
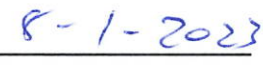






Director's Rule 5-503 Digital Products

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1. Purpose

Seattle Dir. Rule 5-503 is intended to assist taxpayers in determining tax liability for digital products and digital codes. For purposes of this rule, a digital product includes digital goods or digital automated services.

2. Rule

Seattle Dir. Rule 5-503 is a new rule that contains definitions, narrative explanation, and examples. The rule explains the Seattle business license tax treatment of certain classes of information technology.

3. Definitions

Seattle Dir. Rule 5-503 includes a section of definitions and other defined terms that clarify the tax treatment of digital products and digital codes.

Seattle Rule 5-503 Digital products.

(1) Introduction.

- (a) This rule is intended to assist taxpayers in determining tax liability for digital products and digital codes. For purposes of this rule, a digital product includes digital goods or digital automated services, which are described in detail below.

Products or services must be transferred electronically in order to be digital products. If a product is transferred by means of a tangible storage media (e.g., compact disc, magnetic tape, hard drive, etc.), it is not a digital product. Digital codes need not be transferred electronically in order to be digital codes, but may be obtained by any means, including tangible storage media.

- (b) The sale of digital products and digital codes is generally considered to be a retail sale subject to tax under the retail sales and retail services classification.

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.

- (a) Advertising Services. "Advertising services" means all services directly related to the creation, preparation, production, or the dissemination of advertisements. Advertising services include layout, art direction, graphic design, mechanical preparation, production supervision, placement, and rendering advice to a client concerning the best methods of advertising that client's products or services. Advertising services also include online referrals, search engine marketing and lead generation optimization, web campaign planning, the acquisition of advertising space in the Internet media, and the monitoring and evaluation of website traffic for purposes of determining the effectiveness of an advertising campaign. Advertising services do not include web hosting services and domain name registration.
- (b) Digital Product. The term "digital product" means (i) digital goods and (ii) digital automated services.
- (c) Digital Goods. "Digital goods" means sounds, images, data, facts, or information, or any combination thereof, transferred electronically, with certain exclusions discussed in section (5) of this rule. "Digital goods" includes within it the specific term "specified digital

products” below in subsection (f) of this section. The sale of a digital good is generally subject to tax under the retail sales and retail services classification.

- (d) Digital codes. These are codes that provide a purchaser with the right to obtain one or more digital products if all of the digital products to be obtained through the use of the code have the same retail sale tax treatment. A digital code may be obtained by any means, including email or by tangible media regardless of its designation as song code, video code, book code, or some other term. For example, a digital code includes the sale of an alphanumeric code that, when entered online at a website, provides the customer with a digital music file for download.
- (i) *Products with mixed tax treatment*. Codes that provide the right to obtain one or more products that do not have the same retail sale treatment are not digital codes.
- (ii) *Codes that represent a stored monetary value, redeemable cards, gift cards, or gift certificates*. Codes that represent a stored monetary value that is deducted from a total as it is used by the purchaser or that represent a redeemable card, gift card, or gift certificate that entitles the holder to select digital products of an indicated cash value, are not digital codes.

Example 1. Calvin purchases a code at his local grocery store for use on Joe Seller’s (JS) website. At check out, Calvin tells the grocery store clerk to put \$25.00 in value on the plastic card containing the code. Calvin then goes to JS’s website and inputs the code from the card. The \$25.00 value of the card is stored in Calvin’s “account” and can be used on any purchase by Calvin from JS’s website. Calvin then purchases five digital songs for \$5.00 from JS. At check-out from JS’s website, \$5.00 is deducted from Calvin’s account to pay for the songs. When the transaction is complete, Calvin has a \$20.00 balance remaining in his account on JS’s website. Because the code represents a stored monetary value it is not a digital code, and the sale of the code is not subject to tax.

- (e) Digital Automated Services. “Digital automated services” means services transferred electronically that use one or more software applications. The sale of a digital automated service is generally subject to tax under the retail sales and retail services classification.
- (i) “Digital automated services” may include one or more software applications either prewritten or custom, as well as components that are similar to stand-alone digital goods. For example, an online information service may contain data, facts, or information the use of which is facilitated by one or more software applications that provide search capabilities and other functionality. Thus, digital automated services will include software and may include elements similar to stand alone digital goods, which operate together in an integrated fashion to provide an electronically transferred service.

