

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-502

Seattle Rule 5-502 **Taxation of information services and computer related services.**

- (1) **Introduction.** This rule explains the business license tax and utility tax treatment of activities related to information services and computer-related services.

This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results in all situations must be determined after a review of all facts and circumstances.

(2) **Definitions.**

- (a) Application Service Provider. "Application Service Provider", "ASP" means a provider that generally offers customers electronic access to applications on the ASP's server. An ASP generally does not provide computer software for customers to download. ASP, however, may provide downloadable codes in order for customers to access its applications on its server that are only incidental to the services provided to customers.
- (b) Data processing services. "Data processing services" include, but is not limited to, word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also include the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service.
- (c) Data warehousing service. "Data warehousing service" means the service of a provider offering server space for a customer to store its data and to access, retrieve, or use the data as needed.
- (d) Information services. "Information services" means every business activity, process, or function by which a person transfers, transmits, or conveys data, facts, knowledge, procedures, and the like to any user of such information through any tangible or intangible medium.
- "Information services" does not include, however, any sale of standard information available to any customer that is delivered through any tangible storage medium or through electronic download. The sale of such standard information available to any customer is considered a retail sale of tangible personal property subject to taxation under the retailing classification. "Information services" does not include telephone business as defined under Seattle Municipal Code 5.30.060.
- (e) Internet. "Internet" means the myriad collection of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by electronic transmissions through electronic or radio infrastructure.
- (f) Internet access provider. 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet.
- (g) Internet service. "Internet service" means a service that enables users to access content, information, electronic mail, or other services offered over the Internet, and may also include access to proprietary content, information, hosting of information for retrieval over the internet, and other services as part of a package of services offered to users. The

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term 'Internet service' does not include telecommunications services. See Seattle Rule 5-300 for more information regarding telecommunications services.

- (h) Intranet service. "Intranet service" means the service of providing a private or intra-company network used by a person to facilitate the sharing or accessing of internal information by the person's employees or other authorized parties.
 - (i) Network system support. "Network system support" activities include analyzing and interpreting problems using diagnostic software, monitoring network to ensure network availability to users, and performing network system configurations. Network system support activities may be performed through remote telephone support or onsite consulting.
 - (j) Proprietary subscriber network. "Proprietary subscriber network" means proprietary or corporately owned network in which its services are available to the public for fees. Proprietary subscriber network does not include intranets.
 - (k) Website development service, website hosting service. "Website development service" means the design and development of a website provided by a website developer to a customer. "Website hosting service" means the service of a provider offering server space to host a customer's website.
- (3) **Taxable activities under the service and other business activities classification of the Business License Tax.**
- (a) Sales of information services. The gross income received for providing information services is subject taxation under the service and other business activities classification. Gross income from providing standard information that is available to all customers is subject to taxation under the retailing classification. The maintaining of a place of business or a server within Seattle creates taxing responsibility for Seattle tax purposes.

Below are some examples of taxing information services:

- (i) XY Statistical Data, Inc. maintains an information supplying operation located in Seattle and sells statistical data at the specific request of each customer. XY does not compile such statistical information to be available for all customers. Instead, each customer submits its own request of the statistical information based on its needs. XY compiles, analyzes, and summarizes the statistical information it gathers and sends the information to customers in a tangible medium. XY is subject to taxation under the service and other business activities classification for the sales of statistical information because XY is providing an information service at the specific request of each customer.
- (ii) YY Statistical Data, Inc. maintains an information supplying operation located in Seattle and sells standardized statistical data to customers. Any customer would receive the same standardized statistical data through electronic download. Customer W purchases standardized statistical data from YY. YY is subject to taxation under the retailing classification on the sale of tangible personal property. Standardized statistical data is considered to be tangible personal property whether it is delivered in hard copy or through electronic download or transmitted in any other way.
- (iii) ZZ Statistical Data, Inc. maintains an information operation in Seattle and allows its customers to perform online research of statistical information through its

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database. ZZ bills its customers a monthly fee for having online access to the database for research. Its customers may or may not download the information onto their computers. ZZ is subject to taxation under the service and other business activities classification for providing information services to its customers.

