

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-276

FILED
CITY OF SEATTLE
MAY 15 2013 10:49

Seattle Rule 5-276 **Constructing and repairing of new or existing buildings or other structures upon real property (including property owned by governmental entities).**

(1) Definitions. As used herein:

- (a) The term "prime contractor" means a person engaged in the business of performing for consumers, the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property, either for the entire work or for a specific portion thereof. The term includes persons who build, repair or improve streets, road, and other transportation infrastructure for governmental entities, or other consumers. The term includes persons who for governmental entities or other consumers contract for the construction or relocation of facilities of any public, private, or cooperatively owned utility or transportation entity including but not limited to water mains, telecommunication infrastructure, electrical infrastructure and sewer lines. The term includes persons who rent or lease equipment to property owners for use in respect to constructing, repairing, etc., buildings or structures upon such property, when the equipment is operated by the lessor.
- (b) The word "subcontractor" means a person engaged in the business of performing a similar service as (1)(a) above for persons other than consumers, either for the entire work or for a specific portion thereof. The term includes persons who rent or lease equipment to prime contractors or subcontractors for use in respect to constructing, repairing, etc., when such equipment is operated by the lessor. When equipment or other tangible personal property is rented without an operator to contractors, subcontractors or others, the transaction is a sale at retail (see SMC 5.30.050 B).
- (c) The terms "prime contractor" and "subcontractor" include persons performing labor and services in respect to the moving of earth or clearing of land, cleaning, fumigating, razing, demolition, or moving of existing buildings or structures even though such services may not be done in connection with a contract involving the constructing, repairing, or altering of a new or existing building or structure as mentioned in 1(a) above.
- (d) The term "buildings or other structures" means everything artificially built up or composed of parts joined together in some definite manner and attached to real property. It includes but is not limited to buildings in the general and ordinary sense, roads, streets, and other transportation infrastructure including street lights, drainage systems, tanks, fences, conduits, culverts, railroad tracks, tunnels, overhead and underground transmission systems, monuments, retaining walls, piling and privately owned bridges, trestles, parking lots, and pavements for foot or vehicular traffic, runways, water systems, electrical systems, sewer systems, etc, whether owned by private or public entities.
- (e) The term "constructing, repairing, decorating or improving of new or existing buildings or other structures" ("contracting"), in addition to its ordinary meaning, includes, but is not limited to:
 - (i) The installing or attaching of any article of tangible personal property in or to real property, whether or not such personal property becomes a part of the realty by virtue of installation; the clearing of land and the moving of earth;
 - (ii) The term includes the sale of or charge made for all activities normally taxed under the service and other classification but rendered in respect to such constructing, repairing, etc. "Services rendered in respect to" means those services that are directly related to the constructing building, repairing, improving, and decorating of buildings or other structures and that are performed by the

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-276

person who is responsible for the performance of the constructing, building, repairing, improving, or decorating activity. For example, such service charges as engineering fees, architectural fees or supervisory fees are within the term when the services are included within a contract for the construction of a building or structure. The fact that the charge for such services may be shown separately in bid, contract or specifications does not establish the charge as a separate item in computing tax liability. (Refer to RCW 82.04.051 and the legislative intent following that section)

- (f) The term "office" means a place where the contractor holds himself or herself out to the public for the regular transaction of business. An office has a mailing address and usually a telephone address, and serves as a location for the central administration of the contractor's business and contains general business records. A building or shelter on a construction site may constitute an office for purposes of allocating income between offices in Seattle and also elsewhere (see 4(c and d) below) when the on-site location has a resident supervisor, is used for a continuous period of at least six months, and the contractor hires employees or subcontractors and orders supplies and materials from the site.

(2) Speculative builders.

- (a) As used herein the term "speculative builder" means one who constructs buildings for sale or rental upon real estate owned by him or her. The attributes of ownership of real estate for purposes of this rule include but are not limited to the following:
- (i) The intentions of the parties in the transaction under which the land was acquired;
 - (ii) The person who paid for the land;
 - (iii) The person who paid for improvements to the land; and
 - (iv) The manner in which all parties, including financiers, dealt with the land.

The terms "sells" or "contracts to sell" include any agreement whereby an immediate right to possession or title to the property vests in the purchaser.

- (b) Where an owner of real estate sells it to a builder who constructs, repairs, decorates, or improves new or existing buildings or other structures thereon, and the builder thereafter resells the improved property back to the owner, the builder will not be considered a speculative builder. In such a case that portion of the resale attributable to the construction, repairs, decorations, or improvements by the builder, shall not be considered a sale of real estate and shall be fully subject to retailing business license tax. It is intended by this provision to prevent the avoidance of tax liability on construction labor and services by utilizing the mechanism of real property transfers. (SMC 5.30.050 (B)(3)(c)).
- (c) Amounts derived from the sale of real estate are exempt from the business license tax. (SMC 5.45.090 T). Consequently, the proceeds of sales by legitimate speculative builders of completed buildings are not subject to such tax.
- (d) However, when a speculative builder sells or contracts to sell property upon which he is presently constructing a building, all construction done subsequent to the date of such sale or contract constitutes a retail sale and that portion of the sales price allocable to

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-276

construction done after the agreement shall be taxed accordingly. Consequently, the builder must pay business license tax under the retailing classification on that part of the sales price attributable to construction done subsequent to the agreement.

