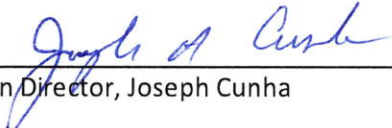







Director’s Rule 5-133-Warranties and Maintenance Agreements

Department: Office of City Finance	Rule No: 5-133	Supersedes: 5-133
	Publication: 6/28/23	Effective: 8/1/23
Subject: Warranties and Maintenance Agreements Re: City of Seattle Business License Tax	Code and Section Reference(s): SMC 5.30 SMC 5.45	
Approved:  _____ Division Director, Joseph Cunha	 _____ Date	
 _____ Jamie Carnell, Office of City Finance, Interim Director	 _____ Date	

1. Purpose

Seattle Director’s Rule 5-133 explains the Business License Tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.

2. Rule

Amendments to Seattle Dir. Rule 5-133 include

Seattle Dir. Rule 5-133 clarifies and updates definitions

Seattle Dir. Rule 5-133 clarifies that income from the sales of insurance riders to consumers that is not subject to Washington State insurance premiums tax (RCW 48.14) is taxable under the retail sales and retail services classification.

Seattle Dir. Rule 5-133 clarifies that commission income is taxable under the service and other business activities classification.

Seattle Dir. Rule 5-133 adds examples applicable to

1. Warranties/service agreements and wholesale sales and
2. Additional charges for parts or repair services covered under an agreement

Seattle Dir. Rule 5-133 clarifies the tax treatment of sales of warranties/service agreements by third parties as to

1. The third-party commission income and
2. Warrantor revenue

Seattle Dir. Rule 5-133 clarifies the tax treatment of revenue generated by wholesale sales of

1. Parts and
2. Repair services

received by a parts supplier or service provider from a third-party obligor.

3. Definitions

Seattle Director's Rule 5-133 adds the following definitions:

- a. Agreement. Unless otherwise stated, "agreement" means "service contract," "warranty," or "mixed agreement" as those terms are defined.
- b. Insurance rider. An insurance rider is an attachment to an insurance policy that modifies the conditions of the policy by expanding or restricting its benefits or excluding certain conditions from the coverage.
- c. Mixed agreement. A mixed agreement is an agreement that contains provisions of both warranty and service contracts. The sale to a consumer of a mixed agreement for tangible personal property, which by definition contains provisions of both a warranty and a service contract, is a "bundled transaction."
- d. Seller. "Seller" means every person making sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal.
- e. Service contract. A "service contract," sometimes referred to as a maintenance agreement or even an extended warranty, provides for the repairing, cleaning, altering, or improving of tangible personal property, generally for the purpose of continued satisfactory operation. These services may be performed on a regular or irregular basis. Even though a service contract may be referred to by some other name, it is the coverage that determines whether the contract is a service contract or extended warranty.

Seattle Rule 5-133

Warranties and maintenance agreements.

(1) Introduction. This rule explains the Business License Tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property. For additional information on computer software maintenance agreements see Seattle Rule 5-500 Computer Software.

Examples included in this rule identify facts and then state a conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all facts and circumstances. Additionally, each fact pattern in each example is self-contained (i.e., "stands on its own") unless otherwise indicated by reference to another example. Examples concluding that business license tax applies to the transaction assume that no exclusions or exemptions apply, and the sale is sourced to Seattle.

(2) Definitions. For the purposes of this rule, the following terms will apply:

- (a) Agreement. Unless otherwise stated, "agreement" means "service contract," "warranty," or "mixed agreement" as those terms are defined.
- (b) Insurance rider. An insurance rider is an attachment to an insurance policy that modifies the conditions of the policy by expanding or restricting its benefits or excluding certain conditions from the coverage.
- (c) Mixed agreement. A mixed agreement is an agreement that contains provisions of both warranty and service contracts. The sale to a consumer of a mixed agreement for tangible personal property, which by definition contains provisions of both a warranty and a service contract, is a "bundled transaction."
- (d) Seller. "Seller" means every person making sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal.
- (e) Service contract. A "service contract," sometimes referred to as a maintenance agreement or even an extended warranty, provides for the repairing, cleaning, altering, or improving of tangible personal property, generally for the purpose of continued satisfactory operation. These services may be performed on a regular or irregular basis. Even though a service contract may be referred to by some other name, it is the coverage that determines whether the contract is a service contract or extended warranty.

- (f) Warranties. A “warranty,” sometimes referred to as a guarantee, is an agreement which provides for the replacement or repair of tangible personal property at no additional charge or at a reduced charge for tangible personal property, labor, or both, or to compensate for the replacement or repair of tangible personal property, based upon the happening of some unforeseen occurrence, e.g., a component part fails, and the property needs repair. Unless otherwise stated, the term warranty includes both a warranty and an extended warranty.

