

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-532

FILED
CITY OF SEATTLE
05 JUL 15 PM 2:50
CITY CLERK

Seattle Rule 5-532 Real estate brokers and salesman.

(1) Definitions.

- (a) The terms "real estate broker" and "real estate salesman" mean, respectively, a person licensed as such under the provisions of chapter 18.85 RCW. A real estate broker is a person licensed by the State of Washington who acts for others, for commissions or other compensation or acting on their own behalf, sells or offers to sell, lists, buys or offers to buy, negotiates or offers to negotiate, real estate, business opportunities or mobile homes, or any interest therein. A real estate salesman is a person who works either directly or indirectly for a real estate broker in the performance of any of the acts permitted to a real estate broker.
- (b) The term "gross income of the business" includes gross income from commissions, fees and other emoluments, however designated, which the person receives or becomes entitled to receive, but does not include amounts held in trust for others. SMC 5.30.035 (D) ("*gross income of the business*" defined).

(2) Business License Tax.

- (a) A real estate broker is engaged in business as an independent contractor and is taxable under the service and other business activities classification upon the gross income of the business.
- (b) A real estate salesman is presumed to be an independent contractor and is taxable under the service and other business activities classification upon the gross income of the business.
- (c) Except as expressly provided for in this rule, no deduction or exclusion from gross income for real estate brokers or salesmen is allowed. For example, you may not deduct commissions, fees, salaries paid to another broker or salesman, dues, any charges to others, referral fees, or fees paid to multiple listing associations.

(3) Tax on Real Estate Commissions.

- (a) The measure of the tax on real estate commissions earned by a real estate broker is the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salesmen or associate brokers in the same office. Where the broker has paid the tax on 100 percent of the gross commission earned by that office from a particular transaction, salesmen and associated brokers in the same office are not required to pay tax on their share of the commission from that transaction. Where the brokerage office at which the real estate salesman or associate broker's license is required to be posted has not paid the tax on 100 percent of the gross commission earned by that office on a particular transaction, each real estate salesman or associated broker who receives a share of the gross commission shall pay tax on his or her share.
- (b) Where there is an agreement between an originating brokerage office and a cooperating brokerage office to effectuate a particular transaction, each brokerage office shall pay tax only upon its respective share of the commission from that transaction (SMC 5.45.090 (AA)). Except as expressly provided in this subsection (3)(b), a broker may not exclude commissions from income.

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(4) Shared Expenses.

- (a) Where a broker charges salesmen or associate brokers for providing space and other facilities such as telephone, advertising, multiple-listing service, and office supplies, the broker is subject to business license tax on such charges, in addition to the tax on gross commissions, regardless of whether a fixed amount per month, a percentage of commissions, or a percentage of sales is used as the basis for the charges. The business license tax applies to the charges even if the broker is simply, without markup, attempting to recover the costs which are incurred by having the salesman or associate broker within the office. The recovery of these costs does not qualify as a nontaxable reimbursement unless the broker is acting as the agent of the salesmen or associate brokers in incurring the costs, and does not have either primary or secondary liability to pay the provider of the supplies or services. See SMC 5.45.040 (C) for provisions governing the exclusion of advances and reimbursements.

- (b) A broker may enter into written agreements with salesmen or associate brokers where it is agreed that the broker is solely liable for all expenses incurred by the real estate brokerage office, and that the salesman or associate broker is under no obligation to reimburse the broker for expenses. In such cases, the broker is deemed not to have received income from the payment of expenses on behalf of the salesmen or associate broker if, and only if, such written agreement:
 - (i) provides that the salesman or associate broker is not entitled to any commission unless and until the broker has recouped its expenses;
 - (ii) provides that the salesman or associate broker has no liability to pay the broker's expenses even if the gross commission is not adequate to pay them; and
 - (iii) contains a predetermined amount of any net commission to which the salesman or associate broker is entitled, which commission amount may be determined on a formulary or percentage basis.

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

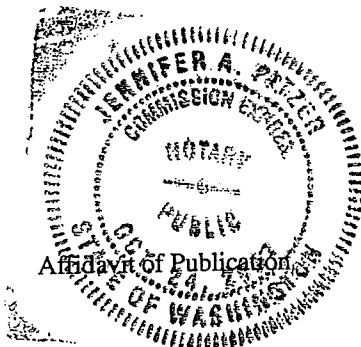
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published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

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