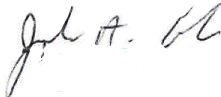






Director's Rule Template

Department: City of Seattle Department of Finance and Administrative Services	Rule No: 5-980	Supersedes: N/A
	Publication: November 24, 2020	Effective: January 1, 2021
Subject: Payroll Expense Tax	Code and Section Reference(s): SMC 5.38; SMC 5.30, and SMC 5.55	
Approved:  <hr/> Division Director  <hr/> Business Unit Officer  <hr/> Kiersten Grove, Deputy Department Director on behalf of Calvin W. Goings, Department Director	<hr/> Date <hr/> Date 12/29/2020 <hr/> Date	

1. Purpose

This rule aids businesses operating in Seattle on reporting requirements of the new payroll expense tax. The new rule is effective January 1, 2021 and is the result of Seattle Ordinance 126108. The rule helps to clarify certain language in the ordinance and provides examples for taxpayers on reporting and paying the tax.

2. Rule

The payroll expense tax is computed on the total payroll expense paid in Seattle to employees with annual compensation of \$150,000 or more. Rates are applied to the total annual compensation paid in Seattle of employees with annual compensation of \$150,000 or more but less than \$400,000, and employees with annual compensation of \$400,000 or more. The tax rates also increase as a company's

total compensation paid in Seattle increases. A business must have at least \$7 million in Seattle payroll in the prior calendar year to be subject to the tax.

3. Definitions

“Compensation” includes “remuneration” as defined by the Washington State Family and Medical Leave program as currently or subsequently amended. The name by which employee compensation is designated is immaterial and includes all payments for personal services including commissions and bonuses and the cash value of all earnings paid in any medium other than cash.

“Employee” means any individual who performs work, labor or personal services of any nature for compensation paid by a business and includes:

- (1) Individuals who are members of limited liability companies, members of professional limited liability companies, partners, other owners of pass-through entities and sole proprietors; and
- (2) Independent contractors, who are individuals contracted to perform work or provide services to the business and are not considered to be employees under the common law rules of the employer-employee relationship.

“Payroll expense” means compensation paid in Seattle to employees.

- (1) Compensation is paid in Seattle to an employee if:
 - (a) The employee is primarily assigned within Seattle;
 - (b) The employee is not primarily assigned to any place of business for the tax period and the employee performs 50% or more of their service for the tax period in Seattle; or
 - (c) The employee is not primarily assigned to any place of business for the tax period, the employee does not perform 50% or more of their service in any city, and the employee resides in Seattle.
- (2) “Tax period” means the calendar year during which tax liability is accrued.

“Primarily assigned” means the business location of the taxpayer where the employee performs their duties for the tax period. An employee that performs more than 50% of their duties at the business location of the taxpayer will be primarily assigned to that business location.

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- (1) **Introduction.** The City Council recognizes that the affordable housing crisis, homelessness emergency, and the COVID-19 pandemic and accompanying economic downturn are deeply impacting the lives of people throughout Seattle. The JumpStart Seattle Progressive Revenue Plan will help to address these crises by funding investment in rental assistance programs, providing resources for non-profit affordable housing, the City’s grocery voucher program and cash assistance to small businesses.

Effective January of 2021, the City of Seattle will impose a payroll expense tax on businesses operating in Seattle. A business must have at least \$7 million in Seattle payroll in the prior calendar year to be subject to the tax. The payroll expense tax is based on the business’s annual Seattle payroll expense attributable to employee annual compensation of \$150,000 or more in the current calendar year.

