

Seattle Rule 5-060

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(1) Introduction. This rule explains the application of Seattle's business license tax to intrastate, interstate and international sales of tangible personal property. It covers both outbound sales of tangible personal property from Seattle to persons outside the city and inbound sales of tangible personal property from outside this city to persons in Seattle. The rule also explains how drop shipments are taxed.

This rule contains a number of examples. The examples state a conclusion based on the specific facts presented. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) Change to taxation of intrastate deliveries of tangible personal property. Beginning January 1, 2008 tangible personal property sales made from a Seattle business location and delivered to, and accepted by, a customer at a location outside of Seattle but within Washington may be deducted from the gross receipts. (See Rule 5-031, SMC 5.45.081 and SMC 5.45.100.) Delivery and acceptance are explained in section 4 below. Such sales must be documented similarly to the interstate sales as required in the sections below. Before January 1, 2008 sales of tangible personal property delivered to customers within Washington were subject to Seattle's business license tax unless the sales were subjected to tax under another city's eligible gross receipts tax when delivered within that city.

(3) Related rules. Readers may also wish to refer to the following rules for additional information.

(a) Seattle Rule 5-043 (Engaging in business). This rule provides information about what types of business activities create nexus for taxation of persons conducting the activities and gives examples.

(b) Seattle Rule 5-100 (Extracting natural products). This rule provides information about the taxation of persons who extract natural products, including persons who sell their extracted products in this state.

(c) Seattle Rule 5-481 (Motor Carrier - Trucking). This rule explains the taxation of services that constitute interstate commerce and provides examples of exempt and taxable activities.

(d) Seattle Rule 5-536 (Leases or rentals of tangible personal property, financing leases). This rule provides tax-reporting information for persons who lease or rent tangible personal property.

(4) The application of business license tax to intrastate and interstate sales of tangible personal property. For inbound sales, Seattle imposes its business license tax on intrastate and interstate sales of tangible personal property if the property is delivered to the buyer or the buyer's representative in Seattle and the seller has nexus with Seattle. For outbound sales prior to January 1, 2008 Seattle imposed its business license tax on intrastate sales unless the sales were delivered in, and taxed by, another city that levied an eligible gross receipts tax. For outbound sales beginning January 1, 2008, Seattle imposes its business license tax only on sales delivered within Seattle.

(a) Delivery defined. "Delivery" is the transfer of possession of tangible personal property between the seller and the buyer or the buyer's representative. Delivery to an employee of a buyer is considered delivery to the buyer.

(i) Transfer of possession defined. Transfer of possession of tangible personal property occurs when the buyer or the buyer's representative first takes physical control of the property or exercises dominion and control over the property.

(ii) Dominion and control defined. Dominion and control means the buyer has the ability to put the property to the buyer's own purposes. It means the buyer or the buyer's representative has made the final decision to accept or reject the property, and the seller has no further right to possession of the property and the buyer has no right to return the property to the seller, other than under a warranty contract. A buyer does not exercise dominion and control over tangible personal property merely by arranging for shipment of the property from the seller to itself.

(iii) Buyer's representative defined. A buyer's representative is a person, other than an employee of the buyer, who is authorized in writing by the buyer to receive tangible personal property and take dominion and control by making the final decision to accept or reject the property. Neither a shipping company nor a seller can serve as a buyer's representative.

(iv) Determination of delivery location. In determining where delivery occurs, it is immaterial where the contract of sale is negotiated or where the buyer obtains title to the property. Delivery terms and other provisions of the Uniform Commercial

Code (Title 62A RCW) do not determine when or where delivery of tangible personal property occurs for purposes of Seattle's business license tax.