Example 2. Company B provides an online service that facilitates apartment building management. The online service lists and advertises apartment vacancies, screens applicants, routes maintenance requests, and accepts and processes rental payments. In this example the software-based service facilitates and automates various administrative functions and coordinates third-party services for apartment renting. The service is a digital automated service subject to tax under the retail sales and retail services classification.

Example 3. Company Q provides a service that uses one or more software applications to “crawl the Internet” in order to identify, gather, and categorize digital information according to specified criteria. In this example, software facilitates the gathering, identifying, and categorizing of information acquired from the Internet. The service is a digital automated service subject to tax under the retail sales and retail services classification.

- (ii) **Distinguishing between a digital good and a digital automated service.** A digital good is not a service involving one or more software applications. A digital good consists solely of images, sounds, data, facts, information, or any combination thereof. Clear examples of digital goods are digital books, digital music, digital video files, and raw data.

Example 4. Company X provides an online service that uses one or more software applications to facilitate the use of news and information with features such as research history, natural and Boolean searching, industry chat forums, chart creation, document and word flagging, and information organizing folders. In this example software features facilitate the search of the news or information. X’s service is a digital automated service subject to tax under the retail sales and retail services classification.

Example 5. Company Z sells digital music files (i.e., digital goods) on its website. In order to locate specific digital music files customers may use a free software-based search function that is integrated into Company Z’s website. Customers may also find the digital music file they are seeking by clicking on a series of links to get to the desired music file. Z’s software-based search function associated with the sale of the digital music file does not transform the sale of the digital music file into a digital automated service. Z is selling a digital good (i.e., music file) subject to tax under the retail sales and retail services classification.

- (iii) **Distinguishing remote access prewritten software from digital automated services.** Remote access prewritten software defined in SMC 5.30.050(E)(1) is solely prewritten software that is made remotely accessible from the vendor’s server or other third-party server for a customer. To the extent that components similar to digital goods and/or additional services are supplied with the prewritten software the sale may be the sale of a digital automated service (see also Section 5, subsection (b)(viii) of this rule).

Example 6. Company F provides an online gaming service that allows subscribers to play a game with other subscribers in a real time multiplayer environment using software accessed via the Internet. In this example the gaming software is combined with additional capabilities that enable a real time multiplayer environment that is not otherwise available. The service is a digital automated service subject to tax under the retail sales and retail services classification.

Example 7. Company G sells prewritten word processing software that is accessed by customers but hosted on G's computers. The software includes access to clip-art image files that can be inserted into documents created with the remotely accessed prewritten word processing software. G sells remote access prewritten software and not a digital automated service or digital goods. The clip art made available with the software does not transform the remotely accessed prewritten software into a digital automated service or a digital good. G is selling remote access prewritten software subject to tax under the sales and retail services classification.

- (f) Specified Digital Products. Specified digital products means electronically transferred digital audio-visual works, digital audio works, and digital books.
- (i) Digital audio works. These are products that result from the fixation of a series of musical, spoken, or other sounds. Digital audio works include ringtones, recorded or live music, readings of books or other written materials, speeches, and other sound recordings. For example, a music file in MP3 format accessed or downloaded through the Internet is a digital audio work.
- (A) A “ringtone” is a digitized sound file that is downloaded onto a communication device (e.g., mobile phone) and may be used to alert the user to an incoming communication such as a call or text message.
- (B) A ringtone does not include “ring-back tones” or other digital audio files that are not stored on the purchaser’s communication device. In other words, a ring-back tone is not a “specified digital product.” A ring-back tone may be a digital automated service or a digital good depending on the facts. See examples for digital automated services in Section (2)(e) of this rule.
- (ii) Digital audio-visual works. These products are a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any. Digital audio-visual works include movies, music videos, videos of live events, and news and entertainment programs. For example, a movie downloaded or accessed via the Internet is a digital audio-visual work.
- (iii) Digital books. These are books in a digital format that are generally recognized in the ordinary and usual sense as books. A digital book does not include periodicals,

magazines, newspapers, chat rooms, or weblogs. For example, a cookbook in a PDF format downloaded or accessed through the Internet is a digital book.

