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CITY OF SEATTLE  
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**THE CITY OF SEATTLE**  
**DIRECTOR'S RULE**  
**IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE**  
**RULE 5-067**

**Seattle Rule 5-067**      **Accommodation sales, exchange of fungible products.**

- (1) **Introduction.** In general, retail sellers who sell tangible personal property at cost to another seller of the same kind of tangible personal property to fill a sales order for its customer as described herein may claim an accommodation sale exemption.

Exchanges of fungible products are taxable unless they meet the criteria of an accommodation sale or qualify for some other exemption or deduction. (Refer to section 4 for more information.)

- (2) **Definition.** As used herein:

(a) "Accommodation sales" means only sales for resale by persons regularly engaged in the business of making retail sales of the type of property so sold to other persons similarly engaged in the business of selling such property where:

- (1) The amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article; and
- (2) The sale is made as an accommodation to the buyer to enable the buyer to fill a bona fide existing order of a customer or is made within fourteen (14) days to reimburse in kind a previous accommodation sale by the buyer to the seller.

Provided, that where the seller holds itself out as being regularly engaged in the business of making sales at wholesale of such property, such sales shall be included in its principal business activity, and not exempt from tax. (See SMC 5.45.090 Z).

- (3) **Business license tax and accommodation sales.** In computing tax under the retailing classification, receipts from accommodation sales may be excluded from the reported gross receipts amount. Each seller claiming this exemption must retain sufficient evidence to prove the nature of the transactions as a part of his sales records to qualify for this exemption.

- (4) **Requirements for exemption.** The following conditions must be satisfied for the exemption to apply:

(a) Amount paid by buyer may not exceed amount paid by seller. The amount the buyer pays to the seller may not exceed the amount the seller paid to the seller's vendor in the acquisition of the property. A seller that manufactured the property sold cannot claim the exemption because the property has not been acquired from a vendor.

(i) *Expenses associated with preparing property for sale.* Under some circumstances, a seller may add reasonable expenses to the invoice cost of the article sold in connection with an accommodation sale, including but not limited to, actual freight or delivery costs incurred by the seller and billed as such to the buyer. The specific facts concerning such additional costs must be submitted to the Director for a tax determination prior to claiming the exemption.

(ii) *Holdbacks or discounts.* The amount paid by the seller may not be reduced by the amount of any manufacturer's holdbacks or discounts received after an article has been sold even though the seller may retain such holdbacks or discounts.



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- (b) Sale is an accommodation to fill an existing order. The sale must occur as an accommodation to allow the buyer to fill a bona fide existing order of a customer or occur within fourteen days to reimburse in-kind a previous accommodation sale by the buyer to the seller. A bona fide existing order is present if there is a commitment by the buyer's customer to purchase the property. The buyer must retain records demonstrating the customer's commitment to purchase, such as a written agreement or deposit. For example, Recreational Vehicle Dealer A purchases a fifth-wheel trailer from Recreational Vehicle Dealer B as an accommodation. Ten days later, Dealer A sells a travel trailer to Dealer B as reimbursement in-kind of the previous accommodation sale. For Dealer A to claim the business license tax exemption for the sale of the travel trailer to Dealer B, Dealer A must keep sufficient records to document a bona fide existing customer order for the fifth-wheel trailer purchased from Dealer B.
- (c) Documentation. A person claiming the exemption for an accommodation sale must maintain sufficient documentation to verify the exemption. In addition to the documentation noted above establishing, where pertinent, the existence of a bona fide existing customer order, this documentation must also include:
- (i) The buyer's name and address;
  - (ii) The seller's name and address;
  - (iii) The buyer's UBI/tax registration number;
  - (iv) Description of the property purchased, including make, model, and serial numbers as appropriate;
  - (v) The date of purchase and the purchase price;
  - (vi) A statement by the buyer as to whether the purchase is to fill a bona fide existing order or to reimburse a previous in-kind accommodation sale, including information identifying the previous accommodation sale; and
  - (vii) The buyer's signature and title.
- (5) **Exchanges of fungible products.** Persons engaged in the selling and distributing of fungible products often enter into exchange agreements. An exchange is a sale regardless of whether it results in a profit because a transfer of the ownership of, title to, or possession of property for valuable consideration occurs. SMC 5.30.050. Exchanges are subject to the B&O tax unless otherwise exempt by law.
- (a) Fungible product defined. Fungible products are products that lose their physical identity to the point that they cannot be distinguished from like-kind items when commingled. Examples of fungible products include gasoline, bulk oil products, grains, logs, wood chips, fruits, and vegetables.
- (b) Exchange agreements. Under typical exchange agreements, a person is required to furnish products to another person selling and distributing the same products, sometimes receiving payment in-kind or with a substitute product at a later date. Exchange agreements may require the person to arrange for direct delivery from his or her vendor to the third party distributor. In some cases, actual title and/or possession of the product may pass directly from the vendor to the third-party distributor.