(A) Example of a final decision to accept or reject property. Inbound sale. If a seller and buyer have agreed in writing that final acceptance or rejection by the buyer or buyer's representative occurs in Seattle, despite a prior out-of-state acceptance by someone acting on the buyer's behalf (not an employee or buyer's representative), then the sale takes place in Seattle. Company A in Oregon sells parts to Washington Company Z. The sales contract provides that Company Z will finally accept or reject the parts at its Seattle facility. An employee of an affiliate of Company Z receives the parts at a shipping terminal in Oregon and directs the parts to be shipped to Company Z in Seattle. In this example, delivery occurs in Seattle because the written sales contract provides that the buyer may finally accept or reject the parts at its Seattle facility and the employee of the affiliate obviously did not have the ability to ultimately accept or reject the merchandise.

Conversely, for an outbound sale, if a person other than the buyer or a buyer's representative, acting on behalf of a buyer, receives delivery of property within Seattle, but the buyer retains, in writing, the ability to finally accept or reject the property upon delivery at its out-of-city (out-of-state if prior to January 1, 2008) location, the sale takes place outside of Seattle (outside of Washington, if prior to January 1, 2008) and is not taxable.

Since most contracts of sale are silent about the procedure of inspection and acceptance of the goods, it will be presumed that delivery and acceptance takes place where the buyer or buyer's representative has received, inspected and accepted the goods.

(B) Example of someone prohibited from serving as a buyer's representative. A seller located outside of Seattle manufactures and sells parts to a Seattle buyer. Employees of the seller, who are specifically approved by the buyer, inspect the parts for adherence to quality standards and then authorize their shipment to the buyer in Seattle. Delivery does not occur at the taxpayer's out-of-city place of business. Employees of the seller may not be a buyer's representatives; shipping companies, consolidators, or freight forwarders will only be recognized as buyer's representatives if they have express written authority from the buyer to inspect and make the final decision to accept or reject the goods.

(b) Establishing that delivery by a Seattle seller occurred outside of Seattle (Washington, if prior to January 1, 2008). If the Seattle seller delivers property outside of Seattle (outside of Washington, if prior to January 1, 2008), the seller must retain documentary proof that the sale is not subject to tax. The seller may

use the following proof of out-of-state delivery to establish that delivery occurred outside of Seattle (Washington, if prior to January 1, 2008).

Acceptable proof that goods were delivered outside of Seattle (outside of Washington if prior to January 1, 2008) includes the written contract or agreement of sale, if any, and:

(i) If the property is shipped by a for-hire carrier: a waybill, bill of lading, or other contract of carriage indicating that the seller delivered the property to the for-hire carrier for transport to the buyer or the buyer's representative at a point outside of Seattle (Washington, if prior to January 1, 2008). The seller must be shown on the contract of carriage as the consignor (or other designation of the person sending the property), and the buyer or buyer's representative as the consignee (or other designation of the person to whom the property is being sent);

(ii) If the property is sent by the seller's own transportation equipment: a trip-sheet signed by the person delivering the property showing:

(A) The seller's name and address;

(B) The buyer's name and address;

(C) The time and place of delivery; and

(D) The signature of the buyer or the buyer's representative acknowledging delivery at the designated place outside of Seattle (Washington, if prior to January 1, 2008); and

(iii) If the property was received by a buyer's representative: documentation that the representative was authorized to accept or reject the property and did actually accept the property outside Seattle (Washington, if prior to January 1, 2008).

(iv) When the sales documents indicate that tangible personal property is to be shipped by a Seattle seller to a buyer in Seattle (Washington, if prior to January 1, 2008) but the seller delivers the property to the buyer at a location outside Seattle (Washington, if prior to January 1, 2008), the documentation contained in (i) through (iii), along with a document from the buyer changing the "ship to" address, will suffice to prove that delivery occurred outside of Seattle (Washington, if prior to January 1, 2008).

(c) Nexus. Nexus is that minimum level of business activity or connection with the City of Seattle, or within the city of Seattle, that subjects the seller to the taxing jurisdiction of Seattle. See Seattle Rule 5-043 for definition of engaging in business activities (nexus creating activities)

(i) How long does nexus continue? Once established, nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus-generating contact, or subsequent contacts.

