

Seattle Rule 5-009

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(1) Introduction. This rule explains the time period that can be covered during an audit or review by the Director of the taxpayers records to ascertain whether the taxpayer has been correctly reporting its business activities. It also explains the circumstances under which the Director may request that a taxpayer complete a statute of limitations waiver.

(2) Assessment period. The Director shall not assess, or correct an assessment for, additional taxes, or penalties or interest due more than four (4) years after the close of the calendar year in which they were incurred, except under the following conditions:

(a) Against a taxpayer who is not currently registered or has obtained a business license certificate or has not filed a tax return as required by SMC chapter 5.55;

(b) Against a person that has committed fraud or misrepresented a material fact;

(c) Against a taxpayer that has executed a written waiver of such limitation, for taxes due within the period authorized by the waiver; or

(d) Against a taxpayer that has collected and not remitted admissions taxes imposed by SMC Chapter 5.40 or parking taxes imposed by SMC Chapter 5.35.

(3) Unlicensed taxpayer; persons engaging in business without a business license tax certificate; Non-filers.

(a) Ten-year limitations period for unlicensed taxpayers that did not obtain a business license tax certificate. Except in cases of fraud or misrepresentation, if the Director discovers any unlicensed taxpayer without a business license tax certificate engaged in business activities in this City, or that a taxpayer has not filed a tax return as required, the Director may assess taxes, fees, interest, and penalties due for a period of ten (10) years plus the current year in which the person was contacted in writing by the Director. For purposes of this subsection (3), contact occurs on the date that the Director mails correspondence to the taxpayer to notify the taxpayer of its unlicensed and delinquent status with the Department.

(b) Voluntarily obtaining a business license tax certificate or filing. If a taxpayer voluntarily obtains a business license tax certificate and files delinquent tax returns prior to being contacted by the Director, whether for a routine tax audit or

otherwise, the Director will apply the general limitations period of four (4) years as described in SMC 5.55.095 for the subsequent assessment against such taxpayer rather than the ten (10) year look-back period. This will only apply if the taxpayer has made a good faith attempt to voluntarily report correctly and there is no evidence of fraud, misrepresentation, or intent to evade tax. It will be presumed that a taxpayer has voluntarily obtained a business license tax certificate or filed with the Director if the taxpayer files a business license tax certificate application, remits the associated license fees and tax certificate fees, files a tax return(s), and pays its tax liability in the amount of tax shown as due on the return(s), prior to being contacted by the Director.

(4) Fraud or misrepresentation. The time in which the Director may assess the tax is not limited if the taxpayer has committed fraud or misrepresented a material fact. One example of misrepresenting a material fact is providing documents or schedules which are intended to mislead the Director. Any assessment of interest, penalties and taxes will be limited to the interest, penalties and taxes which were underpaid as a result of the fraud or misrepresentation.

(5) Statute of limitations waiver.

(a) The Director may request that a taxpayer sign a waiver of the statute of limitations to extend the time in which the Director may assess tax, penalties, or interest in cases where the delay in timely completing an audit or issuing an assessment is the result of the action, or inaction, of the taxpayer. Where a taxpayer has extended the period in which to assess the tax, penalties, or interest, the Director may assess the tax, penalties, or interest within the period agreed to.

(b) A signed written waiver also extends the time in which a taxpayer may apply for, or the Director may make, a refund or credit of any taxes, penalties, or interest paid during, or attributable to, the years covered by the waiver.

(6) Trust funds. Since the admissions tax and parking tax are paid by the consumer and not by the person required to collect and remit the tax to the City, those taxes are deemed held in trust by the person required to collect them until the taxes are remitted to the Director. The person who collects these taxes has no legal right to retain them. Therefore, no statute of limitations applies and the Director may collect the tax at any time.

(7) Assessments following conditional refunds or credits. Taxpayers may petition for a credit or refund of overpaid taxes by following the procedures in Seattle Rule 5-012. The Director may grant such credits or refunds without further immediate verification. If it is later determined that a refund was granted in error and that

there was no fraud/evasion or misrepresentation of a material fact, the Director may issue an assessment to recover the taxes and interest which were refunded in error, provided the assessment is issued within four (4) years from the close of the tax year in which the tax was incurred or within a period covered by a statute of limitations waiver.

(8) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) The Director issued its assessment on December 20, 2004, for taxes owed by ABC Company covering the period January 1, 2000, through September 30, 2004 (Audit Period). The taxpayer subsequently contacted the Director in April 2006 and provided documentation to support its position that retailing tax had previously been paid for certain retail sales assessed in the tax years 2001 and 2002.

In the process of reviewing this documentation, the Director discovered that the auditor inadvertently failed to assess wholesaling tax on some overlooked wholesale sales sold in the year 2001, which would have resulted in a larger tax assessment for that year than originally assessed in 2004.

The Director issued a revised assessment on June 15, 2006, covering the Audit Period which adjusted the retailing tax assessed in error for tax years 2001 and 2002. The revised assessment did not increase the tax assessment for wholesaling taxes owed in 2001 because the statute of limitations had expired for this tax year. Any petition for refund must be made within four years of the close of the tax year in which the tax was paid.

(b) The Director contacted XYZ Distributing on September 1, 2006, to schedule a routine audit of its records. The taxpayer requested that the Director delay the start of the audit until December 1, 2006, because its records are maintained on a fiscal year ending September 30 and the audit would be extremely disruptive to its year end closing if begun immediately. This delay would not allow the Director sufficient time to complete the review of the records for 2002 and timely make an assessment for any taxes found to be due. In this instance, the Director may request the taxpayer to complete a statute of limitations waiver for the year 2002 in exchange for delaying the start of the audit. The completion of the waiver by the taxpayer will also hold open the year 2002 for refund or credit of any taxes found to have been overpaid in this period until such time as an assessment is issued or the waiver expires.

(c) The Director was auditing ABC Theaters for the period January 1, 2002, through September 30, 2006. During the process of examining the records, the Director discovered that ABC had collected admission tax on ticket sales in 1998 which had never been remitted to the Director. There was no fraud or misrepresentation involved in the taxpayers failure to remit the tax. The Director appropriately expanded the period covered by the assessment to include the un-remitted admission tax in the year 1998. Admission tax collected by a seller is deemed to be held in trust until paid to the Director and the statute of limitations does not apply.

(d) The Department audit staff was unable to find a business license tax certificate registration for ARC Company. The audit staff contacted ARC by letter inquiring about its business activities in Washington and asking ARC for its business license tax certificate number. ARC had not obtained a business license tax certificate with the City of Seattle to engage in business activity within Seattle. Shortly after being contacted by the audit staff, ARC contacted a Customer Service Representative within the Department and completed an application for a business license tax certificate without disclosing the earlier contact by the audit staff. ARC subsequently argued that the assessment should be restricted to four years plus the current year. The Director appropriately made the assessment for ten years plus the current year because the taxpayer had not obtained a business license tax certificate at the time of being first contacted by the City of Seattle.

DIRECTOR'S CERTIFICATION

I, Glen M. 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 ____ day of July 2016.

CITY OF SEATTLE,

a Washington municipality

By: _____

Glen M. Lee, Finance Director

Department of Finance and Administrative Services

Effective date: July 14, 2016

Jul 14, 2016