- (e) Persons, including corporations, partnerships, sole proprietorships, and joint ventures, among others, who perform construction upon land owned by their corporate officers, shareholders, partners, owners, co-venturers, etc., are constructing upon land owned by others and are taxable as sellers under this rule, not as "speculative builders."

(3) Business license tax.

- (a) Measure of tax. Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price.

Where no gross contract price is stated in any contract or agreement between the builder and the property owner, then the measure of business license tax is the total amount of construction costs, including any charges for licenses, fees, permits, etc., required for the construction and paid by the builder.

- (b) Retailing. Prime contractors are taxable under the retailing classification, and subcontractors under the wholesaling classification upon the gross contract price. The retailing tax applies in respect to contracts for cleaning septic tanks or the exterior walls of buildings, as well as to earth moving, land clearing and the razing or moving of structures, cleaning up construction sites, whether or not such services are performed as incidents of a contract to construct, repair, decorate, or improve buildings or structures.
- (c) Services. The service and other business license tax applies to charges made for interior design services, janitorial services and for the leveling of land used in commercial farming or agriculture.

(4) Allocation of income.

- (a) Contracting or other activities defined in section 1(e) in Seattle. Every contractor is subject to business license tax measured by the gross proceeds of sales derived from construction, repairing or altering of buildings or other structures located within the City and/or from a public works contract with the municipal corporation of the City of Seattle. No deduction is allowed from the gross proceeds of sales for on-site construction activities in Seattle, or from a contract with the City of Seattle itself, because the contractor may maintain an office, incur expenses, or accomplish preparatory work outside Seattle.
- (b) On or after January 1, 2008, any construction activity located outside Seattle is not subject to the Seattle business license tax. Constructing an item of tangible personal property within Seattle that will then be delivered outside of Seattle to be attached to real property will be subject to the manufacturing business license tax.
- (c) Only office in Seattle. Prior to January 1, 2008, every contractor, who maintains an office within Seattle and not elsewhere, is subject to business license tax measured by:
 - (i) The gross proceeds of sales arising from "contracting" on all buildings or other structures or with the City of Seattle itself, in Seattle; and

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-276

- (ii) The gross proceeds of sales administered or processed through the contractor's Seattle office even though the buildings or other structures may be located elsewhere in Washington.

The contractor may deduct from the gross proceeds of sales taxable under subsection (4)(c)(ii) (office inside Seattle; construction site outside) the proceeds of those sales which satisfy these criteria:

- (A) The contractor derives the sales from "contracting" on buildings or other structures located in another Washington city:
 - (B) The contractor pays a business license fee or tax to the city where the buildings or other structures are located, and the fee or tax measured as a percentage of the contractor's proceeds of sales or gross receipts; and
 - (C) The proceeds of the sales, which are deducted in calculating the City tax, are used in determining the amount of taxes paid to the other Washington city.
- (d) Offices in Seattle and elsewhere in Washington. Prior to January 1, 2008, a contractor, who maintains an office within Seattle and one or more office(s) elsewhere in the State of Washington, may allocate his or her gross proceeds of sales to reflect the business activity rendered at or through each business location.

Effective: May 15, 2007.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-276


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

STATE OF WASHINGTON – KING COUNTY

--SS.

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 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

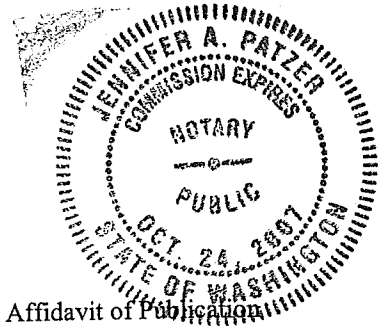
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

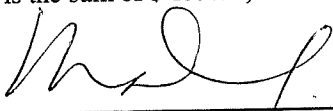
was published on

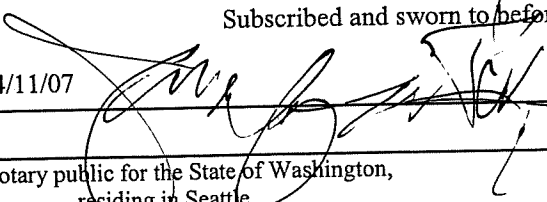
04/11/07

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.