(g) Other digital goods. The following list illustrates the types of products that are also digital goods in addition to the subclass of “specified digital products” discussed above. This list is merely illustrative and not exhaustive:

(i) A digital schematic of a lawnmower engine transferred electronically.

(ii) A digital car history report transferred electronically.

(iii) A digital picture transferred electronically.

(iv) Digital periodicals or magazines transferred electronically.

(v) A digital presentation that includes still photos and accompanying audio content transferred electronically.

(h) Transferred Electronically. Transferred electronically means the purchaser obtains the product by means other than tangible storage media. Generally, this means the product is transferred using the public Internet, a private network, or some combination. However, it is not necessary that the product be delivered to the purchaser. As long as the purchaser may access the product, it will be considered to have been electronically transferred to the purchaser.

For example, whether a digital movie is downloaded by the user or streamed by the user, it is considered to be “transferred electronically.” Alternatively, if the same movie is purchased on tangible media (e.g., DVD, etc.) it would be the purchase of tangible personal property and not considered to be either the sale of a digital product or transferred electronically.

(3) Taxation of the Digital Product or Digital Code.

(a) Sales of digital products or digital codes to the end user/consumer are subject to tax under the retail sales and retail services classification.

(b) Sales of digital products or digital codes purchased for resale in which the buyer of digital products or digital codes purchases the digital product or digital code for resale without intervening use will be deemed wholesale sales subject to tax under the wholesaling classification. Sellers should obtain from buyers a copy of the buyer’s reseller permit.

(4) Sourcing sale of digital products and digital codes. Sales of digital products are sourced based on the criteria provided in SMC 5.45.081(C).

- (a) Business location. When a digital product or digital code is received by the buyer at a business location of the seller, the sale is sourced to that business location.

Example 8. Fred goes to Box Store’s brick-and-mortar location in Seattle and purchases a music file from an electronic kiosk in the store. Fred purchases and downloads the music file inside Box Store’s store by connecting his digital music player to the kiosk in the store. The sale of the music file is sourced to Box Store’s store location in Seattle and is subject to tax under the retail sales and retail services classification.

- (b) Place of receipt. If the first sourcing rule explained above in (a) of this subsection does not apply, the sale is sourced to the location where receipt takes place.

(i) The digital product or digital code may be received by the buyer at the buyer’s location or by the buyer’s donee (e.g., a gift recipient) at the donee’s location.

(ii) In the context of digital products and digital codes, “receive” and “receipt” means:

(A) making first use of digital automated services; or

(B) taking possession or making first use of digital goods or digital codes, whichever comes first.

Example 9. D Corp., located in Seattle, purchases a digital automated service generally classified as a retail sale from Company Z. D Corp’s employees access and make first use of the service at their computer workstations located in Seattle. Company Z knows that the digital automated service is received in Seattle and therefore will source the sale of the digital automated service to that location.

- (c) Address in records. If the first two sourcing rules explained in (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer that is available from the seller’s business records maintained in the ordinary course of business, so long as use of this address does not constitute bad faith. For example, any address of the buyer held by the seller that reasonably estimates the receipt location will be sufficient, including an address contained in a relevant service contract or an address used for accounts receivable purposes.

Example 10. B Corp., located in California, purchases a digital automated service generally classified as a retail sale, from Company X located in Seattle. The purchase contract between B Corp and Company X provides that B Corp may have five users access the digital automated service. Company X does not know where the digital automated service is actually received. However, Company X has B Corp’s California address in its business records and will therefore source the sale to B Corp’s California address. Because the sale is sourced to B Corp’s California address, Company X may deduct the sale as an interstate sale.

- (d) Address obtained during sale. If the first three sourcing rules explained in (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the buyer obtained during the consummation of the sale.

For example, an address obtained during consummation of the sale would include the address of a buyer's payment instrument (e.g., billing address for a credit card), if no other address is available, so long as use of this address does not constitute bad faith.

Internet protocol (IP) address. The buyer's IP address is acceptable location information obtained at the time of sale if an address cannot otherwise be obtained during consummation of the sale.

