

THE CITY OF SEATTLE  
Director's Rule  
Implementing Seattle Business Tax Ordinance

**Seattle Rule 5-522 International Investment Management Services Rule**

Introduction. The purpose of this rule is to provide guidance for taxpayers the regarding the qualifications and application of the lower tax rate (SMC 5.45.040(G)) for international investment management services defined in SMC 5.30.035(H).

SMC 5.45.035(H) states that "Investment management services" means investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions, or related investment services.

(1) Investment management services. "Investment management services" means that there is some management component in each of the enumerated services. For example, a broker-dealer transaction may incidentally involve investment research or investment consulting, but such transactions are not considered "investment management services" because they lack the requisite management component.

To assist in illustrating this distinction, refer to the following:

(a) Part 1A, Item 5(G) when compared to Item 6(A) of the Securities and Exchange Commissions' uniform form (Form ADV) that investment advisers use to register. "Investment management services" does not include "impersonal investment advice" which is defined in the Form ADV glossary as investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts.

(b) The description of an investment adviser in Section 2(a)(20)(A) of the Investment Company Act of 1940. The term includes a person who:

(i) regularly furnishes advice with respect to the desirability of investing in, purchasing or selling securities or other property; or

(ii) is empowered to determine what securities or other property shall be purchased or sold;

but does not include a person:

(iii) whose advice is furnished solely through uniform publications distributed to subscribers thereto; or

(iv) who furnishes only statistical and other factual information, advice regarding economic factors and trends, or advice as to occasional transactions in specific securities, but without generally furnishing advice or making recommendations regarding the purchase or sale of securities.

(c) The description of investment discretion in Section 3(a)(35) of the Securities Exchange Act of 1934.

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(2) Primarily engaged in investment management services. A person is "primarily" engaged in the business of providing investment management services when more than fifty percent (50%) of that person's activities are investment management services. If a person's activities are not primarily investment management services, then they cannot qualify for the international investment management services B&O tax rate.

Activities can be characterized either by income earned or by expenses incurred. Therefore, a taxpayer must show that more than 50 percent of either (1) its gross income is from investment management services or (2) its total expenditures are incurred in support of its investment management services.

What percent of gross income for a person engaged primarily in the business of providing investment management services must be derived from rendering those services to qualified clients?

(3) Ten percent of gross income. At least ten percent of the person's total gross income from investment management services must be from those investment management services provided to qualifying clients. SMC 5.30.035(H).

Taxpayers must determine whether each client individually is a qualified client, not collectively. Income from those clients that individually qualify must make up at least ten percent of the taxpayer's gross income. Form ADV, Part 1A, Items 5(C) and (D) provide an example of how to determine who each client is.

Qualifying client. SMC 5.30.035(H) identifies two types of qualifying clients. Both types of qualifying clients consist of persons or collective investment funds.

- a) The first type of qualifying clients reside outside the United States.
- b) The second type of qualifying clients reside in the United States and have at least ten percent of their investments located outside the United States.

(4) Clients and income requirements. The ten percent of taxpayer's total gross income may come from one type of qualifying client or the other or any combination of the two types of clients.

Example (a): A taxpayer would meet this requirement of the statute if ten percent of its gross income comes only from the first type of qualifying clients (those who reside outside the United States).

Example (b): A taxpayer would meet this requirement if ten percent of its income was generated from the second type of qualifying clients (those who reside in the United States and have at least ten percent of their investments located outside the United States).

Example (c): A taxpayer would meet this requirement if five percent of its income was generated from the first type of qualifying clients and five percent of its income was

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generated from the second type of qualifying clients for a total of 10% of its income being generated from qualifying clients.

Example of Collective Investment Fund as a client. The International Small Sector Fund (ISSF) invests in small companies around the world that specialize in cheese making. ISSF hires Spork Investments (Spork) as its investment manager to pick which small cheese making companies outside the United States it will invest in per its investment goals. ISSF is registered and issued in the United States. Spork is the taxpayer and believes it qualifies for the IIMS classification. ISSF is one of four clients, but provides 30% of Spork's income. ISSF is not a Type 1 client because it is a collective investment fund residing in the United States. However, ISSF is a qualified Type 2 client because it is a collective investment fund with over 10% of its money invested in cheese making company stock issued outside the United States.