- (2) **Definitions.** For purposes of this rule, the following definitions will apply:

- (a) **“Compensation”** includes “remuneration” as defined by the Washington State Family and Medical Leave program as currently or subsequently amended.
- (i) The name by which employee compensation is designated is immaterial and includes all payments for personal services, including commissions and bonuses and the cash value of all earnings paid in any medium other than cash.
- (ii) Based on the guidance from the Washington State Employment Security Department, compensation **includes**:
- (A) Salary or hourly wages;
 - (B) Cash value of goods or services given in the place of money;
 - (C) Commissions or piecework;
 - (D) Bonuses;
 - (E) Cash value of gifts or prizes;
 - (F) Cash value of meals and lodging when given as compensation;
 - (G) Holiday pay;
 - (H) Paid time off (vacation, sick leave, associated cash outs);
 - (I) Separation pay such as severance pay, termination pay, or wages in lieu of notice;
 - (J) The value of stocks at the time of transfer to an employee if part of a compensation package (i.e., stock grants, Restricted Stock Units (RSUs)); and
 - (K) Stipends and per diems (unless provided to cover a past or future cost incurred by the worker as a result of the worker’s expected job functions).
- (iii) In addition, for purposes of the payroll expense tax, compensation also includes:
- (A) Employee contributions to deferred compensation plans (e.g., 401(k), 403(b), or other deferred compensation plans) in which a portion of an employee’s salary or wages are set aside to be paid at a later date; and
 - (B) Net distributions, or incentive payments, including guaranteed payments earned for services rendered or work performed, whether paid directly or through an agent. “Net distribution” means the draws from net income by any owner of a pass-through entity.

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Taxable distributions are limited by the amount of draws or net income for that owner, whichever is less.

(iv) Compensation does **not** include:

- (A) Tips;
- (B) Supplemental benefit payments as defined in WAC 192-510-025 made by an employer to an employee in addition to any paid family or medical leave benefits received by the employee;
- (C) Employee exercised stock options (incentive stock options (ISOs) or non-qualified stock options (NQSOs));
- (D) Payments provided to cover a past or future cost incurred by the worker as a result of the worker's expected job functions;
- (E) Employer contributions into retirement or disability plans; or
- (F) Payments to an owner of a pass-through entity that are not earned for services rendered or work performed (i.e., return of capital, investment income, or other passive activities).

Example 1: Employee X is hired by Able Corp to work at their Seattle office. Employee X's total compensation is \$175,000 per year and employee X decides to contribute 5% of their \$175,000 compensation into the Able Corp 401K plan. Assuming Able Corp is subject to the payroll expense tax, when Able Corp determines its payroll expense tax due, Able Corp must include employee X's total annual compensation of \$175,000. An employee's contributions to retirement plans are not excluded when determining compensation subject to the Seattle payroll expense tax.

Example 2: Employee Y works for Able Corp and has an annual salary of \$160,000. Employee Y also receives 4,000 Restricted Stock Units (RSUs) that vest at a rate of 25% a year. In 2021, the value of the stock vesting is \$20,000. The value of stocks at the time of transfer (vesting) is part of a compensation package and is considered compensation for the payroll expense tax. Employee Y's total compensation for purposes of Able Corp's payroll expense tax is \$180,000 (\$160,000 salary + \$20,000 vested RSUs).

Example 3: Employee Z works for Beta Corp and has an annual salary of \$160,000. Employee Z also receives 4,000 non-qualified stock options (NQSOs). In 2021, employee Z exercises 1,000 stock options. Employee Z's exercised stock options are not included in Beta Corp's payroll expense because they are not considered compensation.

Example 4: While on paid medical leave, an employee receives 61% of the employee's typical weekly wage from the State of Washington and the employer paid the employee the remaining 39% of the employee's typical weekly wage as a supplemental benefit payment. The payments made to the employee from the state of Washington and the supplemental benefit payments from the employer are not compensation for purposes of the payroll expense tax.

(b) **"Employee"** means any individual who performs work, labor, or personal services of any nature for compensation paid by a business and includes:

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- (i) Individuals who are members of limited liability companies, members of professional limited liability companies, partners, other owners of pass-through entities and sole proprietors; and
- (ii) Independent contractors, who are individuals contracted to perform work or provide services to the business and are not considered to be employees under the common law rules of the employer-employee relationship.