(3) Sales of agreements for tangible personal property.

- (a) Retail sales. Income from agreements sold with or without tangible personal property to consumers is subject to tax under the retail sales and retail services classification. Income from the sales of insurance riders to consumers that is not subject to Washington State insurance premiums tax (RCW 48.14) is also taxable under the retail sales and retail services classification. Unless a specific exemption exists, sellers of agreements and insurance riders to consumers are subject to tax under the retail sales and retail services classification.

A seller who is acting as an agent or broker for another party, such as the actual warrantor, normally receives a commission. Commission income is taxable under the service and other business activities classification. See section (4) of this rule for "sales by third parties." The warrantor's gross income on the sale is subject to tax under the retail sales and retail services classification. There is no deduction allowed for the commission paid to the agent or broker.

- (b) Wholesale sales. Sales of agreements can be made at wholesale when the buyer will be reselling the agreement without intervening use or including the agreement in the sale of tangible personal property.

Example 1. An automobile dealer sells a vehicle to a customer for a selling price of \$20,000 that includes a manufacturer's limited five years or 50,000 miles warranty. The automobile dealer extends coverage for an additional two years, as a bonus to the customer. When the automobile dealer purchases the two-year agreement from a warranty provider, with the intent to sell the agreement along with the sale of the vehicle to the customer, the purchase of the extended warranty by the automobile dealer is for resale.

Example 2. A home improvement store (store) sells a lawnmower to a customer. The store also makes available for purchase a manufacturer's agreement for extended coverage. The customer decides to purchase an agreement from the store for the lawnmower. Both the sales of the lawnmower and agreement to the customer by the

store are subject to tax under the retail sales and retail services classification. Sales of the manufacturer's agreement from the manufacturer to the store is considered a sale at wholesale. If the manufacturer has nexus with Seattle, the manufacturer would be subject to tax under the wholesaling classification for the sale of the manufacturer's agreement to the store.

Example 3. For a special holiday sale, the home improvement store in Example 2 purchases the manufacturer's extended warranties to provide with the sales of lawnmowers. The store makes no intervening use of the extended warranties and does not charge customers for the warranties. The warranty purchases by the store are wholesale purchases. The store is not the consumer of the warranties as the warranties are provided to customers as a condition of purchase of the lawnmowers. The store is subject to tax under the retail sales and retail services classification. If the manufacturer has nexus with Seattle, the manufacturer would be subject to tax under the wholesaling classification for the sale of the extended warranties to the store.

Example 4. If a vehicle wholesaler sells a vehicle to a retailer and includes an agreement with the sale, the sale of the vehicle with agreement is a wholesale sale. If the vehicle wholesaler has nexus with Seattle, the vehicle wholesaler would be subject to tax under the wholesaling classification.

- (c) Additional charges for parts or repair services covered under an agreement. In some cases, a customer is required to pay an amount for services or parts not fully covered under an agreement. This additional amount is subject to tax under the retail sales and retail services classification.

Example 5. The automobile dealer in Example 1 sells a vehicle to a customer for a selling price of \$20,000 that includes a manufacturer's limited five-year or 50,000 miles warranty. The dealer also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier, and under the policy claims are paid on the retail value of the repairs. The customer has the dealer complete \$500 of repairs under the warranty. The customer pays the dealer a reduced charge of \$100 for the warranty services and the dealer receives \$400 from its insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and subcontractor is as follows:

The \$20,200 selling price for both the automobile and warranty is subject to tax under the retail sales and retail services classification.

The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

The subcontractor is making a \$200 wholesale sale to the dealer if the dealer provides the subcontractor with a copy of its reseller permit.

(d) Additional Examples.

Example 6. An automobile dealer sells a vehicle to a customer for selling price of \$15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has \$600 (\$200 parts and \$400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer-warrantor. The \$15,000 selling price is reported under the retail sales and retail services classification. The \$600 repair is reported under the wholesaling classification.

Example 7. The automobile dealer in Example 6 also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier and under the terms of the policy, claims are paid on the retail value of the repairs. In addition to the repairs in example 6, the customer has the dealer complete \$500 of repairs under the dealer's extended warranty. The customer paid the \$100 deductible and the dealer received \$400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and the subcontractor are as follows:

- (i) The dealer reports the \$200 sale of the warranty under the business license tax retail sales and retail services classification.
- (ii) The \$100 deductible received by the dealer is a retail sale subject to tax under the retail sales and retail services classification.
- (iii) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.
- (iv) The subcontractor is making a wholesale sale to the dealer if the dealer provides the subcontractor with a copy of its reseller permit.

(4) Sales by third parties. Consideration received by a third party as a commission for selling an agreement for the actual warrantor is generally subject to tax under the service and other business activities tax classification. In this situation, the third-party seller never takes possession of the agreement, and the warrantor maintains liability for the provisions of the agreement.