(ii) Examples of nexus-creating activities. Any of the activities in (A) through (E) of this subsection (4)(c)(ii), standing alone, establishes sufficient nexus with Seattle for the business license tax to apply in cases where delivery and acceptance of tangible personal property occur in Seattle. These activities are not intended to be an exclusive list of examples of nexus-creating activities. Moreover, these activities are not intended to relieve any person of tax liability that would otherwise be allowed under the laws and constitutions of the City of Seattle, the State of Washington and of the United States. See Seattle Rule 5-043 for additional examples of nexus-creating activities.

(A) The property is delivered from an outlet of the seller in Seattle or from the seller's stock in Seattle.

(B) The seller has a branch office, outlet, or other place of business in Seattle.

(C) The seller solicits sales of its products in the city through the seller's own employees, or agents, independent contractors, or other representatives of the seller.

(D) The out-of-state or out-of-city seller, either directly or by an agent, independent contractor, or other representative in Seattle, installs its products in Seattle as a condition of the sale.

(E) The out-of-state or out-of-city seller, either directly or by an agent, independent contractor, or other representative, performs activities in Seattle that are significantly associated with the seller's establishment or maintenance of a market for sales into the city of Seattle. It is immaterial that the seller does not have a formal sales office in Seattle or the representative does not solicit sales in Seattle or is not formally characterized as a "salesperson."

(iii) Unrelated sales/Disassociation. Nexus is not determined on a transaction-by-transaction basis. If a person engages in activities within the city sufficient to establish nexus, that person is subject to Seattle's business license tax for all of that person's sales of tangible personal property delivered in Seattle. It is immaterial that the activities that established nexus are not significantly associated in any way with another sale into Seattle.

(d) Imposing the business license tax. When tangible personal property is delivered to, and accepted by, the buyer or the buyer's representative in Seattle and the

seller has nexus with Seattle, the seller is subject to either the retailing or wholesaling business license tax on the sale.

Seattle's business license tax applies even if:

- * The buyer or the buyer's representative intends to, and actually does, transport or send the property out of the city for use or resale there, or for use in conducting intrastate, interstate, or foreign commerce;
- * The contract of sale or contract to sell is negotiated and executed outside the city of Seattle; or
- * The purchaser resides outside the city of Seattle.

Where the seller physically delivers tangible personal property to the buyer or the buyer's representative at a point outside Seattle (outside of Washington if prior to January 1, 2008), the seller is not subject to the business license tax on the sale. The seller must retain proof of delivery to a point outside of Seattle (outside of Washington, if prior to January 1, 2008) as described above in subsection (3)(b). If physical delivery and the buyer's or the buyer's representative's acceptance occurs outside of Seattle (outside of Washington if prior to January 1, 2008), then the manner in which the property is delivered (e.g., for-hire carrier, seller's own vehicle, freight consolidator, or freight forwarder acting on behalf of either the seller or purchaser), the payment terms for the shipping (e.g., freight prepaid or freight collect), and who bears the risk of loss are all immaterial.

(e) Examples. The following examples identify a number of facts and then state a conclusion regarding the application of the business license tax to sales of tangible personal property originating either inside Seattle or outside of Seattle. For purposes of these examples, the reader should assume that the seller has retained the proper documentary proof when a sale is not subject to tax.

(i) Company A is located in Seattle. It sells machine parts at retail and wholesale. Company B is located in California and buys machine parts from Company A. Company A carries the parts to California in its own vehicle to deliver them to Company B. The sale is not subject to the business license tax in Seattle because the parts were not delivered to the buyer in Washington.

(ii) The facts are the same as in the previous example except that instead of shipping the parts itself, Company A delivers the parts by a common carrier to Company B in California. The sale is not subject to the Seattle business license tax because the parts were not delivered to the buyer in Washington. It is immaterial whether the shipment is freight prepaid or freight collect.

(iii) The facts are the same as in (i) of this subsection except that Company B has its employees pick up the parts at Company A's Seattle plant and transport them out of Washington. As delivery of the property to the buyer occurred in Seattle, the sale is subject to the business license tax.

