

THE CITY OF SEATTLE  
DIRECTOR'S RULE  
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE  
RULE 5-536

FILED  
CITY OF SEATTLE

FEB -5 PM 12: 26

**Seattle Rule 5-536**

**Leases or rentals of tangible personal property; financing leases.**

CITY CLERK

- (1) **Introduction.** This rule explains the application of the Seattle business license tax ordinance to persons who rent or lease tangible personal property or rent equipment with an operator. The leasing or renting of tangible personal property to consumers and the rental of equipment with an operator to consumers is defined as a retail service pursuant to SMC 5.30.040 P(8), and generally taxable under the retailing classification. However each instance will be taxed depending on the specific services rendered.
- (2) **Definitions.** As used herein:
- (a) The terms "leasing" and "renting" are used interchangeably and refer generally to the act of granting to another the right of possession to, and use of, tangible personal property for a consideration. When "lease," "leasing," "lessee," or "lessor" are used in this rule, these terms include rentals as well, though not specifically stated.
  - (b) The terms "leasing" or "lease" mean the act of granting to another the right of possession to and use of tangible personal property for a consideration for a set term with the intent that the property will revert back to the lessor at the conclusion of the term. "Leasing" and "lease" do not include a "financing lease", as defined in (2)(g) below. A lease of tangible personal property does not arise unless the lessee actually takes possession of the property and exercises dominion and control over it. Persons may not lease tangible personal property to themselves since they are not granting to another the right of possession.
  - (c) The term "bailment" refers to the act of granting to another the temporary right of possession to and use of tangible personal property for a stated purpose without consideration to the grantor.
  - (d) The term "subcontractor" refers to a person who has entered into a contract for the performance of an act with the person who has already contracted for the act with the end consumer. A subcontractor is generally responsible for performing the work to contract specification and determines how the work will be performed. In purchasing subcontract services, the prime contractor is primarily purchasing the knowledge, skills, and expertise of the subcontractor to perform the task, as distinguished from the mere operation of the equipment.
  - (e) The term "rental of equipment with operator" means the provision of equipment with an operator to a lessee to perform work under the specific direction of the lessee. In such cases, the lessor is generally not responsible for performing work to contract specification and does not determine how the work will be performed. Though not controlling, persons who rent equipment with an operator typically bill on the basis of the amount of time the equipment was used.
  - (f) The term "true lease" (often referred to as an "operating lease") refers to the act of leasing property to another for consideration with the property under the full and complete dominion and control of the lessee for the term of the lease with the intent that the property will revert back to the lessor at the conclusion of the lease.
  - (g) The term "financing lease" (often referred to as a "capital lease") involves the transfer of property for a stated period of time with ownership transferring to the transferee at the conclusion of the contract for a nominal or minimal payment. The transaction is

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structured as a lease, but generally is considered to be an installment sale and taxed as such. The presence of some or all of the following factors indicates a "financing lease":

- (i) The lessee is given an option to purchase, and, if so, the option price is nominal (sometimes referred to as a "bargain purchase option");
- (ii) The lessee acquires equity in the property;
- (iii) The lessee is required to bear the entire risk of loss;
- (iv) The lessee pays all the charges and taxes imposed on ownership;
- (v) There is a provision for acceleration of payments; or
- (vi) The property was purchased specifically to lease to this lessee.

- (3) Lease of equipment with an operator, contractors and subcontractors.** A true lease, rental, or bailment of personal property does not arise unless the lessee or bailee, or employees or independent operators hired by the lessee or bailee actually takes possession of the property and exercises full and complete dominion and control over it. Where the owner/lessor of the equipment or the owner's/lessor's employees or agents maintain dominion and control over the personal property and actually operate it, the owner/lessor has not generally relinquished sufficient control over the property to give rise to a true lease, rental, or bailment of the property, and will be treated as a prime contractor or subcontractor.

Persons renting "equipment with an operator" to others will have that transaction recognized as a lease or rental of tangible personal property only when:

- (a) The agreement between the parties is designated as an outright lease or rental, without reservations; and
- (b) The lessee acquires the right of possession, dominion, and control of the equipment, even to the exclusion of the lessor.

This last requirement is a factual question and the burden of proof is upon the owner/operator of the equipment to establish that the degree of control has been relinquished necessary to constitute a lessor-lessee relationship. Weight will be given to such factors as who has physical, operating control of the equipment; who is responsible for its maintenance, fueling, repair, storage, insurance (risk of loss or damage), safety and security of operation, and whether the operator is a loaned employee. If control of these factors is left with the owner/operator, then as a matter of fact, there has not been a relinquishing of control of the equipment to the degree necessary to create a lessor-lessee relationship for the rental of tangible personal property. This is true, even though the customer exercises some constructive control over such matters as when and where the equipment is used in connection with the construction work being performed, i.e., the contractor controls the job site.