Example 5: ZYX is a partnership based in Seattle and subject to the payroll expense tax because its prior calendar years' total compensation paid in Seattle was over \$7 million. During the current year, ZYX had \$5 million of compensation paid in Seattle to non-partner employees and \$5 million in net distributions paid in Seattle to partners who performed work for ZYX. Partners' shares of net distributions are considered compensation paid by the partnership under the payroll expense tax. Therefore, ZYX's total payroll expense in Seattle is \$10 million.

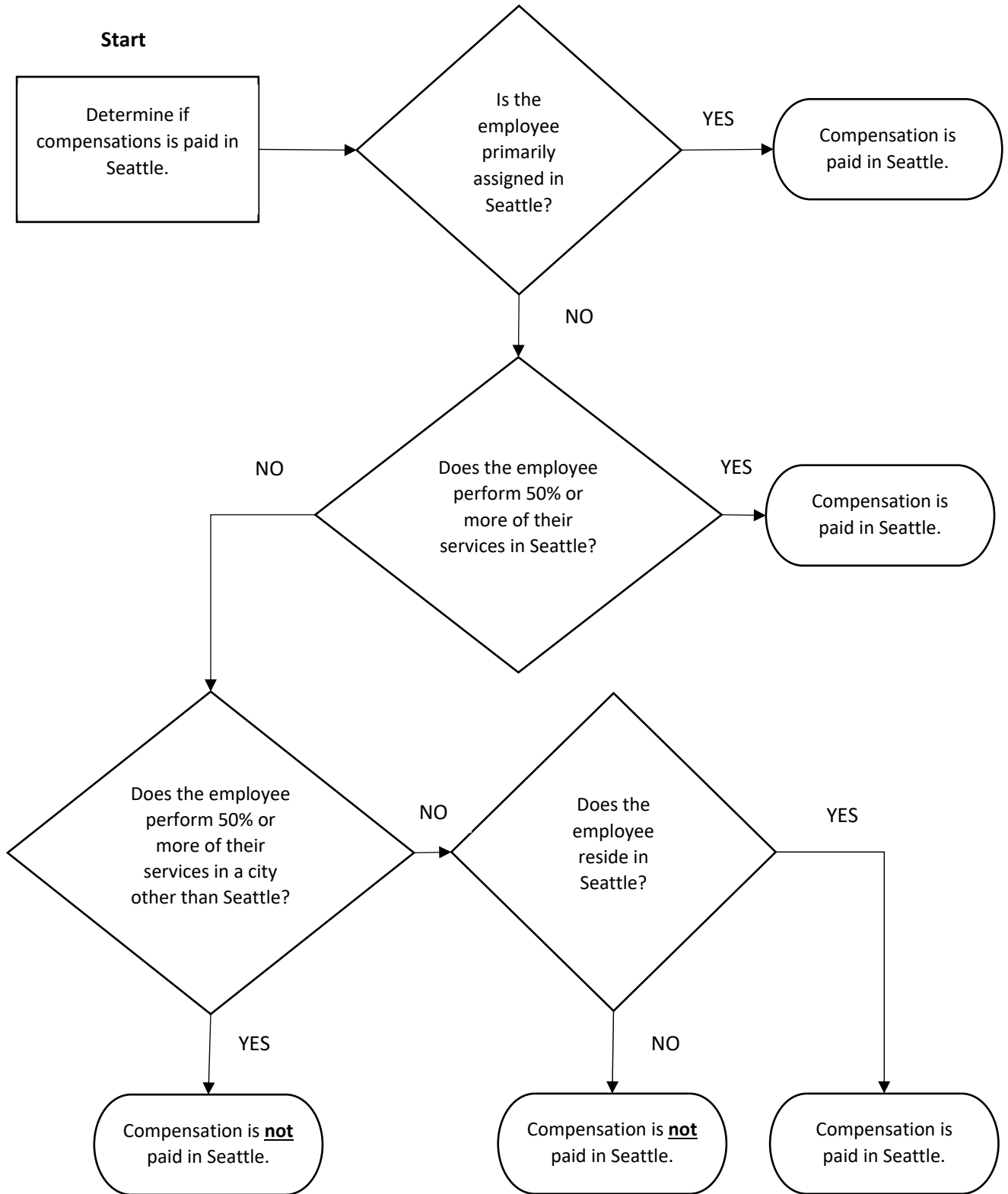
Example 6: Same as Example 5, except that ZYX also has limited partners in Seattle that do not provide services or perform work for the partnership. Rather, the limited partners are merely investors in the partnership. In addition to the \$10 million in compensation paid to the employees and general partners, ZYX also distributes another \$2 million in net distributions to its limited partners. ZYX's total compensation paid in Seattle is still \$10 million. ZYX does not include the \$2 million paid to its limited partners in its total payroll expense because for the payroll expense tax, compensation excludes payments made to owners of pass-through entities that are not earned for services rendered or work performed.

