

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-405

FILED
CITY OF SEATTLE
05 JUL 15 PM 2:49
CITY CLERK

Seattle Rule 5-405 **Restaurants, cocktail bars, taverns and similar businesses.**

- (1) **Introduction.** This rule explains the application of Seattle's business license tax to sales by restaurants and similar businesses. It discusses the sales of meals, beverages, and foods at prices inclusive of the retail sales tax. This rule also explains how discounted and promotional meals are taxed. Persons who merely manage the operations of a restaurant or similar business should refer to Seattle Rule 5-404 to determine their tax liability. The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.
- (2) **Business license tax.** The tax liability of restaurants, cocktail bars, taverns, and similar businesses is as follows:
 - (a) **Retailing.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns, and similar businesses are subject to the retailing tax classification on the gross proceeds of such sales unless the sales price of the meal is advertised as including the retail sales tax. In such case, the retail sales tax may be deducted to arrive at the gross proceeds from the sale of meals. (See Seattle Rule 5-130.) Meals provided to employees are presumed to be in exchange for services rendered by employees and are classified as retail sales, and therefore subject to the retailing tax. (See Seattle Rule 5-404, Sales of meals.)
 - (b) **Wholesaling.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling tax classification.
 - (c) **Service and other activities.** Compensation received from owners of coin-operated machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other classification.
- (3) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. The retailing business license tax should be calculated on the reduced price actually received by the seller.
 - (a) Persons who provide meals free of charge to persons other than employees are not subject to tax. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a business license tax liability with respect to these items given away. A sale has not occurred.
 - (b) Meals provided to employees are presumed to be in exchange for services rendered by the employee and are not considered to be given away. These meals are retail sales. (See Seattle Rule 5-404 regarding employee meals.)
- (4) **Sales of meals, beverages, and food at prices including sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax.
 - (a) Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menus and other price information.
 - (b) If sales slips, sales invoices, or dinner checks are given to the customer, the sales tax must be separately stated on all such sales receipts. If not separately stated on the sales receipt, it will be determined that retail sales tax was not collected. In such cases the measure of tax will be gross receipts. (Refer to Seattle Rule 5-130, Selling price -- Advertised prices including sales tax).

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- (c) Restaurants operating under the authority of a class H liquor license generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas are generally not given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.
 - (i) Many class H restaurants elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. It will be concluded that no retail sales tax has been collected or is included in the gross receipts when a notice is not posted and the customer does not receive a sales slip or sales invoice separately stating the retail sales tax.
 - (ii) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, an operator of a class H restaurant may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.
 - (iii) Class H restaurants are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in Seattle Rule 5-130 must be met.
- (5) **Gratuities.** Tips or gratuities, when made voluntarily by customers, are not part of the selling price and not subject to the retailing business license tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise must be included in the selling price and are subject to the retailing business license tax. (Refer also to Seattle Rule 5-404.) Mandatory gratuities on group meals and banquets will be determined to be on the meal sales and 100% taxable unless split between the meals, and any alcoholic beverages (not taxable) on a percentage basis and separately stated by the server on the sales invoice.
- (6) **Exemption.** Sales of alcoholic beverages are exempt from Seattle's business license tax per SMC 5.45.090 (W) and RCW 66.08.120.

Effective: July 15, 2005

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DIRECTOR'S CERTIFICATION

I Kenneth J. Nakatsu, Director of the Department of Executive Administration 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 Executive Administration.

DATED this 15th day of July, 2005.

CITY OF SEATTLE,
a Washington municipality

By:



Kenneth J. Nakatsu, Director
Department of Executive Administration

STATE OF WASHINGTON - KING COUNTY

--SS.

183390
CITY OF SEATTLE:Revenue &

No.

Affidavit of Publication

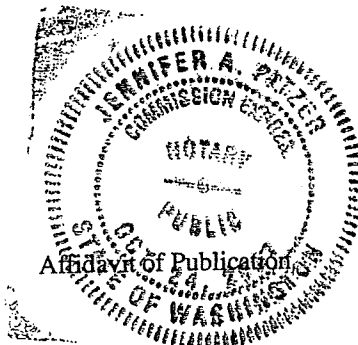
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published 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:RULE MAKING HEARING

was published on

3/21/2005



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Subscribed and sworn to before me on

3/21/2005

Jennifer Preter

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

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 5.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business and Occupation 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 5.40 (Admissions Tax), SMC 5.48 (Business Tax -- Utilities) and SMC 5.52 (Gambling Tax). The following rules are proposed for adoption and will become effective as of April 30, 2005:

Seattle Rule 5-006 -- Tax Returns -- Filing and Payment

Seattle Rule 5-007 -- Penalties

Seattle Rule 5-031 -- Measure of Tax -- Retailers and Wholesalers

Seattle Rule 5-032 -- Measure of Tax -- Service and other business activities

Seattle Rule 5-035 -- Freight and Delivery Charges

Seattle Rule 5-040 -- Corporations, Massachusetts trusts

Seattle Rule 5-043 -- Engaging in Business

Seattle Rule 5-063 -- Returned goods, allowances, cash discounts

Seattle Rule 5-100 -- Extracting natural products

Seattle Rule 5-112 -- Commercial or industrial use

Seattle Rule 5-127 -- Sales to and by the State of Washington, counties, cities, school districts, and municipal subdivisions

Seattle Rule 5-130 -- Selling price -- Advertised prices including sales tax

Seattle Rule 5-131 -- Trade-ins, selling price, sellers' tax measures

Seattle Rule 5-132 -- Leased departments

Seattle Rule 5-133 -- Warranties and maintenance agreements

Seattle Rule 5-702 -- Coin operated vending machines; amusement devices and service machines

Seattle Rule 5-404 -- Sales of meals

Seattle Rule 5-405 -- Restaurants, cocktail bars, taverns and similar businesses

Seattle Rule 5-481 -- Motor carriers -- Trucking

Seattle Rule 5-523 -- Sales of precious metal bullion and monetized bullion

Seattle Rule 5-530 -- Sale or rental of real estate, license to use real estate

Seattle Rule 5-531 -- Sales of real property, standing timber, minerals, natural resources

Seattle Rule 5-532 -- Real estate brokers and salesman

Seattle Rule 5-600 -- Educational institutions, school districts, student organizations, and private schools

Seattle Rule 5-700 -- Amusement, Recreation, and Physical Fitness Services

Seattle Rule 5-720 -- Hotels; motels, boarding houses, rooming houses, resorts, summer camps, trailer camps, etc.

Seattle Rule 5-803 -- Consignees, bailees, factors, agents, and auctioneers

Seattle Rule 5-806 -- Advertising agencies

Seattle Rule 5-807 -- Outdoor advertising and advertising display services

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 4, 2005. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 5th 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, Director, Revenue and Consumer Affairs, 700 5th Avenue - Suite 4250, Seattle, Washington 98104-5020.

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 5th Avenue, Suite 4200. If you would like a copy of the proposed rules, please call (206) 684-8300, FAX (206) 684-5170, email rca.bizletx@ci.seattle.wa.us, or submit a written request to the address above.

Dated: March 21, 2005.

DWIGHT D. DIVELY,

Director, Department of Finance.

Date of publication in the Seattle Daily Journal of Commerce, March 21, 2005.

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