(iv) The facts are the same as in (i) of this subsection except that Company B instructs Company A to store the parts at Company A's Seattle plant pending Company B's future disposition of the parts. Company A agrees to store the parts for Company B, and Company B insures the parts stored at Company A's Washington plant. Company A cannot sell the parts stored for Company B to anyone else. Because Company B exercised dominion and control of the goods in Seattle, delivery of the parts to Company B occurred in Seattle. The sale is subject to the business license tax.

(v) Seattle will not tax the transactions in (i) and (ii) of this subsection if Company A mails the parts to Company B rather than using its own vehicles or a common carrier for out-of-state delivery. By contrast, Seattle will tax the transaction in (iii) of this subsection if Company B's employees mail the parts to an out-of-state location after delivery to Company B occurs in Seattle.

(vi) Buyer C, who is located in Alaska, buys parts for its own use in Alaska from Seller D, who is located in Seattle. Buyer C inspects and takes delivery of the parts in Seattle at the dock of the carrier selected to transport the parts to Alaska. The sale is subject to the business license tax because Buyer C took delivery of the parts in Seattle.

(vii) Company A is located in California and has nexus with Seattle. It sells machine parts at retail and wholesale. Company B is located in Seattle and buys machine parts for its own use from Company A. Company A uses its own vehicles to deliver the parts to Company B in Seattle. Company A is subject to the business license tax on this sale of parts to Company B. Company A has nexus with Seattle, and delivery of the parts to Company B occurred in Seattle.

(viii) The facts are the same as in the previous example (vii) except that Company A transports the parts by a common carrier to Seattle where Company B takes physical possession of the parts. The sale would be subject to the business license tax only if Company A has nexus with Seattle. Transportation by common carrier does not establish nexus as does delivery into Seattle with your own transportation vehicles.

(ix) The facts are the same as in (vii) of this subsection except that Company B has its employees inspect and take possession of the parts at Company A's California

plant for transport to Seattle. Even if Company A has nexus with Seattle it is not liable for business license tax on the sale of these parts because delivery occurred in California.

(x) A department store (Taxpayer) has retail stores located in Seattle, Portland, and in several other states. John Doe goes to Taxpayer's store in Portland, Oregon to purchase luggage. John Doe takes physical possession of the luggage at the store and elects to finance the purchase using a credit card issued to him by Taxpayer. John Doe is a Seattle resident and the credit card billings are sent to him at his Seattle address. Taxpayer is not liable for business license tax because John took delivery of the luggage outside of Seattle.

(xi) The facts are the same as in the previous example except that Taxpayer ships the luggage to John Doe for delivery in Seattle. Taxpayer owes Seattle business license tax. Taxpayer has nexus with Seattle (store located here), and delivery of the luggage to John Doe occurred in Seattle.

(5) Drop shipments. A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a supplier and instructs the supplier to deliver the property directly to the seller's customer. The sale between the supplier and seller is a wholesale sale, and if the supplier has nexus with Seattle and delivers the goods into Seattle, the supplier is subject to the wholesaling business license tax. If the customer to whom the goods are delivered is located in Seattle, and the seller has nexus with Seattle, then the seller is subject to the retailing business license tax.

The following examples in this subsection illustrate the taxability of drop shipments. Unless otherwise noted, these examples assume that the tangible personal property is delivered to the customer in Seattle.

(a) A seller and the supplier are located outside of Seattle and do not have nexus with Seattle. The seller's customer is located in Seattle. Sales of tangible personal property by the seller to the customer and the supplier to the seller are not subject to the business license tax because there is no nexus. In this example delivery was made by a common carrier since delivery in one's own truck would have created nexus.

(b) A seller and customer are located in Seattle, and the supplier is located outside Seattle and does not have nexus with Seattle. The supplier's sale of tangible personal property to the seller is not subject to the business license tax. The sale by the seller to the customer is subject to the wholesaling or retailing tax.