- (c) **"Payroll expense"** means compensation paid in Seattle to employees.
 - (i) Compensation is paid in Seattle to an employee if:
 - (A) The employee is primarily assigned within Seattle;
 - (B) The employee is not primarily assigned to any place of business for the tax period and the employee performs 50% or more of their service for the tax period in Seattle; or
 - (C) The employee is not primarily assigned to any place of business for the tax period, the employee does not perform 50% or more of their service in any city, and the employee resides in Seattle.
 - (ii) "Tax period" means the calendar year during which tax liability is accrued.
- (d) **"Primarily assigned"** means the business location of the taxpayer where the employee performs their duties for the tax period. An employee that performs more than 50% of their duties at the business location of the taxpayer will be primarily assigned to that business location.

The City of Seattle offers the following decision tree to aid businesses on how they should determine compensation paid in Seattle.

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Compensation Paid in Seattle



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Example 7: Company A has three employees in Seattle in 2021, employee X, Y, and Z. All three employees perform their duties at Company A's headquarters in Seattle. Employees X, Y and Z are primarily assigned in Seattle because they perform their duties at Company A's business location in Seattle. Therefore, compensation paid to employees X, Y and Z is paid in Seattle and included in Company A's payroll expense. (see section (2)(c)(i)(A)).

Example 8: In 2021, Company B has an office in Seattle and has three employees, employees K, L, and M. Employees K and L perform 100% of their duties at Company B's office in Seattle for the tax period. In 2021, employee M spends 60% of their time performing services at a client's worksite in Kent, Washington and 40% of their time performing duties at the Seattle office. Compensation paid to employees K and L is paid in Seattle because employees K and L are primarily assigned within Seattle. Employees K and L are primarily assigned within Seattle because they spend more than 50% of their time performing their duties at the business location of the taxpayer in Seattle. However, employee M's compensation is not paid in Seattle. Employee M is not primarily assigned within Seattle because employee M does not spend more than 50% of their time performing their duties at the business location of the taxpayer. Additionally, because employee M performs 50% or more of their time performing services for the tax period in Kent, Washington, their compensation is not paid in Seattle. (see section (2)(c)(i)(B)).

Example 9: Company C has an office in Seattle and has three employees in 2021, employees R, S, and T. Employee R performs their duties at Company C's office in Seattle. Employees S and T have telework agreements with Company C and work from their respective residences for the entire tax period. Employee S's residence is in Kent, Washington and employee T's residence is in Seattle. Compensation paid to R and T is paid in Seattle. Compensation paid to employee R is paid in Seattle because employee R is primarily assigned in Seattle. R is primarily assigned in Seattle because employee R spends more than 50% of their time performing their duties at the business location of the taxpayer in Seattle. Employee T is not primarily assigned to Company C's office because they do not spend more than 50% of their time performing their duties at the business location of the taxpayer. However, compensation paid to employee T is in Seattle because employee T spends 50% or more of their time performing their services in Seattle. (see section (2)(c)(i)(B)). Conversely, compensation paid to employee S is not paid in Seattle. Employee S is not primarily assigned within Seattle because employee S does not spend more than 50% of their time performing their duties at the business location of the taxpayer. Additionally, employee S performs 50% or more of their service for the tax period in Kent, Washington. Therefore, because employee S spends 50% or more of their time performing services in Kent, Washington, their compensation is not paid in Seattle. (see section (2)(c)(i)(B)).

