

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-804

FILED
CITY OF SEATTLE
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CITY CLERK

Seattle Rule 5-804 **Staffing business, staffing services.**

(1) **Introduction.** This rule explains the business license tax responsibilities of businesses engaged in the business of providing staffing 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) Staffing business. "Staffing business" is a business engaged in the activity of providing staffing services.

(b) Staffing services. "Staffing services" means services consisting of a person:

- (i) Recruiting and hiring its own employees to provide short term or temporary help for others businesses and organizations;
- (ii) Finding other organizations that need the services of its employees;
- (iii) Assigning its employees on a temporary basis to perform work at, or services for, other organizations to support or supplement the organizations' work force, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the client; and
- (iv) Customarily attempting to reassign the employees to other organizations when they finish each assignment.

(3) **Business activities assigned by staffing businesses.** Business activities generally assigned by staffing businesses to its employees, include but are not limited to, services rendered with respect to the following:

- (a) Construction (both custom and speculative);
- (b) Customer software design and implementation;
- (c) Manufacturing and light industrial activities;
- (d) Professional services including medical and clerical;
- (e) Janitorial and repair services; and
- (f) Other skilled and unskilled labor.

(4) **Business license tax.**

(a) The gross income received by a staffing business is subject to Seattle's business license tax, and possibly Seattle's utilities tax. The appropriate business license tax classification is determined by the activities that the employee engages in for the staffing business' client. It is the staffing business's responsibility to determine or identify the appropriate business license tax classification prior to dispatching its employee to its client and to report to the Director accordingly.

THE CITY OF SEATTLE
DIRECTOR'S RULE
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RULE 5-804

The staffing business should not assume that they should report its employee's activities under the same classification under which its client reports. It is the activity of each employee and the employee's relationship to the client or consumer that determines the tax classification, not the client's reporting classification.

- (b) When an assigned employee provided by a staffing business to a client provides more than one activity then the following applies:
- (i) The different activities may be taxable under separate tax classifications.
 - (ii) If the staffing business separates the amounts it charges the client by activities, the separated charges are reported under the appropriate tax classifications.
 - (iii) If the staffing business does not separate its charge to the client, the charge is reported under the classification of the predominant activity.
 - (iv) For purposes of this rule, "predominant activity" for two employee activities is when more than 50% of the worker's time is spent working in one tax classified activity.
 - (v) For purposes of this rule, "predominant activity" for more than two employee activities is the activity at which the employee spends the greatest amount of time.
 - (vi) When two or more employees engaged in different activities are assigned to one client, the charge for each employee is reported based on the predominant activity of each individual employee.
- (c) Examples.
- (i) A business operating a retail store is taxable under the retailing tax classification. If the staffing business provides a receptionist for the retail store's office, the gross income received for the receptionist's services is subject to the service and other business activities classification. The service and other business activities classification applies because the receptionist is not providing retailing services.
 - (ii) A staffing business supplies an employee to help a prime construction contractor. If the employee provides construction and repair services to repair the contractor's building then the activity would be retail and the staffing business must report under retailing. If the employee provides construction and repair service to repair a building that the contractor is repairing for another person then the activity would be reported under the wholesaling classification.
 - (iii) The assigned employee in (ii) above has a commercial driver's license and is only occasionally required to drive the client's truck within Seattle to pick up a load of gravel (an activity subject to the service and other business activities classification). The employee also spends about one hour per day helping in the office. The predominant activity is the wholesaling activity of performing construction work because the greatest amount of time is spent performing wholesaling construction work. The staffing business has not segregated charges for the other lesser activities. In this case, the staffing business reports the gross amount charged to the client under the wholesaling classification.

THE CITY OF SEATTLE
DIRECTOR'S RULE
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RULE 5-804

- (iv) Same facts as in subsection (iii) above, except the staffing business also provides a receptionist to the client (general contractor.) As demonstrated in subsection (iii), the staffing business is subject to the wholesaling tax on the gross amount charged to the client for work done by the employee engaged in construction work. However, the staffing business is subject to the service and other business activities tax classification on the gross amount charged to the client for the receptionist's work. The service and other business activities tax classification is the proper classification notwithstanding the client reports under the wholesaling classification for its construction activities.

- (5) **Exemptions and Deductions.** SMC 5.45.090, SMC 5.45.100, and SMC 5.48.070 provide limited exemptions and deductions from Seattle's business license tax and utility tax. The requirements of each specific exemption or deduction must be met to qualify for the exemption or deduction.

Bad debts on which tax has been paid and which have been written off for federal tax purposes may be deducted from the gross income for business license tax purposes.

Exemptions, deductions, and special tax rates that may apply to the client do not automatically also apply to the staffing business. For example, gross income received by licensed nonprofit adult family homes is exempt from the business license tax. However, the gross income received by a staffing business from assigning a health care worker to the licensed nonprofit adult family home is fully taxable under the service and other business activities classification of the business license tax.

A staffing business cannot deduct gross income it receives for employee payroll expenses. Its employees are in fact its employees and they are not independent contractors working for the staffing business's clients. (Refer to Seattle Rule 5-039.) Bona fide advancements or reimbursements may be deducted pursuant to SMC 5.45.040 C.

- (6) **Documentation.** The staffing business must keep documentation showing what services its assigned employees performed. All available information should be recorded concurrently with the assignment of the employee and the charge for the service. It is important that the client's labor and skill requirements are detailed upfront as much as possible prior to dispatch.

Documentation may be in the form of a copy of a client order or other documented request by a client for an employee. The documentation must state the specific work to be performed, and/or the employee skills requested by the client. If the client's request comes in by telephone, the staffing business should ask exactly what type of services are required and write them down on an order form, or as a memo to the client's file. The employee can also provide a written explanation of the services actually performed. Documentation to support the business license tax classification must be sufficiently detailed to support the classification reported. If, subsequent to filing a return, it is later determined that income has been incorrectly classified, amended returns should be submitted to the Director to make the appropriate adjustment.

Effective: May 15, 2007.

THE CITY OF SEATTLE
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RULE 5-804

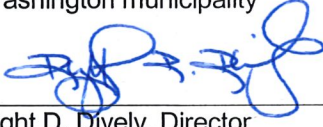
DIRECTOR'S CERTIFICATION

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.

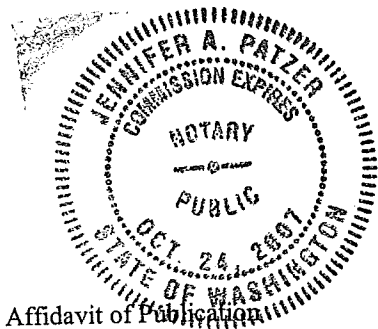
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

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

[Signature]
Subscribed and sworn to before me on
04/11/07
[Signature]
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.