

Seattle Rule 5-901

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THE CITY OF SEATTLE DIRECTORS RULE IMPLEMENTING SEATTLE BUSINESS TAX
ORDINANCE RULE 5-901

Seattle Rule 5-901 Admission tax exemption for Music Venues.

Introduction. SMC 5.40.028 provides for an exemption from the admission tax for qualifying music venues. This rule sets forth: (1) definitions (2) criteria to qualify for the music venue exemption; (3) cancellation of exemption certificate (4) appeal rights (5) record keeping requirements; and (6) examples.

Once a music venue secures a certificate of exemption, admission tax as imposed in SMC Section 5.40.020 shall not be charged to any person paying for admission to any such exempt premises or location. If a promoter or other person hosts or presents live music at a qualified tax exempt music venue, then all admission charges are exempt from the admission tax under SMC 5.40.020. Venues and others hosting or promoting at an exempt music venue will still be subject to the other Seattle business taxes in accordance with Title 5 of the Seattle Municipal Code.

(1) Definitions. For purposes of this rule and SMC Chapter 5.40.028, the following definitions will apply:

(a) "Live Music" means an active performance of music by an individual or individuals who, at the time of and during the performance, creates music or engages in an audible form of artistic expression, other than, or in addition to, any pre-recorded music, for an audience through the use or manipulation of voice, instruments, or electronic or computerized equipment.

(b) "Music Venue" means any place, premise or location where live music is hosted or presented to the public, including but not limited to all hallways, bathrooms and other adjoining areas or the areas accessible to the public during the premises' or location hours of operation. An outdoor location does not qualify as a music venue for purposes of this definition.

(c) "Violation" means a legally binding final decision, order, citation, or other finding of violation entered by any court, adjudicative body or government agency against

any legal owner, operator, manager, or employee of the premises or location, or any other person hosting or presenting live music at the premises or location.

(d) "Promoter" means any individual, sole proprietorship, partnership, corporation, association, or other public or private organization of any character other than the owner or operator of the music venue that promotes, hosts, presents, operates, or sponsors any event, special offer, performance, or other activity or occurrence for which admission is charged at a music venue.

(e) "Complete application." For purposes of the application effective date, a complete application means the submission of a fully executed Music Venue Exemption Application, along with a copy of a certificate of occupancy.

(f) "Certificate of Occupancy." For buildings constructed after 1957, the requirement for a Certificate of Occupancy exists for all admissions tax exemption applications. For buildings constructed before 1957, a letter from the Department of Planning and Development specifying the occupancy load for the establishment is required.

(2) Criteria to qualify for the music venue exemption

(a)(i) Certificate of occupancy of less than 1,000. In the event the music venue does not have a certificate of occupancy due to the age of the facility, then the Director will review all information available which will allow a determination as to whether the occupancy is less than 1,000.

(ii) Submission of a complete application for music venue exemption. The effective date of the exemption will be the date the completed application is received by the Business License Tax Administration Division.

(iii) Operating criteria. In order to continue to qualify for the music venue exemption, the music venue must host or present live music on at least three (3) separate days per week at the premises or location on a regular schedule, and must hire one (1) or more musicians to perform the equivalent of sixteen (16) individual performances per week at the premises or location. The operating test must be met on a calendar year quarterly basis. The test is cumulative for an entire quarter. In the event the effective date of the exemption is other than the beginning of a calendar year quarter, then the calculation will be completed for that portion of the calendar year quarter. Subsequent quarter calculations will utilize the entire quarter. Live music performances hosted or presented by promoters or other persons at the exempt music venue will count towards the operating criteria test.

(iv) The filing of a quarterly report form with the Director that will validate the music venues ability to meet the performance tests noted in section (iii) above.

(b)(i) Certificate of occupancy of 500 or less. In the event the music venue does not have a certificate of occupancy due to the age of the facility, then the Director will review all information available which will allow a determination as to whether the occupancy is 500 or less.

(ii) Submission of a complete application for music venue exemption. The effective date of the exemption will be the date the completed application is received by the Business License Tax Administration Division.

(iii) Operating Criteria. A music venue with an occupancy of 500 or less must host or present live music on at least two (2) separate days per week at the premises or location on a regular schedule.

(iv) The filing of an annual report form with the Director that will validate the music venues ability to meet the performance test noted in section (iii) above.

(c) A venue under either section (2)(a) or (2)(b) above must not have more than 3 violations of law within a 12 month period relating to public health, public safety, noise, licensing, taxing or permitting related to the ownership, possession, occupation, operation, use or maintenance of the location. If a location receives more than three violations within a twelve month period, the admissions tax exemption will be revoked and the location will be ineligible for a certificate of exemption for a period of one year from the date of the last violation.

(d) A venue under either section (2)(a) or (2)(b) above that has secured its certificate of exemption must remain current with all Seattle business license tax certificate and tax reporting obligations. If an exempt music venue does not remain current with license tax certificate and tax responsibilities, the certificate of exemption may be revoked.

(3) Conditions in which the Director shall cancel the music venue tax exemption certificate

The Director shall cancel the certificate of exemption of a location or premises upon a determination by the Director that any of the following has occurred:

(a) A person secured the certificate of exemption by making a false representation in the application for the certificate; or

(b) The premises or location has more than 3 violations of law in any 12 month period. The certificate of exemption will be cancelled for a period of one year from

the date of the fourth violation. The Director will review the preceding 12 months upon each occurrence of a violation to determine if the premise has received more than 3 violations in a 12 month period. If a promoter or other person presents or hosts at an exempt music venue and incurs violations of law at the exempt music venue, these violations will count towards the violation of law test for that music venue.