Example 10: In 2021, Company D has its headquarters in Seattle. Employee P is an equipment technician and has an office at Company D's headquarters. Employee P travels to customer locations to service equipment and is rarely in the office. At the end of the year, Company D determines that employee P spends 15% of their time performing services in Seattle, 20% in Redmond, 25% in Bellevue, 30% in Renton, and 10% out-of-state. Employee P is not primarily assigned to any place of business for the tax period because they do not spend more than 50% of their time performing duties at the business location of Company D. Furthermore, employee P does not spend 50% or

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more of their time performing duties in any city. Therefore, compensation paid to employee P is considered paid in the city where the employee resides. (see section (2)(c)(i)(C)).

Example 11: In 2021, Company E has an office in Renton, Washington. Employee O has a telework agreement with Company E that provides employee O will work from their residence four days per week for the year. Employee O's residence is in Seattle. One day a week, employee O travels to Company E's office in Renton to attend meetings and meet with customers. Employee O spends 50% or more of their time performing services from their residence. Employee O is not primarily assigned to Company E's office because they do not spend more than 50% of their time performing their duties at Company E's business location. Compensation paid to employee O is considered paid in Seattle because employee O spends 50% or more of their time performing services in Seattle. (see section (2)(c)(i)(B)).

Example 12: Employee N works for Company F in Bedford, New York and travels to Seattle to provide services to customers. At the end of the year, Company F determines that employee N spent 51% of their time performing services in Seattle and 49% of their time performing their duties at Company F's office in Bedford. Employee N is not primarily assigned to any place of business for the tax period because they do not spend more than 50% of their time performing their duties at the business location of the taxpayer. Compensation paid to employee N is paid in Seattle because employee N spends 50% or more of their time performing services in Seattle. (see section (2)(c)(i)(B)).

Example 13: Employee M works for Company G in Seattle and travels to Hohman, Indiana to provide services to customers. At the end of the year, Company G determines that employee M spent 51% of their time performing services in Hohman, Indiana and spends 49% of their time performing their duties at Company G's Seattle office. Employee M is not primarily assigned to any place of business for the tax period because they do not spend more than 50% of their time performing their duties at the business location of the taxpayer. Furthermore, employee M spends 50% or more of their time performing services in Hohman, Indiana for the tax period. Employee M's compensation is not paid in Seattle, because employee M spends 50% or more of their time performing services in another city. (see section (2)(c)(i)(B)).

- (3) **Tax rate and measure.** Chapter 5.38.030 of the Seattle Municipal Code imposes a tax on the payroll expense of every person engaging in business within Seattle. The payroll expense tax has a progressive tax rate structure.
- (a) The payroll expense tax is computed on the total payroll expense paid in Seattle to employees with annual compensation of \$150,000 or more. Rates are applied to the total annual compensation paid in Seattle of employees with annual compensation of \$150,000 or more but less than \$400,000, and employees with annual compensation of \$400,000 or more. The tax rates also increase as a company's total compensation paid in Seattle increases.

