

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-042

FILED
CITY OF SEATTLE
FEB 15 2018
CITY CLERK

Seattle Rule 5-042 **Successor liability.**

(1) **Liability in general.** This rule explains the responsibilities and liabilities of a successor per SMC 5.55.130. A person to whom business property is sold or transferred, or who is obligated to perform the terms of a contract, may be liable to pay the transferor's or contractor's business license tax liability even if the taxes have not yet been assessed. If the criteria for liability are met, such person becomes a "successor" and is jointly and severally liable with the taxpayer to pay the tax. The Director may collect the tax from either the successor or the taxpayer, and is not required to first attempt collection from the taxpayer. If the Director collects the tax from the successor, the amount collected is considered to be a payment to the taxpayer. If the tax payment exceeds the price, the transferee may collect the difference from the taxpayer, but not from the Director.

(2) **Successor defined.**

Pursuant to SMC 5.30.050 G, "Successor" means any person to whom a taxpayer quitting, selling out, exchanging or disposing of a business sells or otherwise conveys directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, any part of the materials, supplies, merchandise, inventory, fixtures or equipment of the taxpayer. Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor.

(a) Transfer of property. A person will not be liable to pay the taxpayer's tax unless the person is a "successor." In general, a "successor" includes all persons who acquire a taxpayer's business property in bulk, whether they operate the business or not, unless the property is acquired through insolvency proceedings or regular legal proceedings to enforce a lien, security interest, judgment, or repossession under a security agreement.

(b) Contractor defaulting on contract. A person who is a surety or guarantor on a contract and is also obligated to fulfill the terms of the contract is a successor to the contract.

(3) **Taxpayer's obligations.**

(a) Payment required upon transfer of property. Any taxpayer that quits business, or sells out, exchanges, or otherwise disposes of his or her business or stock of goods, shall, within ten (10) days thereafter, make a return and pay the tax or fee due.

(b) Payment required upon default in contract. Any contractor who defaults on a contract, shall, within ten (10) days thereafter, make a return and pay the tax or fee due.

(4) **Successor's obligations.**

(a) The successor must withhold the purchase or contract price a sum sufficient to pay any taxes that are currently due or that may still be assessed against the taxpayer until such time as one of the following first occurs:

(i) The taxpayer produces a receipt from the Director showing payment in full of any tax due and that no further tax is due or will be assessed against it; or

(ii) More than six (6) months has passed since the successor notified the Director of the transfer or default and the Director has not issued, and notified the successor of, an assessment against the taxpayer.

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- (b) The successor must notify the Director in writing of the date of the transfer or default. The written notice must contain the following information:
- (i) The (predecessor) taxpayer's name, business name, address, and UBI number;
 - (ii) The successor's name, business name, address, and UBI number;
 - (iii) The date of the acquisition;
 - (iv) Whether or not the successor acquired any part of the materials, supplies, merchandise, inventory, fixtures or equipment of the (predecessor) taxpayer;
 - (v) A description of the assets acquired and their estimated fair market value;
 - (vi) The total costs of acquisition; and
 - (vii) How the person became a successor (i.e., asset purchase, merger, guarantor of a defaulting contractor, etc.).

(5) Examples.

The following factual situations illustrate the application of the foregoing:

- (a) Taxpayer sells business and stock of goods. Purchaser is the successor.
- (b) Taxpayer sells stock of goods in bulk. Purchaser is a successor, even though taxpayer continues in business through purchase of new stock of goods.
- (c) Taxpayer sells business, including fixtures and good will, to one party and his stock of goods to another. Both purchasers are successors.
- (d) Taxpayer sells one branch of the business and stock of goods, and continues to carry on his or her business at other locations. Purchaser is successor to the portion of the business purchased and liable for any tax incurred in the operation of that branch of the business.
- (e) Taxpayer leaves business, including fixtures and stock of goods, which his landlord holds for unpaid rent. The landlord will be a successor unless he proceeds to foreclose his landlord's lien by posting notice and holding a sale by the sheriff.
 - (i) If the landlord, instead of foreclosing his lien, takes a bill of sale to all of the taxpayer's interest in the business or stock of goods in satisfaction of rent, he is a successor.
 - (ii) If the landlord fails to foreclose his lien and sells the fixtures or stock of goods and the purchaser continues the business or a similar business, the purchaser is a successor.
 - (iii) If the taxpayer does not leave any fixtures or stock of goods and the landlord engages in a like business in the same location, or rents to a third person, neither the landlord nor the third person is a successor.

