

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

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Seattle Rule 5-300 Telecommunications service, telephone business, and telephone service.

(1) **Introduction.** This rule explains the taxation of persons engaged in telephone business, including the rendering of telecommunications services or other electronic data transmission services to customers in Seattle. Generally, telecommunications service, telephone business, or telephone service includes, but is not limited to, ancillary services, data transmission, mobile telecommunication services, voice over internet protocol (VOIP), pager services, and any other transmission of electronic signals or data over lines, fiber, cable, or through the air. Persons engaged in "telecommunication services", "telephone business", or rendering "telephone service" are taxable under the telephone utility classification of the Seattle business utility tax, on total gross revenues, as described herein. This rule also includes how telecommunication services, or telephone business is sourced, and the taxation of bundled services.

(2) **Definitions**

- (a) **"Ancillary services"** mean services that are associated with the provision of telephone services, telephone business, or telecommunications services, including but not limited to directory assistance, vertical service, caller ID, Call waiting, and voice mail services.
- (b) **"Bundled transactions"** means the sale of two or more services, where (1) the services are otherwise distinct and identifiable, and (2) the services are sold for one non-itemized price.
- (c) **"Call-by-call basis"** means any method of charging for telephone services where the price is measured by individual calls.
- (d) **"Cellular telephone service"** is a voice or data telephone/telecommunications system based in whole or substantial part on wireless radio communications, whether or not the communications are subject to regulation by the Washington Utilities and Transportation Commission (WUTC). This includes cellular mobile service. Cellular mobile service includes other wireless radio communications services such as specialized mobile radio (SMR), personal communications services (PCS), and any other evolving wireless radio communications technology which accomplishes the same purpose as cellular mobile service.

Examples of such services are paging and beeper services, mobile radio services, wireless services including cellular roaming services, and air-to-ground telephone service. Mobile telecommunications services do not only include transmission services for voice communications but also include transmissions of other types of content including data or video as in text messaging.

- (e) **"Communications Channel"** means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.
- (f) **"Competitive telephone service"** means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which may be provided by persons not subject to regulation as telephone companies under RCW Title 80, and for which a separate charge is made.
- (g) **"Customer Channel Termination Point"** for purposes of a private line communication service, means the location where the customer either inputs or receives the communications.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

- (h) **"Internet access provider (IAP)"** is an entity that provides individuals and internet service providers access to the internet. An IAP has the equipment and the telecommunication line access required to create a point of presence (POP) on the internet for individuals within a geographic area. The IAP controls the assignment of domain names and other identifying characteristics which provide a specific address to each person using the internet. Generally, individuals and small businesses receive their POP through their internet service providers who in turn received the POP from an IAP.
- (i) **"Internet service"** means a service that includes computer processing applications that provide the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of homepage, internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical sub-network called the World Wide Web.
- (j) **"Mobile telecommunications services"** means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:
- (i) Both one-way and two-way radio communications services;
 - (ii) A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation; and
 - (iii) Any service for which a license is required in a personal communications service under part 24 of Section 20.3, Title 47 Code of Federal Regulations ("CFR") (1999).
- "Mobile telecommunications service" is commonly referred to as cellular telephone or wireless service.
- (k) **"Place of primary use"** means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.
- (l) **"Post-paid calling service"** means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service.
- (m) **"Prepaid calling service"** means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount. For example, calling cards purchased at a retail outlet are a "prepaid calling service."

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

- (n) **"Private communication service"** commonly referred to as "private line" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points. This includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels. Virtual private network services, frame relay services, and dedicated access lines are examples of private communications services.
- (o) **"Telecommunication services", "telephone business", or "telephone services"** are broadly defined terms, and synonymous to each other, and mean the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. It includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added.

Telecommunication services also includes ancillary services that are associated with or incidental to the provision of telecommunication services including, but not limited to, conference bridging, detailed telecommunications billing, directory assistance, vertical service, or voice mail services, all as defined in RCW 82.04.065.