Tax reporting responsibility of the warrantor- The warrantor is subject to tax under the retail sales and retail services classification on the gross sales price received from the sales of agreements by third parties. No deduction is allowed for commissions paid to third parties. The third party is responsible for service and other business activities tax on its commission income. If the seller of the agreement is subject to an insurance premiums tax on the sales of the warranty agreements, under chapter 48.17 RCW, such sales by the seller are exempt from tax (See SMC 5.45.090(N)).

(5) Sales of repair services or parts to obligor. A person obligated under an agreement, including any third-party obligor under an agreement sold to a retailer and provided at no additional charge to the end consumer, may purchase the following from a supplier or service provider at wholesale:

- (a) Parts purchased to replace or become an ingredient or component of tangible personal property covered by the agreement, if there is no intervening use of the parts as a consumer; and
- (b) Repair services purchased to satisfy the obligor's obligations under an agreement.

Gross income received by the supplier or service provider is subject to tax under the wholesaling classification on the value of the parts and labor provided.

(6) Warranties with insurance elements. There are tangible personal property agreements that include elements of insurance (i.e., theft, loss) and elements of warranty (operational failure, damage). Income from sales to consumers of agreements defined as a warranty service contract or maintenance agreement, that are not otherwise insurance contracts where tax has been paid under Title 48 RCW insurance premiums tax, is subject to tax under the retail sales and retail services classification.

DIRECTOR'S CERTIFICATION

I, Jamie Carnell, City of Seattle Interim City Finance Director, 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, Office of City Finance.

DATED this 1 day of August 2023.

CITY OF SEATTLE, a Washington municipality.

By: Jamie Carnell,  _____

City of Seattle Interim City Finance Director

Effective date: August 1, 2023.

STATE OF WASHINGTON -- KING COUNTY

--ss.

418541

No.

CITY OF SEATTLE:FINANCE&ADMIN

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:PROPOSED RULE MAKING

was published on

06/28/23

The amount of the fee charged for the foregoing publication is the sum of \$186.75.



M. Barnes

Subscribed and sworn to before me on

06/28/2023

[Signature]

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

City of Seattle

NOTICE OF PROPOSED RULEMAKING HEARING AND OPPORTUNITY TO COMMENT

The City of Seattle Interim City Finance Director, acting under the authority of Seattle Municipal Code (SMC) Chapters 3.02 and 5.55, proposes the adoption or amendment of the following rules:

Seattle Rule 5-007, Penalties

Seattle Rule 5-133, Warranties and Maintenance Agreements

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 5-503, Digital Products

Seattle Rule 5-990, Information Requests - Aggregation and Confidentiality

The rules may apply to one and/or several chapters of the City's Municipal Code, including but not limited to all chapters within SMC Title 5, Subtitle I - General Regulations and Title 5, Subtitle II - Taxes.

PUBLIC HEARING AND COMMENT:
On ~~Tuesday, July 11, 2023~~, from 10 a.m. to 11:30 a.m., the Office of City Finance will hold a public hearing to consider the proposed rules. The hearing will be hosted on WebEx Events.

Event address for attendees:

City of Seattle Director's Rules Hearing

Date and time:

Tuesday, July 11, 2023, 10:00 AM
(UTC-07:00) Pacific Time (US & Canada)

Join link:

<https://seattle.webex.com/seattle/j.php?MTID=m4f923e18d9fab3caa70dd7650aacdecb>

Webinar number:

2483 022 0793

Webinar password:

pCxumZTJ674 (72986985 from phones and video systems)

Join by phone

+1-206-207-1700 United States Toll
(Seattle)

+1-408-418-9388 United States Toll

Access code: 248 302 20793

The Office of City Finance invites all interested persons to present data and provide comments or arguments pertaining to the proposed rules, either orally at the hearing or in writing at or before the hearing.

Please mail or deliver written comments to:

Office of City Finance

Attn: Kevin Guichon, Tax Policy Analyst

License and Tax Administration

700 Fifth Ave. - Suite 4250

P.O. Box 34214

Seattle, WA 98124-4214

Kevin.Guichon@seattle.gov

The public may inspect copies of the two new and five amended, proposed rules on our website at <http://www.seattle.gov/finance-and-administrative-services/directors-rules>. If you would like a copy of the proposed rules, please call (206) 253-3789, FAX (206) 684-5170, email: tax@seattle.gov, or submit a written request to the License and Tax Administration offices, 700 Fifth Ave.,

Suite 4250, P.O. Box 34214, Seattle, WA
98124-4214.

Jamie Carnell, Interim City Finance
Director, Office of City Finance

Date of publication in the Seattle Daily
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