- (iv) WW Travel, Inc. maintains an information operation within Seattle and provides information services online to its customers. WW bills its customers a monthly fee for having online access to a travel reservation system that includes a charge for dedicated telephone lines. WW is subject to taxation under the service and other business activities classification for providing information services in Seattle. The provider of dedicated telephone lines to WW must pay Seattle's telephone business utility tax on the sale of telephone or telecommunications service to WW. WW is the consumer of the telephone business services.
 - (v) VV Telephone, Inc. maintains an operation within Seattle and provides a satellite-based tracking and communications system that includes instant messaging and position reporting between its customer's vehicles in transit and their dispatch centers. Both the vehicles and the dispatch centers are operated by VV's customers and information is both generated and received by VV's customers. VV is subject to Seattle's telephone business utility tax on the sale of network telephone service in Seattle. This is not a sale of information services. The true object of the transaction is the transmission of data between the vehicles and the dispatch centers through VV's telecommunications system.
- (b) Sales of data processing services. Gross income received for data processing services are subject to taxation under the service and other business activities classification.
- (c) Sales of Internet services. Gross income received for Internet services, including proprietary subscriber network services, are subject to taxation under the service and other business activities classification.

The following are some examples of the taxation of Internet services.

- (i) LOA, Inc. is an Internet service provider that provides customers with access to the Internet. LOA does not furnish any telephone lines to its customers. LOA maintains Internet operations within Seattle. Customer Q is charged a monthly Internet access fee from LOA for access to the Internet. LOA is subject to taxation under the service and other business activities classification for the monthly Internet access fee charged to Q.
- (ii) Same facts as (i), except that LOA provides customers with access to the Internet using its own telephone lines. Customer Q, located in Seattle, is charged a combined monthly fee for access to the Internet using LOA's telephone lines. LOA is subject to Seattle's telephone utility tax for the combined fee. However, if LOA separates out the Internet service charge from the telephone line usage charge, then LOA would report the telephone line usage charge under the telephone classification of Seattle's utility tax and the Internet service charge would be reportable under the service and other business activities classification of the business license tax.
- (iii) DD Computers, Inc. provides access to information through its website for which it charges the users a fee. DD maintains its website in Seattle. DD charges Customer Z, an out-of-state customer, a transaction fee to use DD's website to

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search and retrieve real estate appraisal information. DD is not providing Internet service because DD is not an ISP and does not provide customers with access to the Internet. DD, however, is providing Z access to its website for informational search and retrieval, which is subject to taxation under the service and other business activities classification.

- (d) Sales of network system support services. Gross income received for network system support services are subject to taxation under the service and other business activities classification.
- (e) Sales of remote access to applications provided by application service providers (ASPs). Gross income received for providing remote access to applications on the ASP's servers is subject to taxation under the service and other business activities classification when the service is performed in Seattle.

For example:

BE Games, Inc. offers a variety of games online to its customers for a monthly subscription fee. BE Games operates its business within Seattle. BE Games is subject to taxation under the service and other business activities classifications on its subscription fees received.

- (f) Sales of website development or hosting services. Gross income received for website development or hosting services are subject to taxation under the service and other business activities classification.
- (g) Sales of online advertising services. Gross income received for online advertising services are subject to taxation under the service and other business activities classification.

For example:

BB.com, Inc. is located in Seattle and engaged in the business of selling souvenir items through the Internet. BB.com also provides online advertising services for third parties. Income received for online advertising services on its website is subject to taxation under the service and other business activities classification.

- (h) Sales of data warehousing services. Gross income received for data warehousing services are subject to taxation under the service and other business activities classification.

For example:

HH Recovery, Inc. provides substitute computer systems in Seattle so that its customers may access HH Recovery's computer facilities for disaster recovery purposes or for unplanned computer system failures. Customer K pays a monthly subscription fee for this service. HH is subject to taxation under the service and other business activities classification on the sale of data warehousing services to K.