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Persons exchanging fungible products often do so on a regular and continuing basis to cover shortages occurring because of a lack of storage or production facilities, and/or to effect savings in transportation costs. Exchanges may be carried as loans on the books of account (in which case the exchanges are often referred to as "inter-company loans"). Products acquired via an exchange may or may not be carried as regular inventory on the books of account.

- (c) May an exchange of fungible products qualify as an accommodation sale? The fact that the product sold is a fungible product does not preclude a claim that the sale is exempt as an accommodation sale. However, such a claim will be recognized only if the requirements as set forth above in this rule are met.

Effective: May 15, 2007.



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**DIRECTOR'S CERTIFICATION**

I Dwight D. Dively, Director of the Department of Finance 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 Finance.

DATED this 14th day of May, 2007.

CITY OF SEATTLE,  
a Washington municipality

By:

  
\_\_\_\_\_  
Dwight D. Dively, Director  
Department of Finance





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**STATE OF WASHINGTON – KING COUNTY**

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209880  
CITY OF SEATTLE:REVENUE &

No. MAKING HEARING

**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 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

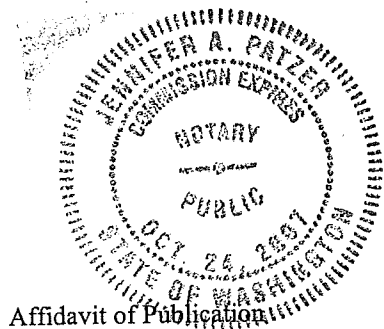
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

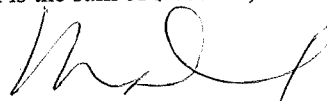
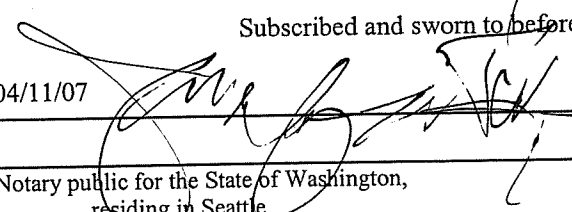
was published on

04/11/07

The amount of the fee charged for the foregoing publication is the sum of \$ 139.50, which amount has been paid in full.



Affidavit of Publication

  
\_\_\_\_\_  
Subscribed and sworn to before me on  
04/11/07   
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle



**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 3.02 and 5.55, proposes to adopt new rules for implementing the Seattle Business License 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 5.35 (Commercial Parking Tax), SMC 5.37 (Employee Hours Tax), SMC 5.40 (Admissions Tax), SMC 5.48 (Business Tax - Utilities), SMC 5.52 (Gambling Tax), and SMC 5.55 (General Administrative Provisions). The following rules are proposed for adoption and will become effective as of May 15, 2007:

Seattle Rule 5-000 Rules adopted.

Seattle Rule 5-002 Business license requirements.

Seattle Rule 5-007 Penalties.

Seattle Rule 5-008 Recordkeeping requirements.

Seattle Rule 5-009 Limitations on tax assessments.

Seattle Rule 5-033 When tax liability arises.

Seattle Rule 5-034 Finance charges, carrying charges, interest, and penalties.

Seattle Rule 5-037 Accounting methods.

Seattle Rule 5-039 Employees distinguished from persons engaging in business.

Seattle Rule 5-042 Successor liability.

Seattle Rule 5-044 Value of products.

Seattle Rule 5-064 Credit losses, bad debts, recoveries.

Seattle Rule 5-065 Taxes, deductible and nondeductible.

Seattle Rule 5-067 Accommodation sales.

Seattle Rule 5-068 Pool purchases.

Seattle Rule 5-125 Casual or isolated sales.

Seattle Rule 5-275 Installing, cleaning, repairing or otherwise altering or improving personal property of consumers.

Seattle Rule 5-276 Constructing and repairing of new or existing buildings or other structures upon real property.

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 5-804 Staffing businesses, staffing services.

Seattle Rule 5-921 Exemptions, deductions and credits available under the employee hours tax.

**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 30, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4096, located at 700 Fifth 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, Deputy Director Revenue and Consumer Affairs 700 Fifth Avenue - Suite 4250 P.O. Box 34214 Seattle, Washington 98124-4214

The public may inspect copies of the proposed rules at the Revenue and Consumer Affairs offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-0071, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

Dwight D. Dively, Director, Department of Finance

Date of publication in the Seattle Daily Journal of Commerce, April 11, 2007.