(c) A seller is located outside of Seattle and does not have nexus with Seattle, and the customer and supplier are located in Seattle. The supplier has nexus with Seattle and the property was delivered in Seattle. Wholesaling tax applies to the sale of tangible personal property by the supplier to the seller. The sale from the seller to its Seattle customer is not subject to business license tax since the seller does not have nexus with Seattle. If the seller in this example had nexus with Seattle, the transactions would have been subject to tax as provided below in the next example.

(d) A seller and supplier have nexus with Seattle and the customer is located in Seattle. Wholesaling tax applies to the supplier's sale of tangible personal property to the seller when delivery of the property occurs in Seattle. The sale from the seller to the customer is subject to wholesaling or retailing tax.

(e) Company X is located in Ohio and does not have nexus with Seattle. Company X receives an order from Company Y, located in Seattle, for parts that are to be shipped to Company Y in Seattle for its own use as a consumer. Company X buys the parts from Company Z, which is also located in Seattle, and requests that the parts be drop-shipped to Company Y. Since Company X has no nexus with Seattle, Company X is not subject to business license tax on its sale to Company Y. The wholesale sale by Company Z to Company X is subject to the wholesaling business license tax as Company Z has nexus with Seattle and the parts are delivered in Seattle.

(6) Taxation of import and export sales of tangible personal property.

(a) Imports. Business license tax applies to sales of tangible personal property that originate in foreign countries if the property is delivered to the buyer or the buyer's representative in Seattle and the seller has nexus. Generally, the taxation of imported tangible personal property follows the same principles that are provided in subsections (4) and (5) above concerning the taxation of intrastate or interstate sales of tangible personal property.

(b) Exports. A deduction is allowed with respect to export sales when, as a necessary incident to the contract of sale, the seller agrees to and does deliver the goods: (1) to the buyer at a foreign destination; or (2) to a carrier consigned to and for transportation to a foreign destination; or (3) to the buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the goods has begun, and such exportation will not necessarily be deemed to have begun if the goods are merely in storage awaiting shipment, even though there is reasonable certainty that the goods will be exported. The intention to export, as evidenced, for example, by

financial and contractual relationships, does not indicate "certainty of export" if the goods have not commenced their journey abroad; there must be an actual entrance of the goods into the export stream. In all circumstances there must be a certainty of export and the process of export must have started.

It is of no importance that title and/or possession of the goods pass in this state so long as delivery is made directly into the export channel. To be tax exempt for the exported sales, the seller must document the fact that he placed the goods into the export process. That may be shown by the seller obtaining and keeping in his files any one of the following types of documentary evidence:

(i) A bona fide bill of lading in which the seller is the shipper/consignor and by which the carrier agrees to transport the goods sold to the foreign buyer/consignee at a foreign destination; or

(ii) A copy of the shipper's export declaration, showing that the seller was the exporter of the goods sold; or

(iii) Documents consisting of:

(A) Purchase orders or contracts of sale which show that the seller is required to get the goods into the export stream, e.g., "f.a.s. vessel"; and

(B) Local delivery receipts, tripsheets, waybills, warehouse releases, etc., reflecting how and when the goods were delivered into the export stream; and

(C) When available, United States export or customs clearance documents showing that the goods were actually exported; and

(D) When available, records showing that the goods were packaged, numbered, or otherwise handled in a way exclusively attributable to goods for export.

Thus, where the seller actually delivers the goods into the export stream and retains such records as set forth above, the tax does not apply. It is not sufficient to show that the goods ultimately reached a foreign destination; rather, the seller must show that he was required to and did put the goods into the export process.

(c) Examples. The following examples identify a number of facts and then state a conclusion regarding the application of the business license tax to sales of tangible personal property originating in, or delivered to, a foreign country. For purposes of these examples, all sellers of the tangible personal property are assumed to have nexus with Seattle unless otherwise noted, and, for the nontaxable sales, the seller

is assumed to have retained the proper documentary proof that the sale is not subject to tax.