(c) The venue fails to maintain the proper records needed to file the required quarterly report form used to substantiate the operational test.

(d) The venue fails, during any quarterly period, to meet the operating criteria.

(i) For venues with certificate of occupancy of less than 1,000 and greater than 501. In the event a venue does not meet the 3 days per week and 16 individual performances per week criteria for an entire quarter, it may still retain its exemption under the 80% rule. If a venue can show that it has at least 31 live performances and 166 individual performances for an entire quarter, it meets the 80% rule. If a venue falls below the 80% rule for two consecutive quarters, the Director will terminate the admissions tax exemption until the venue is able to demonstrate that they can meet the operating criteria for the music venue exemption.

(ii) For venues with certificate of occupancy of 500 or less. In the event a venue does not meet the live music on two separate days per week minimum criteria, it may still retain its exemption under the 80% rule. A venue under this subsection (ii) that can show that it had least 10 weeks with at least two separate days of live music in a calendar quarter, it meets the 80% rule. If a venue under this subsection (ii) falls below the 80% rule for two consecutive quarters, the Director will terminate the admissions tax exemption until the venue is able to demonstrate that they can meet the operating criteria for the music venue exemption. A venue under this subsection that fails to meet the 80% criteria for two consecutive quarters must notify the Director, file the necessary admission tax forms and pay the admissions tax due for the quarters in which the venue did not meet the 80% criteria.

The music venue may reapply for the music venue exemption but must show that they met the operating criteria during the 30 day period prior to the re-application. The admissions tax will be due for each quarterly period in which the operating criteria are not met. The Department will work with the venue owners to secure the necessary admission tax forms and payment of the admission tax; or,

(e) The venue becomes delinquent with any Seattle business license tax certificate or tax obligations. The Director will send out a notice of delinquency and will

provide 45 days from the date of issuance of the notice of delinquency for the venue to cure the delinquency: or,

(f) The person who obtained the certificate of exemption no longer conducts or operates the premises or location that is the subject of the exemption. New owners or operators are required to reapply for the certificate of exemption.

The director will issue a formal letter of revocation cancelling the music venue admission tax exemption certificate where applicable.

(4) Appeal rights

Any person whose certificate of exemption has been cancelled or any person whose application for a certificate of exemption has been denied may contest the finding by filing a written request for hearing with the Hearing Examiner within ten (10) days after the mailing of the notice of cancellation or notice of denial of exemption. If the person who received the notice of cancellation or notice of denial files a written request for hearing within the prescribed period, the Hearing Examiner shall schedule and conduct a hearing in accordance with the applicable Hearing Examiner rules.

(5) Record keeping for Exempt Music Venues.

A form shall be filed with the Director on a quarterly basis by each person to whom a certificate of exemption has been issued, and shall provide information sufficient to verify that during the corresponding quarter, the premises or location was in compliance with the requirements of the operational criteria in Subsections B(2) and (3) of this SMC 5.40.028. The quarterly reports shall be filed on a regular calendar quarter and shall be due 30 days from the end of the calendar quarter. The quarterly reports are required to be filed by all music venues with occupancy of less than 1,000 and greater than 500 that have secured a certificate of exemption from the Seattle admission tax. Failure to file the quarterly report may result in a revocation of the certificate of exemption. The annual report is required for music venues with occupancy of 500 or less that have secured a certificate of exemption from the Seattle admission tax. Failure to file the annual report may result in a revocation of the certificate of exemption.

Backup documentation to support the operating data submitted with the quarterly report shall be attached.

All backup data shall be maintained pursuant to SMC 5.55.060. All businesses are required to keep books and records necessary to substantiate the tax liability,

deductions and exemptions of the business for a period of five (5) years after filing a taxreturn.

Each exempt music venue is still responsible for the record keeping requirements in accordance with Seattle rule 5-900. The admission charges received at an exempt music venue are exempt from the Seattle admission tax, but are still subject to the Seattle Business and Occupation tax. Therefore, adequate records are still required to track admissions data for the Seattle Business and Occupation tax reporting requirements. In the event a taxpayer cannot meet the criteria for music venue tax exemption, they will be responsible for remitting the Seattle Admission Tax. Therefore, it is imperative to maintain records to substantiate admission revenue in accordance with Seattle rule 5-900. In the event that records have not been maintained, the City of Seattle will estimate the tax obligation due.

(6) Examples

A. Company A operates a live music venue. Company A submits its application for the music venue admission tax exemption to the City of Seattle. Company A has provided its certificate of occupancy showing a capacity of 600, and a fully executed music venue exemption application. A review of their account indicates that they are current with all Seattle business license tax certificate and tax obligations, and they have not obtained any violations of law. The effective date of the music venue exemption will be the date the fully executed application was received by the City of Seattle.

B. Company A has been operating under their certificate of exemption for the past 9 months. Company A has filed the quarterly report for the first two quarters, and has demonstrated their ability to meet the operating criteria under SMC 5.40.028. When filing their quarterly report for the third quarter, Company A reveals that they did not meet the operating criteria or the 80% rule during the third quarter. Company A is responsible for reporting and paying the Seattle admission tax on all admission charges during the third quarter. Company A will have to meet the operating criteria during the fourth quarter, or they will lose their admission tax exemption certificate.

C. Company B operates a live music venue. Company B has had a valid admissions tax exemption for one year. During the second quarter after receiving their exemption certificate, Company B was cited for three violations of law. During the first quarter of their second year, Company B is issued a violation of law. Company Bs exemption certificate will be cancelled the date the fourth violation is issued. Company B will not be able to reapply for an admission tax exemption certificate for one year from the date of the fourth violation.

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