- (4) Engaging in Business in Seattle.**

- (a) Prior to January 1, 2008, lessors who lease tangible personal property from an office located within the city are subject to tax measured by the gross proceeds from all of the leases attributable to that office unless the leased property is received and used by the

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lessee outside the state of Washington or in another Washington city with an eligible gross receipts tax that has priority to tax the activity.

After January 1, 2008, lessors who lease tangible personal property from an office located within the city and deliver the equipment to a place outside the city for use outside the city will not be subject to tax on that lease activity. If equipment is then subsequently used within Seattle, the use of the equipment within Seattle is subject to the tax and the measure of the tax shall be that portion of the revenue received from using the leased equipment within Seattle.

- (b) Lessors located outside Seattle who knowingly lease tangible personal property for use in Seattle are subject to the business license tax. "Knowingly" means that the lessee has indicated that the property will be used inside the city or the lessee's physical address is a Seattle address. It is presumed that a lessee having a physical Seattle address will use the property in Seattle unless the lessor proves the lessee's intent to use the equipment or item outside the city. Apportionment of tax liability based on the degree of use in the city of leased property may be required in the case of lessors located outside the state of Washington or outside of Seattle after January 1, 2008 where it is clear that the property will be used both inside and outside Seattle.
- (c) Lessors located outside the city who lease tangible personal property will not be subject to business license tax if all of the following conditions are met:
  - (i) The tangible personal property is not located in the city at the time the lessee first receives possession of it;
  - (ii) The lessor has no reason to know that the property will be used by the lessee in the city;
  - (iii) The lease agreement does not require the lessee to notify the lessor of any subsequent movement of the property; and
  - (iv) The lessor has no reason to know that the property may have been moved into the city.

Notification by the lessee to the lessor of a change in billing address to Seattle is presumed to constitute reason to know that the leased property may have been moved into Seattle.

**(5) Business license tax.**

- (a) Leases of equipment without an operator or other tangible personal property to consumers are subject to the retailing classification.
- (b) Persons who provide equipment or other tangible personal property and, in addition, operate the equipment or supply an employee to operate the same for a charge, without relinquishing substantial dominion and control to the customer, are providing a service that is classified as a retail sale unless the nature of the activity is specifically classified under another tax classification. Where a specific tax classification applies to the activity performed by the equipment and operator, the activity is subject to the business license tax (or utility tax) according to the classification of the such activity. In the case of building construction, it will be presumed that the rental of equipment with an operator to a prime contractor is a retail sale unless the operator has sole responsibility for

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performing construction in accordance with contract specifications and assumes control over how the work will be performed, in which case the wholesaling classification applies.

- (c) Persons who furnish equipment with an operator under circumstances not giving rise to a lease, are subject to the business license tax according to the classification of the activities they perform with the equipment. For example, a person operating equipment to load and unload ships is taxable under the service and other business activities classification because loading and unloading ships is classified as a service and other type business. A person operating equipment to construct a building for a consumer is taxable under the retailing classification because building construction for a consumer is classified as a retail sale.
- (d) A bailment is not subject to the business license tax since there is no consideration received for the use of the equipment.
- (e) Persons who receive gross income from "financing leases" are taxable under the retailing or wholesaling classification on the "sale" of the equipment. The tax is due on the entire purchase price at the time of sale (when the financing lease is signed). This is the same method as used for installment sales. (See Seattle Rule 5-126 Conditional and Installment sales, method of reporting.)
- (f) The following examples show how the tax would be applied to certain situations.
  - (i) Gross income received by a subcontractor from a prime construction contractor for providing equipment with an operator where the prime contractor directs the subcontractor's work in the paving of a parking lot as part of the construction of a building would be reported by the subcontractor under the retailing classification. Where the subcontractor has the responsibility to perform the work in accordance with contract specifications and has sole responsibility to determine how the work will be performed the gross income would be reported under the wholesaling classification.
  - (ii) A contractor performing work in accordance with contract specifications making a charge to a city for use of equipment and operator in the construction of a publicly owned road would be taxable under the retailing classification.
  - (iii) Gross income for the loading of a vessel using equipment with an operator would be reported under the service and other business activities classification.
  - (iv) Gross income from transporting property for hire by motor vehicle, including leasing or renting motor carrier equipment with driver, is generally reported under the motor carriers transporting freight for hire classification.
  - (v) A customer rents scaffolding and the seller is responsible for providing a technician to setup, move, and dismantle it. The customer also assumes dominion or control over the scaffolding by determining who will use the scaffolding and by controlling the use of the scaffolding. This is the rental of tangible personal property since the true object of the transaction is having the scaffolding available for use by the customer. The rental is subject to the retailing classification.

