

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-530

FILED
CITY OF SEATTLE
05 JUL 15 PM 3:50
CITY CLERK

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

- (1) **Amounts derived from the sale of real estate or from the rental of real estate are exempt** from taxation under the business license tax. Sales of real estate are subject to the Real Estate Excise Tax (REET) as contained in RCW 82.46, and not subject to the business license tax. Amounts received from a lease or rental of real estate are those amounts where the lease or rental of real property conveys an estate or interest in a certain designated area of real property with an exclusive right in the lessee or renter of continuous possession against the world, including the owner, and grants to the lessee or renter the absolute right of control and occupancy during the term of the lease or rental agreement. An agreement will not be construed as a lease or rental of real estate unless a relationship of "landlord and tenant" is created thereby. It is presumed that the sale of lodging by a hotel, motel, tourist court, etc., for a continuous period of thirty days or more is a rental of real estate. It is further presumed that all rentals of mini-storage facilities, apartments and leased departments constitute rentals of real estate. The rental of a parking space, boat moorage slip, or an airplane hangar/tie down site is presumed to be a rental of real estate only if a specific space, slip, or site is assigned and the rental is for a period of thirty days or longer.
- (2) **License to use real estate is taxable.** A license to use real estate grants merely a right to use the real property of another but does not confer exclusive control or dominion over the same. Usually, where the grantor/owner conveys only a license to use, the owner controls such things as lighting, heating, cleaning, repairing, and opening and closing the premises. Amounts derived from the granting of a license to use real property are taxable under the service business license tax classification unless otherwise taxed under another classification by specific statute, e.g., sale of lodging taxed under retailing. (See 5.45.050 (G) and SMC 5.30.050, respectively). Further, no exemption is allowed for amounts received as commissions for the sale or rental of real estate (SMC 5.45.090 (T)), nor for interest received by persons engaged in the business of selling real estate on time or installment contracts unless the contract is secured by a first mortgage.
- (3) **Distinguishing rental or lease of real property and a license to use real estate.** For purposes of distinguishing the lease or rental of real estate from the granting of a license to use real estate the Department will be guided by the following principles.
- (a) It will be presumed that a taxable license to use or enjoy real property is granted in the rental of, including but not limited to, the following:
- (i) Hotel rooms (for periods of less than 30 continuous days; see Seattle Rule 5-720).
 - (ii) Motels, tourist courts and trailer parks (for periods of less than 30 continuous days; see Seattle Rule 5-720).
 - (iii) Cold storage lockers.
 - (iv) Safety deposit boxes and private mail boxes.
 - (v) Storage space--unless the period is for longer than 30 continuous days and the renter or lessee has access to the storage space or storage unit at all times and controls access to that space against all others (see Seattle Rule 5-700).
 - (vi) Space within park or fair grounds to a concessionaire.
 - (vii) Hairdressers, barbers, or manicurists who lease space within another business (see Seattle Rule 5-132 Leased departments).
 - (viii) Use of boat launch facilities for recreational purposes.

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- (ix) Space on a building, or other real property, for the attachment of advertising signs, including for periods in excess of 30 continuous days.

- (4) **Hotels, motels, etc.** SMC 5.30.050 B (3) (f) specifically defines services of a hotel, motel, or similar businesses as being retail sales (with some exceptions such as telephone services). Thus, the rentals of meeting rooms, display rooms, games rooms, or ball rooms are retail sales when rented out by such businesses. Persons who are not in the business of selling lodging are taxable under the service classification on income from the rental of meeting rooms.

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

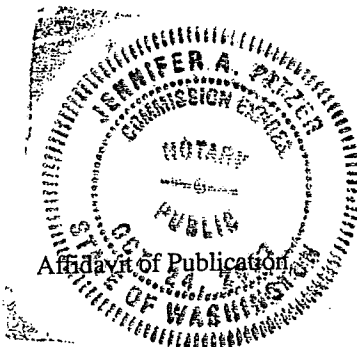
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published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



M. D. J.

Subscribed and sworn to before me on

3/21/2005

Jennifer A. Zetzer

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.bizlctr@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.

3/21(183390)