Seattle Rule 5-132

Leased departments.
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(1) Definition. "Leased departments" mean space within a store that is leased to another business in such a way that a purchaser would not necessarily know that the merchandise is from a business other than the store owner or operator. An example of this is that a meat department in a grocery store could be a leased department and operated by a business other than the grocery store owner, and under the grocery stores name.

(2) Reporting. Any person who leases departments or space within their store or business to another business entity may include in its tax returns the gross receipts or gross sales made by the lessee where such lessor keeps the books for the lessee andmakes collection on the latters account; provided however, that each lessee must apply for and obtain from the Department a business license tax certificate. The lessee will remain liable for its tax liability if the lessor fails to make the proper return or fails to pay taxes due.

(3) Business license tax. Any taxpayer making tax returns for any such lessee shall report the lessees total gross income under the applicable business license tax classification. The lessee in such case is not entitled to the taxable minimum provided in SMC 5.55.040.

(a) Where the lessor receives a flat monthly rental or a percentage of sales as compensation for a leased department or leased space, such income is presumed to be from the rental of real estate and is not taxable. In determining whether an occupancy is a rental of real estate, all the facts and circumstances of the agreement or arrangement, including the actual relationship of the parties, shall be considered (See Seattle Rule 5-530). Written agreements, while not required, are preferred and are given considerable weight in deciding the nature of the occupancy. A written agreement characterizing the occupancy as a "lease" is not sufficient by itself as proof of the rental of real estate. The following conditions must be met to establish a rental of real estate:

(i) The occupant is granted exclusive possession and control of the space;

(ii) The occupancy is for a time certain, which is more than 30 days, i.e. month to month, yearly, etc.; and

(iii) The parties are required to notify each other in the event of termination of the occupancy.

(b) If the lessor provides any clerical, credit, accounting, janitorial, or other services to the lessee, the lessor must report the income from these services under the service and other activities classification. The amounts for providing these services must be segregated from the amounts received from the rental of real estate. In the absence of a reasonable segregation, it will be presumed that the entire income is for providing these services.

(3) Examples. The following examples identify a number of facts and then state a conclusion as to whether the situation is a rental of real estate (non-taxable), or a license to use real estate (taxable). These examples should be used only as a generalguide. The tax status of each circumstance must be determined after a review of the agreement and all of the facts and circumstances.

(a) A retailer enters into a written occupancy agreement for space within a mall for a one year term. The agreement can be terminated upon 30 days written notice of either party, subject to some penalty provisions for early termination. The agreement provides that the retailer can decorate the store and arrange the inventory in any manner desired by the retailer so long as the facility does not create a safety hazard to the mall or other tenants, and is consistent with the overall decor of the mall. The mall owner may enter the premises of the retailer during non-business hours only with the consent of the retailer except for emergencies where physical property is at risk. The retailers area is separated from other lessees by walls with the exception of the front area which is open to the mall common area and is used as the entrance by potential customers and the retailer. The retailer has a movable partition that can be locked and is used to close off the entrance from the mall common area. The agreement calls for the retailer to be open for business at all times during the hours stipulated by the mall.

This is a rental of real estate with the rental term being for a fixed period. The agreement and the facts and circumstances have established a rental of real estate. The retailer has exclusive possession and control over a specific area as indicated by the control the retailer has over the premises, even to the exclusion of the mall owner. The restriction which requires the retailer to maintain the same business hours as other lessees does not make this a license to use real estate. The lessor can exclude from the business license tax that portion of the income which is from the rental of the real estate. The lessor must identify and pay a business license tax on the portion of the income which is from providing services such as security, janitorial, or accounting.

(b) A hairdresser enters into an oral agreement with the operator of a hair salon for the use of a work station. The hairdresser has use of a specific work station during specific hours of every day. A particular work station may be used by more than one hairdresser during a particular month or even during a given day. This work station can not be closed off from other areas within the shop. The hairdresser must obtain advance permission from the owner to make any changes to the work area. This hairdresser also shares a sink, telephone, and other facilities with others in the shop.

This occupancy is not a rental of real estate. The hairdresser does not have exclusive possession and control over the premises to the exclusion of others as is indicated by the requirement that the hairdresser must obtain approval for any changes in the work area. This is further indicated by hairdressers use of a specific work station only during specific hours of every day with multiple users of the same work station. The work station could not be closed off from other areas of the shop, but this in itself is not determinative of whether this is a rental of real estate or a license to use. The presence of walls or the lack of walls is not controlling. The fact that the agreement uses the term "lease" is also not controlling. This is a "license to use" taxable under the service and other activities classification.

(c) Department store agrees to sell household paint for a paint supplier. The paint supplier checks on the inventory on a monthly basis and provides additional paint as needed. The department store handles stocking of shelves and all aspects of the sale. The department store makes a charge to the paint supplier based on the space required to maintain the inventory. By agreement of the parties, the department store agrees to report the retailing tax on paint sales.

This is not a leased department, a leased space, or a rental of real estate. The income is merely tied to the amount of space being used. However, the income is a commission from the sale of merchandise for the paint supplier and held on consignment. The retailing tax is the liability of the paint supplier and is paid by the department store only by agreement. The commission is taxable under the service business license tax classification. See Seattle Rule 5-803.

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 _____ 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

Jul 14, 2016