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- (f) Taxpayer purchases business, equipment, or stock of goods under a security agreement and the vendor repossesses the property; the vendor is not a successor.
 - (i) If the vendor sells to a third person who continues the business, the third person is not a successor.
 - (ii) If the taxpayer sells his equity under the security agreement to a third person, the third person is a successor.
 - (iii) If the property is not repossessed and the vendor buys back the interest of the taxpayer, the vendor is a successor, and any third person who purchases the same from such vendor and continues the business is also a successor.
- (g) Taxpayer dies or becomes bankrupt, goes into receivership, or makes an assignment for the benefit of creditors.
 - (i) The executor, administrator, trustee, receiver, or assignee is not a successor but stands in the place of the taxpayer and is responsible for payment of tax out of the proceeds derived upon disposition of the assets.
 - (ii) A purchaser from the executor, administrator, trustee, receiver, or assignee is not a successor, unless under the terms of the purchase agreement he assumes and agrees to pay taxes and/or lien claims.
- (h) Taxpayer is a contractor and is required to post a bond to insure completion of the contract. Taxpayer defaults on the contract and the bonding company completes it. The bonding company is a successor to the contractor to the extent of the contractor's liability for that particular contract and is also liable for taxes incurred in the completion of the contract.

Effective: May 15, 2007.

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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 14th day of May, 2007.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

--SS.

209880
CITY OF SEATTLE:REVENUE &

No. MAKING HEARING

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.

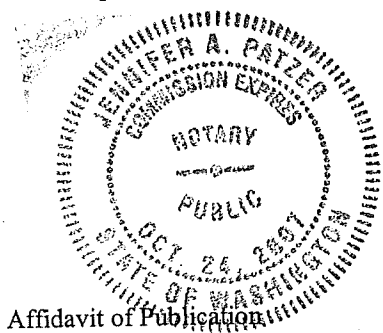
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

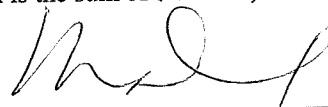
CT:NOTICE PROPOSED RULE

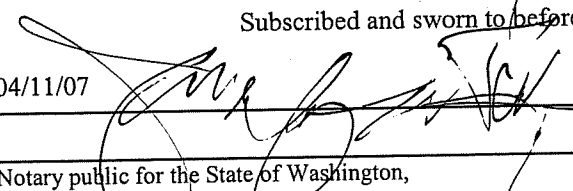
was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of \$ 139.50, which amount has been paid in full.





Subscribed and sworn to before me on
04/11/07 

Notary public for the State of Washington,
residing in Seattle

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 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 and will become effective as of May 15, 2007:

- Seattle Rule 5-000 Rules adopted.
- Seattle Rule 5-002 Business license requirements.
- Seattle Rule 5-007 Penalties.
- Seattle Rule 5-008 Recordkeeping requirements.
- Seattle Rule 5-009 Limitations on tax assessments.
- Seattle Rule 5-033 When tax liability arises.
- Seattle Rule 5-034 Finance charges, carrying charges, interest, and penalties.
- Seattle Rule 5-037 Accounting methods.
- Seattle Rule 5-039 Employees distinguished from persons engaging in business.
- Seattle Rule 5-042 Successor liability.
- Seattle Rule 5-044 Value of products.
- Seattle Rule 5-064 Credit losses, bad debts, recoveries.
- Seattle Rule 5-065 Taxes, deductible and nondeductible.
- Seattle Rule 5-067 Accommodation sales.
- Seattle Rule 5-068 Pool purchases.
- Seattle Rule 5-125 Casual or isolated sales.
- Seattle Rule 5-275 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.
- Seattle Rule 5-276 Constructing and repairing of new or existing buildings or other structures upon real property.
- Seattle Rule 5-500 Computer software.
- Seattle Rule 5-501 Computer hardware.
- Seattle Rule 5-502 Taxation of information services and computer related services.
- Seattle Rule 5-804 Staffing businesses, staffing services.
- Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

PUBLIC HEARING AND COMMENT:
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:00 p.m. to 3:00 p.m., on Monday, April 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, 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, April 11, 2007.

