

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-803

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

Seattle Rule 5-803 **Consignees, bailees, factors, agents and auctioneers of tangible personal property.**

- (1) **Introduction.** A consignee, bailee, factor, agent or auctioneer, refers to one who has either actual or constructive possession of tangible personal property belonging to another person, and selling or calling for bids on such property on behalf of the owner(see SMC 5.45.040).
- (2) **Definition.** The term "constructive possession" means possession of the power to transfer the title of tangible personal property belonging to others.
- (3) **Business License Tax.**
- (a) Retailing and wholesaling. Every person acting as an agent, including consignee, bailee, factor or auctioneer having either actual or constructive possession of tangible personal property, or having possession of the documents of title thereto, with power to sell such tangible personal property in his or its own name and, actually so selling, shall be deemed the seller of such tangible personal property and taxable under the retailing or wholesaling classification of the business license tax. The consignor, bailor, principal, or owner shall be deemed a seller of such property to the agent, consignee, bailee, factor or auctioneer and shall be taxable as a wholesaler with respect to such sales.

The mere fact that the agent, consignee, bailee, factor or auctioneer makes a sale creates a presumption that such agent, consignee, bailee, factor or auctioneer actually sold in his or its own name. This presumption is controlling unless rebutted by proof satisfactory to the Director.

The retailing or wholesaling business license tax is calculated by multiplying the applicable tax rate against the selling price of the item sold or auctioned. There is no deduction for any commission which the agent, consignee, bailee, factor or auctioneer receives as payment for services. (Refer to Seattle Rule 5-130 (1)(a) for definition of selling price.)

- (b) Acting as agents and brokers. Any person who claims to be acting merely as agent or broker in promoting sales for a principal or in making purchases for a buyer, will have such claim recognized only when the contract or agreement between such persons clearly establishes the relationship of principal and agent and when the following conditions are complied with:
- (i) The books and records of the agent or broker show the transactions were made in the name and for the account of the principal, and show the name of the actual owner of the property for whom the sale was made, or the actual buyer for whom the purchase was made.
- (ii) The books and records show the amount of the principal's gross sales, the amount of commissions and any other incidental income derived by the broker or agent from such sales. The principal's gross sales must not be reflected as income of the agent. Commissions must be computed according to a set percentage or amount, which is agreed upon in the agency agreement.
- (iii) No ownership rights may be conferred to the agent or broker unless the principal refuses to pay, or refuses to abide by the agency agreement.

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- (iv) Bulk goods sold or purchased on behalf of a principal must not be co-mingled with goods belonging to another principal or lose their identity as belonging to the particular principal. Sales or purchases of any goods which have been co-mingled or lost their identity as belonging to the principal shall be taxed as retail or wholesale sales.

- (c) Service and other business activities. Every agent, consignee, bailee, factor or auctioneer who makes a sale in the name of the actual owner, as agent of the actual owner, or who purchases as agent of the actual buyer, and meets the above criteria is taxable under the service and other business activities classification upon the gross income derived from such business.

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

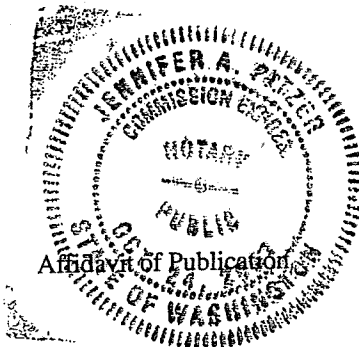
The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published 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 5-068 -- 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 5-528 -- 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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