- (4) **Sales of intranet services are subject to the telecommunications services or telephone business utility tax.** Gross proceeds of sales of Intranet services in Seattle are sales of telephone business activities as such term is defined under SMC 5.30.060, and as such subject to Seattle's telephone business utility tax. See Seattle Rule 5-300 (Telephone business, telecommunications, and telephone service.) for more information.

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- (5) **Distinguishing between sales of tangible personal property and sales of information services.** In deciding under which business license tax classification to report, the taxpayer must determine whether the true object of a sale is the sale of tangible personal property or the sale of information services. If services are performed such that the only tangible personal property in the transaction is the paper or medium on which the information is printed or carried, the activity constitutes the rendering of a service, and the transaction is taxable under the service and other business activities classification. If, on the other hand, the true object of a sale is the sale of tangible personal property, the transaction is taxable under the retailing classification.

Retail sales of downloaded music, videos, books, and other written works are sales of tangible personal property subject to taxation under the retailing classification. The downloaded music, videos, books, and other written works are tangible personal property because they are electronic representations of items that would be tangible personal property if they were delivered in "hard copy" form. These are not one-of-a-kind products; they are meant to be mass produced and distributed.

The following are some examples:

- (a) ML Computers, Inc. maintains its operation in Seattle and sells online music to customers. Customers purchasing the music online may download the music and keep the downloaded music in perpetuity. Customer H, a customer located within Seattle, purchases music online from ML. The sale to customer H is subject to the retailing business license tax.
- (b) Same facts as (a), except that customers can only keep the downloaded music as long as they maintain their periodic subscription. Once the subscription ends, the right of ML's customers to listen to the music ends. ML is subject to taxation under the retailing classification on the sale of downloaded music.
- (c) Same facts as (a), except that customers cannot download the music and can only listen to the music once. ML is subject to taxation under the service and other business license tax classification because ML is providing a service to H for listening to music online.
- (d) Same facts as (a), except that customers cannot download the music and can listen to an unlimited amount of music as long as the subscription is maintained. ML is subject to taxation under the service and other business activities classification because ML is providing a service to H for listening to music online.
- (e) OST, Inc., a Seattle business, organizes customer records for microfiche and sells the microfiche to its customers. OST charges Customer J for the purchase of the microfiche based on the number of sheets of microfiche made. The microfiche is tangible personal property. OST delivers the microfiche to J in Seattle. OST is subject to taxation under the retailing classification on the sale of microfiche in Seattle. OST is also subject to taxation under the manufacturing classification and may subsequently take a multiple activities tax credit (MATC).
- (f) Same facts as (e), except, OST organizes customer records for J and sends the summarized data directly into J's computers. OST charges J a fixed monthly fee for its work. OST is subject to taxation under the service and other business activities classification because OST is providing data processing service to J.

Effective: May 15, 2007.

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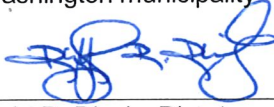
DIRECTOR'S CERTIFICATION

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

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.

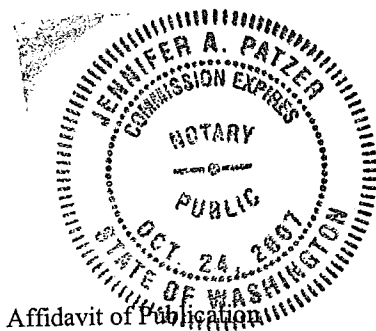
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:NOTICE PROPOSED RULE

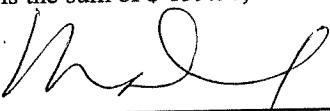
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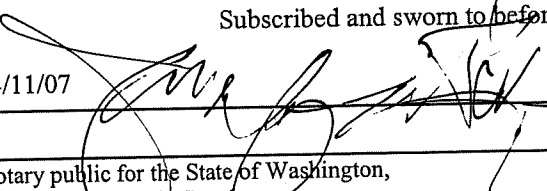
04/11/07

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.bizlctx@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.