apportionable activity must be excluded from the denominator of the service income factor if, in respect to such activity, at least some of the activity is performed in the city, and the gross income is attributable under (ii) of this subsection (c) to a city or unincorporated area of a county within the United States or to a foreign country in which the taxpayer is not taxable.
- (iv) If the allocation and apportionment provisions of this subsection (c) do not fairly represent the extent of the taxpayer’s business activity in the city, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer’s business activity, if reasonable:
  - (A) Separate accounting;
  - (B) The exclusion of any one or more of the factors;
  - (C) The inclusion of one or more additional factors that will fairly represent the taxpayer’s business activity in the city; or
  - (D) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer’s income.
- (v) The party petitioning for, or the tax administrator requiring, the use of any method to effectuate an equitable allocation and apportionment of the taxpayer’s income pursuant to subsection (iv) of this subsection (c) must prove by a preponderance of the evidence:
  - (A) That the allocation and apportionment provisions of this subsection (c) do not fairly represent the extent of the taxpayer’s business activity in the city; and
  - (B) That the alternative to such provisions is reasonable. The same burden of proof shall apply whether the taxpayer is petitioning for, or the tax administrator is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer’s income.

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- (vi) If the tax administrator requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the tax administrator cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (c).
- (vii) A taxpayer that has received written permission from the tax administrator to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the tax administrator reasonably relied in approving a reasonable alternative method.

(3) **Assignment of gross income from royalties.** A person who generates "royalty" income from the granting of the right to use intangible property shall assign such royalty income to the local jurisdiction where its headquarters is located.

(4) **Assignment of gross income to an office or place of business when subsection 2(a)(iii) applies (for periods prior to January 1, 2008).** If the Director determines that the assignment of gross income from business activities is not fair, as determined by the methods prescribed by subsection 2(a)(iii) (apportionment of service income prior to January 1, 2008), the Director shall determine such gross income by choosing either of the following methods:

- (a) The ratio that the cost of doing business within the City of Seattle bears to the cost of doing business both inside and outside the City of Seattle. For these apportionment purposes, all costs of doing business must be assigned to an office or place of business (See Section 6 below); or
- (b) A fair and equitable formula agreed upon by the Director and the taxpayer after consideration of the facts.

(5) **Deduction for taxes paid to other cities that impose an eligible gross receipts tax (for periods prior to Jan. 1, 2008).** When the assignment of gross income contained in subsections 2(a)(i) and 2(a)(iii) apply, and the other local jurisdiction with taxing nexus over a particular transaction imposes an eligible gross receipts tax, then the following deductions apply:

A person who engages in business activities both inside the City and outside the City, and maintains an office within, and who has paid an

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eligible gross receipts tax on gross income received for a service performed in the other local tax jurisdiction, may deduct from the measure of tax amounts the measure of the tax paid to the other jurisdiction. This deduction is applicable whether or not the service was provided inside Washington or outside Washington.

NOTE: Essentially, when two or more cities with eligible gross receipts taxes have nexus over the same "service" transactions, the revenue is assigned first to the City where the service is performed. If there is no tax paid in the City where the service is performed, then the revenue reverts back to the service provider's office location.

**(6) Apportioning the gross income of the business using the cost ratio approach for periods prior to Jan. 1, 2008 (see subsection 4(a) above).** Cost Apportionment Formula. In cases where a cost ratio apportionment is applied, a taxpayer shall report to the City that proportion of gross revenue which the cost of doing business within the City bears to the total cost of doing business both inside and outside the City. For apportionment purposes, all costs must be assigned to an office or place of business. Costs incurred for financing, advertising, and taxes shall not be included in the apportionment calculation. The following costs shall be included, as well as other costs particularly applicable to a taxpayer's business:

- (a) Payroll and salary costs of all employees and officers. These costs must be assigned to the office where the employee is domiciled. If the employee is not assigned or reporting regularly to an office (i.e. traveling salesman) then the salary is assigned to the office which controls the employee;
- (b) Office rent or depreciation expense;
- (c) Office maintenance, equipment expense, and repair;
- (d) Office supplies and materials expense and other general administrative expenses;
- (e) Automobile and travel expenses associated with office personnel (assigned to the office where the employee is domiciled);
- (f) Data processing and other computer system related costs;
- (g) Utility expense; and
- (h) Subcontractor expense. Subcontractor costs are assigned to the office out of which the subcontractor is controlled. This cost might have to be

apportioned between offices if more than one office controls the project and subcontractor.