- (e) Origin. If the first four sourcing rules explained in (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the sale must be sourced to the location determined by the address from which the digital good or digital code was first available for transmission by the seller, or from which the digital automated service was provided. Any location that merely provided the digital transfer of the product sold shall be disregarded.

(5) Exclusions from the General Definitions of Digital Product and Digital Code. For certain products or services transferred electronically that otherwise meet the definition of digital good or digital automated service (as discussed in Section 2) there may be a specific exclusion from the applicable definition.

- (a) Exclusions from the definition of digital goods.

(i) Telecommunications and ancillary services as defined in SMC 5.30.060(D). These services may be used to distribute digital goods, digital automated services, and digital codes, but are not themselves any of these products.

(ii) Software as defined in SMC 5.30.050(E) and Seattle Rule 5-500. These are coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

(iii) The Internet and Internet access as defined in RCW 82.04.297.

(iv) Professional or personal services represented in electronic form are not digital goods. This exclusion applies where the service primarily involves the application of human effort by the service provider, and the human effort originated after the customer requested the service. For example, an electronic engineering report created at the customer's request that reflects an engineer's professional analysis, calculations, and judgment, which is sent to the customer electronically, is considered evidence of a professional service and not a digital good.

Photography. The exclusion for professional or personal services does not apply to photographers in respect to amounts received for the taking of digital photographs that are transferred electronically to the end user/customer. See example 29 for an example of a non-end user transaction involving photography that is the sale of intangible rights (royalties) taxable under the service and other business activities tax classification.

(b) Exclusions from the definition of digital automated service.

(i) Services that require primarily human effort by the seller and the human effort originated after the customer requested the service. In this context, “primarily” means greater than 50% of the effort to perform the service involved human labor. To determine whether the 50%-or-greater threshold is satisfied, the average of the time and cost factors is considered. The time factor is determined by dividing the time spent to perform the human effort portion for customers by the total time spent performing the service. The cost factor is determined by dividing the direct costs incurred to perform the human effort portion for customers by the total direct costs incurred to perform the service. Direct costs of the human effort component include salaries, employee benefits and similar direct costs. Direct costs of the automated component include the cost of software, computers, hosting services and other similar direct costs. If the average of the time and cost factors is greater than 50%, then the service requires primarily human effort and is not a digital automated service in which case the service will generally be subject to tax under the service and other business activities tax.

Example 11. Rep.com performs a reputation monitoring service on the Internet for its clients. The service utilizes software and other technology that searches the Internet for websites that allow posting of information that may be harmful to Rep.com’s client’s reputation (“the automated component”). If the automated component finds a website that is posting erroneous or harmful information about one of Rep.com’s clients, then a Rep.com employee will contact the owner of the website by phone or email and work with the owner and the client to resolve the matter to the satisfaction of the client (“the human effort component”). If the human effort time factor is 20% and the human effort direct cost factor is 60%, then the average of the two factors is 40% ($80\%/2 = 40\%$). Accordingly, the service is performed using 40% human effort which is less than 50% and therefore the service does not require primarily human effort and is subject to tax under the retail sales and retail services classification as a digital automated service.

Alternative methods. If the time and cost factors in this rule do not fairly represent the extent to which the service is performed using primarily human effort, the taxpayer may ask in writing for, or the Director may require, the employment of another reasonable method to equitably determine whether the service is performed using primarily human effort.

- (ii) Loaning or transferring money or the purchase, sale, or transfer of financial instruments. For purposes of this rule, “financial instruments” include cash, accounts receivable and payable, loans and notes receivable and payable, debt securities, equity securities, as well as derivative contracts such as forward contracts, swap contracts, and options. For example, the electronic transfer of money from a savings account to a checking account, whether done for the customer by a bank teller or by an ATM machine, is excluded from the definition of digital automated service.
- (iii) Dispensing cash or other physical items from a machine. Includes an ATM that dispenses cash to users.
- (iv) Payment processing services, including services such as electronic credit card processing activities conducted online or in physical retail stores via electronic transmission.
- (v) Parimutuel wagering and handicapping contests as authorized by chapter 67.16 RCW.
- (vi) Telecommunications services and ancillary services as those terms are defined in SMC 5.30.060(D). For additional information, refer to the discussion above concerning the comparable exclusion from the definition of digital goods.
- (vii) The Internet and Internet access as those terms are defined in RCW 82.04.297.
- (viii) Remote access prewritten software. Remote access prewritten software provided on a standalone basis is excluded from the definition of digital automated service. However, software that is used in connection with a service that is transferred electronically would generally be included in the definition of a digital automated service.