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(b) The amount of the payroll expense tax due shall be the payroll expense of the business in the current calendar year (less deductions if applicable in section (5) of the rule) multiplied by the following rates:

	Payroll Expense		
	Less than \$100 million	\$100 million but less than \$1 billion	\$1 billion or greater
Annual compensation \$0 - \$149,999.99	N/A	N/A	N/A
Annual compensation \$150,000 - \$399,999.99	Rate = 0.7% (Seven-tenths percent)	Rate = 0.7% (Seven-tenths percent)	Rate = 1.4% (One and four-tenths percent)
Annual compensation \$400,000 or more	Rate = 1.7% (One and seven-tenths percent)	Rate = 1.9% (One and nine-tenths percent)	Rate = 2.4% (Two and four-tenths percent)

Example 14: Company A has employees in Seattle. In 2020, Company A had \$9 million of Seattle payroll expense and \$10 million of Seattle payroll expense in 2021. In 2021, Company A has 55 employees that earn \$100,000 per year, 10 employees that earn \$200,000 per year, and 5 employees that earn \$500,000 per year.

Company A's 2021 Seattle Payroll Expense Tax would be:

COMPANY A					
Payroll in Seattle (Prior Year)		\$ 9 million			
Payroll in Seattle (Current)		\$ 10 million			
Compensation	# of Emp.	Ann. Salary	Payroll Exp	Rate	Tax
\$0 – \$149,999.99	55	\$100,000	\$5,500,000	N/A	\$0
\$150,000.00 – \$399,999.99	10	200,000	2,000,000	0.70%	14,000
\$400,000 and greater	5	500,000	2,500,000	1.70%	42,500
TOTAL		70	\$10,000,000		\$56,500

Example 15: Company B has 11,100 employees in Seattle. In 2020, Company B had \$1.1 billion of Seattle payroll expense and \$1.2 billion of Seattle payroll expense in 2021. In 2021, Company B has 10,500 employees that earn \$100,000 per year, 500 employees that earn \$200,000 per year, and 100 employees that earn 500,000 per year.

Company B's 2021 Seattle Payroll Expense Tax would be:

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COMPANY B					
Payroll in Seattle (Prior Year)		\$ 1.1 billion			
Payroll in Seattle (Current)		\$ 1.2 billion			
Compensation	# of Emp.	Ann. Salary	Payroll Exp	Rate	Tax
\$0 – \$149,999.99	10,500	\$100,000	\$1,050,000,000	N/A	\$0
\$150,000.00 – \$399,999.99	500	200,000	100,000,000	1.40%	1,400,000
\$400,000 and greater	100	500,000	50,000,000	2.40%	1,200,000
TOTAL	11,100		\$1,200,000,000		\$2,600,000

Example 16: Same as Example 15, except Company B has \$750 million of Seattle payroll expense in 2021. In 2021, Company A has 6,600 employees that earn \$100,000 per year, 300 employees that earn \$200,000 per year, and 60 employees that earn \$500,000 per year.

Company B’s 2021 Seattle Payroll Expense Tax would be:

COMPANY B					
Payroll in Seattle (Prior Year)		\$ 1.1 billion			
Payroll in Seattle (Current)		\$ 750 million			
Compensation	# of Emp.	Ann. Salary	Payroll Exp	Rate	Tax
\$0 – \$149,999.99	6,600	\$100,000	\$660,000,000	N/A	\$0
\$150,000.00 – \$399,999.99	300	200,000	60,000,000	0.70%	420,000
\$400,000 and greater	60	500,000	30,000,000	1.90%	570,000
TOTAL	6,960		\$750,000,000		\$990,000

In 2021 (the current year), Company B’s annual payroll expense is greater than \$100 million, but less than \$1 billion. Therefore, Company B’s rates are 0.7% of the payroll expense of employees with annual compensation of \$150,000 to \$399,999.99 and 1.9% of the payroll expense of employees with annual compensation of \$400,000 or more.

(4) **Exemptions.** The following are exempt from the payroll expense tax:

- (a) Any business having compensation paid in Seattle to employees of less than \$7 million in the previous calendar year.

Example 17: In the prior calendar year, 2020, Company A had a Seattle payroll expense of \$9 million. In 2021, Company A has \$5 million of Seattle payroll expense. Twenty-five employees earn \$100,000 per year, five employees earn \$200,000 per year, and three employees earn \$500,000 per year.