(i) Taxpayer, located in Seattle, sells tangible personal property at retail and wholesale. Buyer is located in a foreign country and buys items of tangible personal property from Taxpayer. The contract of sale is negotiated in Seattle. Also, the document of title to the property is transferred by Taxpayer to Buyer in Seattle. Taxpayer ships the property by a common carrier to Buyer in the foreign country. The sale is not subject to the business license tax in Seattle because the property is not delivered to the buyer in Seattle. It is immaterial where title to tangible personal property transfers or where a contract of sale is negotiated for purposes of determining where delivery takes place.

(ii) Company MMM enters into a contract to ship apples to China to Company ZNG. Company MMM delivers apples in a container to the Port of Seattle for shipment to China. Company MMM maintains the contract to deliver the apples dockside to the Port of Seattle, trip sheets and a bill of lading that the goods were delivered to the Port of Seattle, and export documents covering the apple shipment. Company MMM is not taxable since it met the requirements to get the apples into the export stream and has documentation that the apples were exported.

(iii) A foreign manufacturer sells tangible personal property to purchasers located outside Seattle. The property is transported from outside the United States by vessel in cargo containers to the port in Seattle. When the property is unloaded from the vessel, it remains in the containers. The containers are loaded onto railcars for delivery to buyers in destinations outside Seattle. The business license tax does not apply because the property is not delivered to buyers in Seattle and the importation has not been completed in Seattle.

(iv) An automobile manufacturer with nexus in Seattle makes wholesale sales of vehicles to retailers located in Seattle and throughout the United States. The vehicles are imported into the United States and received in a Foreign Trade Zone located in Western Washington. The vehicles are then delivered to Seattle and out-of-state retailers. The sales of vehicles delivered to Seattle retailers are subject to wholesaling tax. The sales of vehicles delivered outside of Seattle to the out-of-state retailers are not subject to the business license tax.

(v) An automobile manufacturer with nexus in Seattle manufactures motor vehicles in Mexico for wholesale sale to automobile dealers, some of which are located in Seattle. The vehicles are transported from Mexico to Texas on railcars. From Texas the vehicles are delivered by truck to the retail dealers. Title to the vehicles

transfers to the Seattle dealers in Texas. Delivery and acceptance take place in Seattle. The sales by the manufacturer of vehicles delivered to the Seattle dealers are subject to wholesaling business license tax. It is immaterial where title to the vehicles transfers.

(vi) Seller regularly sells chemicals to Buyer that is located in Seattle. The chemicals are delivered by rail to Buyer in Seattle under an export rail rate. Seller and Buyer always intend that the chemicals will be resold to purchasers in foreign countries under supply contracts. In fact, the chemicals are always exported to foreign countries by the buyer. The sale of chemicals by Seller to Buyer is subject to wholesaling tax because delivery of the chemicals occurs in Seattle, and Seller has nexus with Seattle. It is irrelevant that the chemicals are always subsequently exported by the purchaser. In this case the seller did not get the goods into the export stream.

(vii) Taxpayer, based in Seattle, is a subsidiary of a corporation (Parent) that has nexus with Seattle and is located in a foreign country. Taxpayer makes retail sales of items of tangible personal property manufactured by Parent to a buyer in Seattle. Taxpayer purchases the items from Parent, and the property is transported from outside the United States to a customs house broker in Seattle. The customs house broker prepares the documents necessary to clear the goods through customs and pays the necessary duties and processing fees on behalf of the importer of record. The customs house broker moves the property to its warehouse where the goods are entrusted to a local freight carrier for delivery to the buyer in Seattle. The sales by Parent to Taxpayer are subject to wholesaling tax, as delivery of the property occurs in Seattle, and Parent has nexus with Seattle. The sales by Taxpayer to the purchaser are also subject to the business license tax (retailing) as delivery of the property occurs in Seattle, and Taxpayer has nexus with Seattle.

Effective: January, 2009

DIRECTOR'S CERTIFICATION

I, Dwight Dively, Finance Director 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 Executive Administration.

DATED this ____ day of January, 2009.

CITY OF SEATTLE,

a Washington municipality

By: _____

Dwight Dively, Director

Finance Department

Jan 23, 2009