(5) Clients that reside outside the United States. Individuals establish residence by physical presence and intent to make a particular place a home. A corporation or other legal entity may be a resident of multiple places depending on where it transacts business.

Not every individual or legal entity with a foreign mailing address is a foreign resident. A foreign mailing address alone does not provide proof of the requisite degree of permanent attachment to a foreign location. Records showing a foreign mailing address provide some evidence of residency, but are independently insufficient to prove foreign residency.

The Department will not attempt to detail an exclusive list of documentation or means by which a taxpayer could corroborate the mailing address as the client's residence. Taxpayers must provide information to show residency outside the United States. Examples of corroborating evidence of residency can be found in the US Patriot Act and federal income tax regulations. However, these examples are by no means exclusive standards by which a taxpayer must establish residency of clients.

Item 5(C)(2) of Form ADV, Part 1A is also an indicator of Type 1 clients as it uses the definition of "U.S. person" found in Rule 902(k) or Regulation S under the Securities Act, but the Department may request further information to verify non-United States persons' residence outside the United States.

(6) Ten percent of investments located outside the United States. To determine if a client has at least ten percent of their investments outside the United States, the taxpayer must determine: (1) the client's total investments and (2) the client's total qualified investments. Then simply divide the client's total qualified investments by the client's total investments. If the result is 10% or more, then the client is a Type 2 client.

(7) Definition of "Their." "Their" refers to the client. "Their investments" means the assets of the taxpayer's clients managed by the investment manager on a discretionary basis. For example, the methodologies used to determine the taxpayer's discretionary regulatory assets under management for purposes of reporting on Form ADV, Part 1A, Item (5)(F)(2) would be acceptable for determining "their investments."

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(8) Qualified investment of persons or collective investment funds. SMC 5.30.35(H) states: "Investments are located outside the United States if the underlying assets in which the investment constitutes a beneficial interest reside or are created, issued or held outside the United States." Here the statute essentially requires that investments be assigned a residence, parallel to determining the residence of individual qualifying clients in the first type.

(a) If the investment is an individual security (i.e. stock, bond, etc.), then the location of the investment is determined by where the security is issued.

For example, shares in US Company X are located or reside in the US because that is where the shares were issued regardless of where purchased or what assets US Company X owns. Correspondingly shares of Foreign Company Y are located or reside outside the US even if purchased on an American exchange (for example as an American Depository Receipt).

(b) If the investment is a collective investment fund, then the location of the investment is determined by where the underlying securities held by the collective investment fund are issued.

For example, Z International Mutual Fund is located or resides outside the US because the individual securities held by Z International Mutual Fund were issued outside the US. The fact that Z International Mutual Fund shares are issued in the US (or even if the shares were issued outside the US) does not determine where the investment is located.

(9) A taxpayer shall periodically review the source of its income to determine whether it continues to meet the necessary criteria to report income under the international investment management services B&O tax classification, which may be subject to future audit verification.

For example, a particular taxpayer may have a very consistent client base that does not vary or fluctuate significantly. For such a taxpayer, a single verification date each year may be appropriate. Conversely, a taxpayer's client base may fluctuate significantly, which would render a single verification date inaccurate for their regular business practices. For example, if a taxpayer is filing an amendment to its Form ADV, it may also be appropriate to review the source of its income for B&O tax purposes. Therefore, taxpayers must review the source of their income annually, but the Department may require more frequent review.

(10) Apportionment of income derived from international investment management services. Gross income derived from international investment management services taxed under subsection 5.45.050.F and from service and other business activity taxed under subsection 5.45.050.G shall be apportioned to the City by multiplying apportionable income by a fraction, the numerator of which is the payroll factor plus the service and other business activity income factor and the denominator of which is two as provided by SMC 5.45.081.F and prescribed by RCW 35.102.130.