Example 12. Company sells prewritten gaming software that is identical in all substantive respects to the same software available in stores for individual use and installation on home computers except that it is hosted on Company’s servers and accessed by customers. Company’s sales to consumers would be treated as a sale of remote access prewritten software and therefore is excluded from the definition of digital automated services and generally subject to tax under the retail sales and retail services classification.

Example 13. Same facts as Example 12 except that Company uses the remote access prewritten software to provide a monthly subscription service that provides a real-time multiplayer environment. Company is selling a digital automated service. In this case the customers are not merely receiving the individual use of software, but, instead, an online gaming service facilitated by the software. Thus, the monthly subscription service

is not excluded from the definition of digital automated service and is subject to tax under the retail sales and retail services classification.

(ix) Online education programs provided by the following:

(A) Public or private elementary or secondary schools; or

(B) An institution of higher education as defined in Sections 1001 or 1002 of the federal Higher Education Act of 1965 (Title 20 U.S.C. Sections 1001 and 1002), as existing on July 1, 2009. This would include most colleges and universities. For the purposes of this rule, an online educational program must be encompassed within the institution's accreditation.

Example 14. ABC University, a qualifying institution of higher education under the federal Higher Education Act of 1965, provides an accredited online Spanish course for which it charges a quarterly access and use fee to students. The course is remotely accessed by students logging into a website and accessing a fully interactive program that includes components of video, text, and audio, as well as extensive software code. This service would generally be considered a digital automated service. However, it is specifically excluded from the definition of digital automated service as an online educational program and may be subject to tax under the service and other business activities classification if another exclusion, deduction, or exemption does not apply.

(x) Live presentations such as lectures, seminars, workshops, or courses, where participants are connected to other participants and presenters via the Internet or other networks, allowing the participants and the presenters to provide, receive, and discuss information together in real time.

Example 15. Company provides an online seminar service for Customer. Company provides a panel of live speakers that make a presentation to Customer's employees who listen and view the seminar through an Internet connection supplied by a third-party service provider. The seminar allows Customer's employees and panelists to ask and answer questions on a real-time basis. Company's online seminar service is transferred electronically and uses one or more software applications and therefore would generally be considered a digital automated service. However, this type of service allowing live interaction is specifically excluded from the definition of digital automated service and would generally be subject to tax under the service and other business activities classification.

Example 16. Same facts as Example 15 except that Company records the seminar and charges other individuals a fee for accessing the seminar from Company's website. The recorded presentation allows these customers to watch the presentation, but it does not allow them to ask questions on a real-time basis. Because the presentation was prerecorded there is no live interaction contemporaneous with the presentation and

therefore Company is selling a digital good generally subject to tax under the retail sales and retail services classification.

Example 17. Company provides online training courses to Steve for a fee. The training courses provide key interactive elements such as study guides, knowledge testing, and automated help, all facilitated by one or more software applications. Such courses are not live presentations and do not provide human interaction. Accordingly, Company is selling a digital automated service generally subject to tax under the retail sales and retail services classification.

(xi) *Travel agent services*, including online travel services, and automated systems used by travel agents to book reservations.

(xii) *Online marketplace related activities*, which are services that allow the person receiving the services to make online sales of products or services, digital or otherwise, using either:

(A) The service provider's website; or

(B) The service recipient's website, but only when the service provider's technology is used either to:

(1) Create or host the service recipient's website; or

(2) Process orders from customers using the service recipient's website.

Example 18. Company provides an "electronic marketplace" service to Holcomb that allows Holcomb to list and sell his coffee mugs on the Internet using Company's website. This online marketplace service is excluded from the definition of digital automated services and charges for the service would generally be subject to tax under the service and other business activities classification.

Example 19. Same facts as Example 18, except that now Holcomb decides he no longer wants to be just another seller on Company's website. Instead, Holcomb wants his own "retailing presence" on the Internet so Holcomb contracts with Company to create and host Holcomb's new coffee mug website, "HolcombsCoffeeWorld.com." This is still an online marketplace service that is excluded from the definition of digital automated services and charges for the service would generally be subject to service and other business activities classification.