(7) **Cost apportionment method exclusive of deductions (see section 6 above).**

If the cost apportionment method is used to calculate the gross income of the business as described in section 6 above, no deduction shall be allowed in calculating the taxable gross income of the business for amounts subjected to a gross receipts business and occupation tax in another jurisdiction.

(8) **Deduction to preserve constitutionality of tax (for periods prior to Jan. 1, 2008).** SMC 5.45.100 (P) provides that in computing tax, there may be deducted from the measure of the tax amounts derived from business which the City is prohibited from taxing under the Constitution of the State of Washington or the Constitution of the United States.

(9) **Definitions.** The definitions in this subsection apply throughout the rule.

(a) **"Apportionable income"** means the gross income of the business taxable under the service classifications of a city's gross receipts tax, including income received from activities outside the city if the income would be taxable under the service classification if received from activities within the city, less any exemptions or deductions available.

(b) **"Business activities tax"** means a tax measured by the amount of, or economic results of, business activity conducted in a city or county within the United States or within a foreign country. The term includes taxes measured in whole or in part on net income or gross income or receipts. "Business activities tax" does not include a sales tax, use tax, or a similar transaction tax, imposed on the sale or acquisition of goods or services, whether or not denominated a gross receipts tax or a tax imposed on the privilege of doing business.

(c) **"Commercial Domicile"** has the same meaning as "domicile" as defined in RCW 35.21.855 and means the principal place from which the trade or business of the taxpayer is directed and managed. A taxpayer has only one domicile (or commercial domicile).

(d) **"Compensation"** means wages, salaries, commissions, and any other form of remuneration paid to individuals for personal services that are or would be included in the individual's gross income under the federal internal revenue code.

(e) **"Customer location"** means the following:

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- (i) Effective Jan. 1, 2008 through Dec. 31, 2019, "Customer location" means the city or unincorporated area of a county where the majority of the contacts between the taxpayer and the customer take place.
- (ii) Effective Jan. 1, 2020, "Customer location" means the following:
  - (A) For a customer not engaged in business, if the service requires the customer to be physically present, where the service is performed.
  - (B) For a customer not engaged in business, if the service does not require the customer to be physically present:
    - (1) The customer's residence; or
    - (2) If the customer's residence is not known, the customer's billing/ mailing address.
  - (C) For a customer engaged in business:
    - (1) Where the services are ordered from;
    - (2) At the customer's billing/ mailing address if the location from which the services are ordered is not known; or
    - (3) At the customer's commercial domicile if none of the above are known.
- (f) **"Eligible gross receipts tax"** is defined at SMC 5.30.030.
- (g) **"Gross income of the business"** is defined at SMC 5.30.035.
- (h) **"Headquarters"** means the place from which the company manages its overall operations.
- (i) **"Individual"** means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee of that taxpayer.
- (j) **"Not Taxable"** means that the taxpayer is not subject to a business activities tax by that city or county within the United States or by that foreign country, except that a taxpayer is taxable in a city or county within the United States or in a foreign country in which it would be deemed to have a substantial nexus with the city or county within the United States or with the foreign country under the standards in RCW 35.102.050 regardless of whether that city or county within the United States or that foreign country imposes such a tax.
- (k) **"Office" and "Place of Business"** are defined at SMC 5.30.040.
- (l) **"Primarily assigned"** means the business location of the taxpayer where the individual performs his or her duties.

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- (m) **“Service taxable income”** or **“service income”** means gross income of the business subject to tax under either the service or royalty classification.
- (n) **“Tax period”** means the calendar year during which tax liability is accrued. If taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers shall calculate the factors for the previous calendar year for reporting in the current calendar year and correct the reporting for the previous year when the factors are calculated for that year, but not later than the end of the first quarter of the following year.
- (o) **“Taxable in the customer location” (for periods Jan. 1, 2008 through Dec. 31, 2019)** means either that a taxpayer is subject to a gross receipts tax in the customer location for the privilege of doing business, or that the government where the customer is located has the authority to subject the taxpayer to gross receipts tax regardless of whether, in fact, the government does so.