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DIRECTOR'S CERTIFICATION

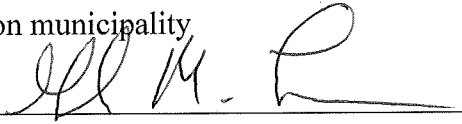
I, Glen Lee, Finance Director of the City of Seattle, do hereby certify under penalty of perjury of law, that the within and foregoing is a true and correct copy as adopted by the City of Seattle, Department of Finance and Administrative Services.

DATED this 16<sup>th</sup> day of September 2014.

CITY OF SEATTLE,

a Washington municipality

By: \_\_\_\_\_



Glen Lee, Finance Director

Department of Finance and Administrative Services

Effective date: September 16, 2014

FILED  
CITY OF SEATTLE

2014 SEP 16 PM 4:26

CITY CLERK

## MEMORANDUM

TO: Monica Martinez Simmons, City Clerk

FROM: Glen Lee, Finance Director  
Joseph Cunha, City Tax Administrator  
License & Tax Administration

DATE: September 16, 2014

RE: The Official Published Notice:  
**Director's Business Tax Rules adoption for SMC Chapter 5.45  
Effective September 16, 2014**

Please file the attached paperwork concerning the following City of Seattle "Tax Rules" 5-620 Hospitals, other medical care facilities, and adult family homes; 5-522 International Investment Management Services Rule; 5-012 Refunds; 5-129 Tribes and Tribal Members/Citizens; and, 5-521 Stock Brokers and Security Houses.

An Affidavit of Publication for the "Notice of Proposed Rule Hearing and Opportunity to Comment" that went to the *Daily Journal of Commerce* for publication on August 6, 2014 is also included in this packet. The required public hearing was held on August 19, 2014 at 10:00 A.M. in Seattle Municipal Tower.

If we can provide any additional information, please let us know. You may contact Joseph Cunha, at 233-7820 for any questions.

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STATE OF WASHINGTON -- KING COUNTY

--SS.

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314156  
CITY OF SEATTLE:FINANCE&ADMIN

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

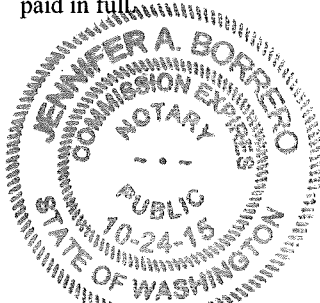
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:TAX RULE HEARING

was published on

08/06/14

The amount of the fee charged for the foregoing publication is the sum of \$104.65 which amount has been paid in full.



Affidavit of Publication

*[Handwritten Signature]*  
\_\_\_\_\_  
Subscribed and sworn to before me on  
08/06/2014  
\_\_\_\_\_  
*[Handwritten Signature]*

Notary public for the State of Washington,  
residing in Seattle

# 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 5.02 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 5.40 (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 September 9, 2014:

Seattle Rule 5-015 Refunds

Seattle Rule 5-129 Tribes and Tribal members/Citizens

Seattle Rule 5-521 Stockbrokers and Security Houses

Seattle Rule 5-522 International Investment Management

Seattle Rule 5-620 Hospitals, other medical care facilities, adult family homes

**PUBLIC HEARING AND COMMENT:**  
The Department of Executive Administration has scheduled a public hearing on the proposed rule changes for 10:00 p.m. to 12:00 p.m., on Tuesday, August 19, 2014. The hearing will be held in a conference room on the 40th floor of the Seattle Municipal Tower, Suite 4070, 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 Finance and Administrative Services

Attn: Joseph A. Cunha, Tax Manager  
License and Tax Administration

700 Fifth Avenue - Suite 4250

P.O. Box 34214

Seattle, Washington 98124-4214

The public may inspect copies of the proposed rules at the License and Tax Administration offices, 700 Fifth Avenue, Suite 4250. If you would like a copy of the proposed rules, please call (206) 233-3789, FAX (206) 684-5170, email: rca.bizlictx@seattle.gov, or submit a written request to the address above.

Glen Lee, Finance Director,  
Department of Finance and  
Administrative Services

Date of publication in the Seattle Daily  
Journal of Commerce, August 6, 2014.

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