Exclusion limitation. The services described in this subsection do not include the underlying sale of the products or services, digital or otherwise, by the person receiving the service. For instance, in Examples 18 and 19, the sale by Holcomb of coffee mugs would still be sales of tangible personal property subject to tax under the retail sales and retail services classification.

(xiii) Advertising services

Example 20. Company provides marketing services to customers wishing to promote their products using the Internet. Amy sells widgets on the Internet and hires Company to market her products. Company consults with Amy on her marketing needs and then creates a marketing plan for her business. Company also creates and distributes online banners, links, and targeted “email blasts” that promote Amy’s business. All of the services provided by Company are advertising services excluded from the definition of digital automated services and would generally be subject to tax under the service and other business activities classification.

Example 21. RVP Inc. creates “sponsored links” on its website that drive customer traffic to Amy’s website. RVP is paid by Amy for each click on a sponsored link on RVP’s website. The services provided by RVP are advertising services excluded from the definition of digital automated services and charges for such would generally be subject to tax under the service and other business activities classification.

(xiv) Storage, hosting, and back-up. The mere storage of digital products, digital codes, computer software, or master copies of software is excluded from the definition of digital automated services. This exclusion includes providing space on a server for web hosting or backing-up data or other information.

Example 22. Company charges Rowe a fee for 25 terabytes of storage space under its “basic storage service” offering. Company also charges Rowe an additional and optional fee for its “premium service” package offering, which involves services beyond mere storage. The “basic storage” services are mere storage services and excluded from the definition of digital automated services. These services would generally be subject to tax under the service and other activities classification. However, the charges for the optional premium services are more than mere storage or hosting services. As such, the premium services are not excluded from the definition of digital automated services and would generally be subject to tax under the retail sales and retail services classification.

(xv) Data processing services means a primarily automated service provided to a business or other organization where the primary object of the service is the systematic performance of operations by the service provider on data supplied in whole or in part by the customer to: (1) Extract the required information in an appropriate form, or (2) to convert the data to usable information. Data processing services include check processing, image processing, form processing, survey processing, payroll processing, claim processing, and similar activities. Data processing does not include remote access prewritten software used by the customer to process their own data.

Example 23. B Corp., in preparation for litigation, hires Company to use its automated technology to search B Corp's computers and gather documents relevant to the lawsuit. Company's service also provides software tools that allow B Corp to categorize, copy, store, and notate the gathered documents. Company's service is not data processing. The services performed primarily involve gathering data and providing software tools that allow the customer to categorize, copy, store and notate documents in preparation for litigation. Accordingly, Company is selling a digital automated service generally subject to tax under the retail sales and retail services classification.

Example 24. Company provides check processing services to W Corp., a bank operating in Seattle. Company accepts scanned checks provided by W Corp and then uses its software and technology to extract the check dollar amount, account number, and verify the check has been signed. Company then provides this extracted and reformatted data back to W Corp allowing it to reconcile its customers' accounts. Company provides data processing services which are excluded from the definition of digital automated services. These services would generally be subject to tax under the service and other business activities classification.

Example 25. Same facts as Example 24, except that Company accepts checks provided directly by W Corp's customers. Thus, check images come from both W Corp and W Corp's customers. The services provided by Company are still data processing services excluded from the definition of digital automated services even though the data does not come exclusively from W Corp. These services would generally be subject to the service and other business activities classification.

(6) Royalties and wholesaling in regard to digital products. The sale of digital products to "non-end users" may be the selling of intangibles (royalties) or wholesale sales depending on the type of transaction and the intangible rights provided to the purchaser. Gross income from the sales of intangibles (royalties) is subject to tax under the service and other business activities tax while gross income from wholesale sales is subject to tax under the wholesaling tax classification. Transactions which provide the right to resell digital products (no copying rights) to consumers will generally be treated as wholesale sales. Additionally, transactions which allow the purchaser the right to incorporate a digital product into a new product for sale will also be treated as wholesale sales. Other non-end user transactions involving digital products or digital codes will generally be treated as royalties transactions.