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- (vi) ABC Crane is hired to supply a crane and operator to lift an air conditioning unit from the ground and hold it in place on the roof of a six-story building while the prime construction contractor bolts the unit down. ABC Crane's operator retains control over the crane. ABC Crane has no responsibility to attach wiring, plumbing, or otherwise make the unit operational. ABC Crane is renting equipment with an operator since it has no responsibility to perform actual construction to contract specification. The activity of renting a crane with an operator is a service included within the definition of a retail sale and is not otherwise tax classified elsewhere.
  
- (vii) ABC Crane is hired by a prime contractor to install a neon sign on the side of a new six-story building which is being constructed. ABC is responsible for making certain that the sign is correctly fastened to the side of the building and for installation of the electrical connections and meets the proper building codes. ABC is directly involved in construction and performs work to contract specification. Since the work is being done for the prime contractor for further resale, this is a wholesale sale, provided a resale certificate is obtained. Had ABC only been hired to hold the sign in place while the prime contractor fastened it, this would have been a retail rental of equipment with operator as in example (vi) above.
  
- (viii) XYZ Concrete Pumping is hired by a prime contractor to supply a concrete pump and operator to pump concrete from a premix concrete delivery truck to the location of the forms. XYZ has no responsibility to build forms, do the concrete finishing, or otherwise see that the concrete meets or is placed according to contract specifications. In short, the pump functions similarly to a wheelbarrow, but in a more efficient manner. XYZ is not a subcontractor and is making a retail rental of equipment with an operator.

Effective: January 31, 2008.

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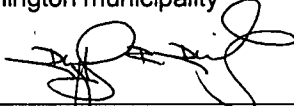
**DIRECTOR'S CERTIFICATION**

I Dwight D. Dively, Director of the Department of Finance 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.

DATED this 31<sup>st</sup> day of January, 2008.

CITY OF SEATTLE,  
a Washington municipality

By:

  
\_\_\_\_\_  
Dwight D. Dively, Director  
Department of Finance

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STATE OF WASHINGTON – KING COUNTY

--SS.

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217549  
SEATTLE EXEC. SVCS-PURCHASING

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.

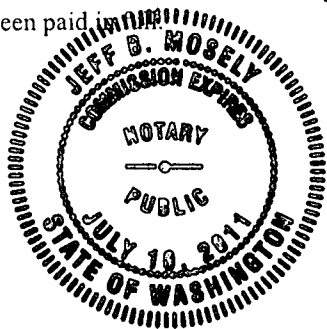
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROP RULE MAKING HEARI

was published on:

11/16/07

The amount of the fee charged for the foregoing publication is the sum of \$ 111.60, which amount has been paid in full.



Affidavit of Publication

A handwritten signature in black ink, appearing to be "M. S. J.", written over a horizontal line.

Subscribed and sworn to before me on

11/16/07

A handwritten signature in black ink, appearing to be "H. B. Mosely", written over a horizontal line.

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 5.302 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 5.37 (Employee Hours 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 December 14, 2007:

- Seattle Rule 5-005 -- Time payments.
- Seattle Rule 5-126 -- Conditional and installment sales, method of reporting.
- Seattle Rule 5-277 -- Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial service.
- Seattle Rule 5-300 -- Telecommunications service, telephone business, and telephone service.
- Seattle Rule 5-536 -- Leases or rentals of tangible personal property; financing leases.
- Seattle Rule 5-801 -- Personal service, service activities.
- Seattle Rule 5-900 -- Admission tax for nightclubs
- Seattle Rule 5-920 -- Imposition of the employee hours tax
- Seattle Rule 5-921 -- Exemptions, deductions, and credits available under the employee hours tax.
- Seattle Rule 5-925 -- Parking tax computations.

**PUBLIC HEARING AND COMMENT:**  
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:30 p.m. to 3:30 p.m., on Monday, December 10, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4080, 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: Mel  
McDonald, Deputy Director,  
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) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

DWIGHT D. DIVELY,

Director, Department of Finance  
Date of publication in the Seattle Daily  
Journal of Commerce, November 16, 2007.  
11/16(217549)