Telecommunication services, telephone business, or telephone services also includes those activities previously used to define telephone business such as the providing by any person of access to a local telephone network, local telephone network switching service, toll service, cellular or mobile telephone service, pager service or the providing of telephonic, video, data, or similar communication or transmission for hire, via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. The term includes the provision of cooperative or farmer line telephone services or association operating exchanges. The term also includes the provision of transmission to and from the site of an internet provider via a local telephone network, toll line or channel, cable, microwave, or similar communication or transmission system.

"Telecommunication services", "telephone business," or "telephone service" does not include the providing of competitive telephone service, data processing and information services, providing of cable television service, or other providing of broadcast services by radio or television stations.

- (p) **"Toll service"** means the charge for services outside the local telephone network except customer access line charges for access to a toll calling network.
- (q) **"Voice over Internet Protocol (VOIP)"** is an internet protocol telephony term for a set of facilities used to manage the delivery of voice information over the internet. VOIP involves sending voice information in digital form and in discrete packets using internet protocols (addressing) rather than by using the traditional circuit-committed protocols of the public switched telephone network (PSTN).
- (3) **Business Utility Tax.** Persons engaged in providing "telecommunications services", "telephone business", or "telephone service" are taxable based upon the gross proceeds of sales under the telephone utility classification per SMC 5.48. Telecommunication services are taxable services regardless of whether they are provided via land line, microwave, wireless, cable, fiber or similar technologies and include local, long distance, mobile, 800 or other services designated as toll

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

free services. Telecommunication services also includes enhanced or value added services such as voice mail, caller Id, call waiting, message indicators, etc. The following list are examples of charges made to customers which are part of the gross charge for telephone services and are included in the measure of the Seattle telephone utility tax regardless of whether such charges are separately itemized. This list is not all inclusive.

- (a) Connection and disconnection charges;
- (b) Reconnect charges;
- (c) Local telephone number portability charge;
- (d) Minimum or fix rate charges; commonly referred to as non-usage charges;
- (e) Telecommunication nonrecurring and recurring charges;
- (f) City of Seattle utility tax, or any other taxes or charges that do not qualify as trust taxes;
- (g) Late charges; and
- (h) VOIP charges.

The use of a coin-operated telephone by means other than coins is taxable under the telephone utility tax.

(4) Business License Tax.

- (a) Retailing. The retailing business license tax applies to competitive telephone service and is measured by the gross proceeds of sales of such competitive telephone service to customers. The tax shall be measured by total gross proceeds of sales to customers in accordance with the provisions of SMC 5.45.080, or SMC 5.45.081. The retailing business tax applies to sales of telecommunications service paid for by inserting coins in coin-operated telephones. The gross receipts from such sales should be reported under the retailing classification of the business license tax and should be excluded from the measure of the telecommunication service utility tax.

The following are examples of activities taxable under the retailing or wholesaling business license taxes depending on whether the purchaser is a consumer or reseller, respectively.

- (i) Sales of all items included in the definition of "Competitive Telephone Service".
 - (ii) Installation or maintenance of wiring or equipment at a customer's premises;
 - (iii) Sales of tangible personal property, such as phones; and
 - (iv) Digital products delivered electronically, including software, music, video, reading materials, or ring tones.
- (b) Wholesaling. Gross income derived from charges to another telecommunications company for resale, as defined in RCW 80.04.010, for connecting fees, switching charges, carrier access, or other telephone service charges relating to intrastate toll telephone services, or for access to charges for, interstate services, are to be reported under the wholesaling classification. Items listed under the retailing classification in

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

subsection (4)(a) above when sold to entities for resale to the end consumer are to be reported under the wholesaling classification.