Sourcing of income from sales of intangibles (royalties) is described in SMC 5.45.076.

Example 26 . Media Corp. licenses to Rerun Inc. the right to further broadcast a digital movie file on Rerun's website for a specified period of time. In this case Media Corp. provides Rerun with the right by contract to further commercially broadcast or exhibit a digital movie to its subscribers. This is a non-end user transaction subject to tax under the service and other business activities classification. Media Corp. would report its gross

receipts from this transaction under the service and other business activities classification and source the gross income as provided in SMC 5.45.076. Rerun's charges for the subscription service provided to consumers are generally subject to tax under the retail sales and retail services classification.

Example 27. Same facts as Example 26 except Rerun purchases individual digital movie files from Media Corp. with the right to resell those individual files to end users at retail instead of rebroadcasting or exhibiting to the public. In this case, Media Corp. has provided Rerun with the right to resell individual digital movie files to end users. Media Corp. would report its gross receipts from this transaction under the wholesaling classification. Rerun's charges to consumers for the movie files are generally subject to tax under the retail sales and retail services classification.

Example 28. Same facts as Example 27 except that Rerun purchases a single digital movie file with the right provided by contract to duplicate and sell that movie file. In this case, Media Corp. has provided Rerun with the right to duplicate and sell individual digital movie files. Media Corp. would report its gross receipts from this transaction under the service and other business activities classification and source the gross income from the transaction in accordance with SMC 5.45.076. Rerun's charges to consumers for the movie files are generally subject to tax under the retail sales and retail services classification.

Example 29. Jack is a photographer who creates a digital picture of Mt. Rainier. Jack licenses to Cashman, by contract, the right to duplicate and sell copies of the Mt. Rainier picture in retail stores. Cashman's payment to Jack is for the grant of an intangible right and subject to tax under the service and other business activities classification. The gross income to Jack for selling the rights shall be sourced according to SMC 5.45.076. Cashman's sale of the picture at retail to customers is subject to tax under the retail sales and retail services classification.

(7) Bundled transactions. A "bundled transaction" is the retail sale of two or more products, which are distinct and identifiable for one nonitemized price. Because retail sales of digital products and digital automated services are subject to tax under the retail sales and retail services classification, the general rules on the taxation of bundled transactions may apply to certain transactions involving digital products and digital automated services.

Example 30. ABC Inc. (ABC) is a global information technology (IT) firm that provides information and services to aid clients in making IT-related business decisions. ABC's services include online access to information in its "Research Library," consulting services, and special events. ABC's Research Library consists of more than solely data, facts, or information. ABC's research content includes published reports, briefings, updates, alerts, newsletters, and other related tools that cover specific topics and are delivered directly to the client's desktop electronically. ABC's sale of admission to its Research Library involves the electronic transfer of a service, which includes access to digital goods that is facilitated

by one or more software applications that provide search capabilities and other functionality.

Each ABC research service package provides clients with a subscription to ABC's Research Library. An ABC research service package also offers other distinct interactive services. These services are distinct and identifiable from purchasing a service package that contains access to the Research Library. A client may purchase access solely to the Research Library and forgo other available services. The subscription agreements do not itemize the prices of the services provided within each package. Rather, ABC offers each package for a single research fee. ABC is selling a "bundled transaction" consisting of a digital automated service and digital goods subject to tax under the retail sales and retail services classification.

- (8) Records requirement.** Every taxpayer liable for any tax collected by the Director must keep and preserve, for a period of five years, suitable records to determine the amount of tax owed. Such records must include copies of all federal income tax and state tax returns and reports. All taxpayer books, records, and invoices must be open to examination by the Director. A taxpayer located outside of Seattle that does not keep the necessary books and records within Seattle may produce the books and records as may be required by the Director or permit the examination by an agent authorized or designated by the Director at the place the books and records are kept. When the taxpayer requests the Director to examine the books and records at a location outside of Seattle, the taxpayer will bear the cost of examination in accordance with SMC 5.55.060.

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

06/28/2023

Subscribed and sworn to before me on

[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=m4f923e18d9fab3caa70dd7650aacdcdb>

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) 233-3789, 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
Journal of Commerce, June 28, 2023.

6/28(418541)