- (c) Service and other business activities classification. Persons engaged in telecommunication services, telephone business or rendering telephone services are taxable under the service and other business activities classification of the business license tax on their activities of selling directory advertising, services for the generation of specialized billing reports, data processing and information services, billing and collection services provided to a third party, and internet access services. The gross receipts derived from engaging in such activities shall be reported under the service and other business classification.
- (5) **Deductions.** There may be deducted from the total gross income upon which the business license tax or utility tax is computed:
- (a) Amounts derived from business which the City is prohibited from taxing under the Constitution or laws of the United States, the Constitution or laws of the state, or the Charter of the City;
- (b) Any amounts collected by the taxpayer as an excise tax (trust funds) and remitted to the taxing authority, including but not limited to the leasehold excise tax, retail sales and use tax. (See Seattle Rule 5-065 for a list of taxes that may be deducted.)
- (c) Charges for the provision of interstate telephone service. The taxpayer is responsible for maintaining proper documentation and proof to establish the interstate charge. The taxpayer must be able to separately identify that portion of telecommunication services or telephone business which qualifies as interstate calls and services.
- (d) Amounts, as applied only to cellular telephone service companies who keep their regular books of account on an accrual basis, for credit losses actually sustained and written off by a taxpayer as a result of cellular telephone service business.
- (6) **Sourcing Rules.** This section provides general sourcing rules for the provision of telecommunication services, telephone business, or telephone service for purposes of the City of Seattle telephone utility tax.
- (a) Sourced to the place of primary use.
- (i) Mobile telecommunications services are sourced to the customer's place of primary use as required by the Mobile Telecommunications Sourcing Act (P.L. 106-252), passed by Congress in 2002. This includes cellular phone service charges that are computed on a flat monthly charge. This also includes any VOIP charges that are computed on a flat monthly basis when the service provider cannot provide documentation to show that the service originated or was delivered at a location other than the customer's place of primary use.
- (ii) The sale of an ancillary service, such as voice mail, caller ID etc., is sourced to the customer's place of primary use.
- (b) Sourced to where service is provided.
- (i) Telecommunication services sold on a call-by-call basis shall be sourced to (A) the tax jurisdiction in which the call originates and terminates or (B) the tax jurisdiction in which the call either originates or terminates and in which the

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

service address is also located. For example, if a customer places a phone call from Seattle to a person in Bellevue, and the customer's service address is Seattle, then the call is sourced to Seattle.

- (ii) Revenue received as a charge for a telephone call made by using a prepaid calling service shall be sourced to the origination point of the telecommunications signal, when first identified by either (A) the telecommunication service provider's telecommunications system, or (B) information received by the telecommunication seller from its telephone service provider, where the system used to transport such signals is not that of the telecommunication seller. Where the taxpayer's equipment or system is unable to identify the origination point to enable sourcing as indicated above in this subsection, the taxpayer shall contact the Director for reporting instructions.

For purposes of the City of Seattle telecommunications utility tax, the telecommunication provider whose name is on the prepaid calling card will be deemed to be the provider of the telephone service and treated as a telephone business and subject to the Seattle utility tax. Gross receipts from retail sales of prepaid cards by other than telecommunication or telephone phone businesses shall be reported under the retail classification of the business license tax.

For example, Telecommunications Company A sells prepaid calling cards containing Company A's name on the face of the prepaid calling card to retail store XYZ. XYZ sells Company A's prepaid calling cards to its customers. Telecommunications Company A is deemed to be the telecommunication or telephone business, and its gross income from providing the telecommunication service will be subject to the Seattle utility tax. XYZ will be subject to the Seattle business license tax under the retail classification on the sale of the prepaid calling card to its customers.

- (iii) Gross receipts for the charge for a telephone call using a post-paid calling service shall be sourced to the origination point of the telecommunications signal, when first identified by either (A) the telephone service provider's telecommunications system, or (B) information received by the telecommunication seller from its wholesale telephone service provider, when the system used to transport the signals is not that of the telecommunication seller.

- (c) A sale of private communication service (private line, frame relay etc.), is sourced as follows:

- (i) Service for a separate charge related to a customer channel termination point is sourced to the jurisdiction in which the customer channel termination point is located. For purposes of a private communication service, a customer channel termination point is the location where the customer either inputs or receives the communications.

Example: company A maintains a private line in Seattle and has ancillary charges related to their customer channel termination points in Seattle. These charges are sourced to Seattle for purposes of the Seattle utility tax.

- (ii) Service charges where all customer termination points are located entirely within one jurisdiction will be sourced to that jurisdiction in which the customer channel termination points are located.

THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300

For example, company Z provides company XYZ with a private line. Company XYZ has four offices which are all located within Seattle. Company Z will source all gross income from providing the private line to company XYZ to Seattle for purposes of the Seattle utility tax.

- (iii) A service charge for a private line located in more than one jurisdiction is sourced to each jurisdiction based on the percentage of private line termination points in each jurisdiction divided by the total number of private line termination points. If the private line termination points are both within and without the state, the same sourcing rule applies.

For example, Company TT provides Company SW with a private line. SW has offices located throughout Washington and Oregon. The private line crosses multiple jurisdictions and connects all of company SW's offices. SW has 25 private line termination points located in Washington including 10 located in Seattle. SW has another 15 private line termination points located in Oregon. Company TT bills Company SW a single amount for providing the private line. SW will source 25% (10/40) of the private line charge to Seattle. Service charges for private lines that are subject to federal interstate tariffs will be considered an interstate charge.

- (7) **Bundled Transactions.** If a bundled transaction includes telecommunications or telephone services, and also internet services, the telecommunication utility tax will be calculated using the total price for the bundled products, unless the telecommunication seller can document from its books and records the portion of the sales price that represents the internet services. Telecommunication sellers, who as a part of their regular business practices, account separately in their books and records for the sales of the different products included in a bundled price, should only include in the measure of the utility tax the sales price allocated to the taxable telecommunications or telephone services in the bundled transaction. The separated non-telecommunication charge would be subject to the business license tax. Sellers must use a reasonable method of allocation. Sellers that do not separately account for bundled products in their books and records must include the whole non-itemized price in the measure of the utility tax.

Effective: January 31, 2008.

**THE CITY OF SEATTLE
DIRECTOR'S RULE
IMPLEMENTING SEATTLE BUSINESS TAX ORDINANCE
RULE 5-300**

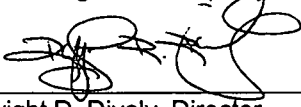
DIRECTOR'S CERTIFICATION

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 31st day of January, 2008.

CITY OF SEATTLE,
a Washington municipality

By:



Dwight D. Dively, Director
Department of Finance

STATE OF WASHINGTON – KING COUNTY

--SS.

217549
SEATTLE EXEC. SVCS-PURCHASING

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.

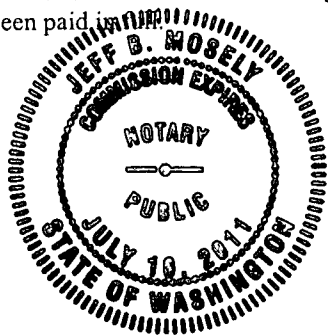
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:PROP RULE MAKING HEARI

was published on:

11/16/07

The amount of the fee charged for the foregoing publication is the sum of \$ 111.60, which amount has been paid in full.



[Handwritten signature]

Subscribed and sworn to before me on

11/16/07

[Handwritten signature]

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

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 5.30 and 5.55, proposes to adopt new rules and amend an existing rule 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 or amendment and will become effective as of December 14, 2007:

- Seattle Rule 5-005 -- Time payments.
- Seattle Rule 5-126 -- Conditional and installment sales, method of reporting.
- Seattle Rule 5-277 -- Clearing land, moving earth, cleaning, fumigating, razing or moving existing buildings, and janitorial service.
- Seattle Rule 5-300 -- Telecommunications service, telephone business, and telephone service.
- Seattle Rule 5-536 -- Leases or rentals of tangible personal property; financing leases.
- Seattle Rule 5-801 -- Personal service, service activities.
- Seattle Rule 5-900 -- Admission tax for nightclubs
- Seattle Rule 5-920 -- Imposition of the employee hours tax
- Seattle Rule 5-921 -- Exemptions, deductions, and credits available under the employee hours tax.
- Seattle Rule 5-925 -- Parking tax computations.

PUBLIC HEARING AND COMMENT:
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 1:30 p.m. to 3:30 p.m., on Monday, December 10, 2007. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4080, 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, November 16, 2007.

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