Company A’s 2021 Seattle Payroll Expense Tax would be:

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COMPANY A					
Payroll in Seattle (Prior Year)		\$ 9 million			
Payroll in Seattle (Current)		\$ 5 million			
Compensation	# of Emp.	Ann. Salary	Payroll Exp	Rate	Tax
\$0 – \$149,999.99	25	\$100,000	\$2,500,000	N/A	\$0
\$150,000.00 – \$399,999.99	5	200,000	1,000,000	0.70%	7,000
\$400,000 and greater	3	500,000	1,500,000	1.70%	25,500
TOTAL	33		\$5,000,000		\$32,500

The City of Seattle will impose a tax on businesses operating in Seattle with \$7 million or more in payroll expense in the previous year. Company A had more than \$7 million of payroll expense in 2020 and is subject to the payroll expense tax in 2021 (see section (1)). However, because Company A had less than \$7 million of payroll expense in 2021, the company will not be subject to the payroll expense tax in 2022 (see subsection (4)(a)).

- (b) Any person engaged in a grocery business. **“Grocery business”** means a business where at least 70% of the gross income of the business for purposes of calculating the business license tax under SMC Chapter 5.45 is attributable to making retail or wholesales sales of food and food ingredients that will be exempt from the retail sales tax under RCW 82.08.0293.

Example 18: ABC is a retail supermarket chain that sells food and food ingredients. Seventy-five percent of ABC’s retail sales are exempt from the retail sales tax. ABC is exempt from the payroll expense tax because 70% or more of its retail sales are exempt from the retail sales tax.

Example 19: DEF is a wholesaler of food and food ingredients who sells products to ABC a retail supermarket chain. When ABC resells DEF products, they are exempt from the retail sales tax. DEF is exempt from the payroll expense tax because its products are exempt from the retail sales tax when resold by ABC.

Example 20: QRS is a manufacturer of food and food ingredients. All QRS’s sales are wholesale sales to customers that are wholesalers who resell QRS products to retailers and other wholesale distributors. The wholesale sale of QRS food and food ingredients to QRS’s customers are exempt from the retail sale tax. QRS is deemed a grocery business because more than 70% of its sales are exempt from the retail sales tax. Therefore, QRS is exempt from the payroll expense tax.

- (c) Compensation paid in Seattle to an independent contractor whose compensation is included in another business’s payroll expense.

Example 21: Company R hires an individual independent contractor, individual Z, for consulting services and agrees to pay them \$175,000 in 2021. Individual Z is a sole proprietor and is an independent contractor for purposes of the business license tax. Assuming Company R is subject to the payroll expense tax, Company R would include individual Z’s total annual compensation of \$175,000 in Company R’s payroll expense. Individual Z is considered an employee of Company R for

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purposes of the payroll expense tax. Individual Z would not include payments received from Company R as compensation for purposes of the Seattle payroll expense tax because that amount is included in Company R's calculation of its Seattle payroll expense.

Example 22: Same as example 21, except that individual Z provides consulting services to Company R and Company S. Companies R and S each pay individual Z \$175,000 in 2021 for consulting services. Assuming that both Company R and Company S are subject to the payroll expense tax, Company R will include \$175,000 of compensation paid to individual Z in its payroll expense and Company S will also include the \$175,000 of compensation it paid to individual Z in its payroll expense.

Example 23: In 2021, Company R hires an independent contractor Small Tech LLC, for consulting services and agrees to pay Small Tech LLC \$175,000 in consulting fees. Individual E is an employee of Small Tech LLC and is entrusted to perform the consulting services requested by Company R. In this example, Individual E's compensation is included in the payroll expense of Small Tech LLC because Individual E is an employee of Small Tech LLC. Company R would not include the consulting fees paid to Small Tech LLC in Company R's payroll expense because Small Tech LLC is not an individual independent contractor.

- (d) Any business engaged in business in Seattle that is preempted from taxation by cities under federal or state statutes or regulations, including, but not limited to, the following:
 - (i) Insurance businesses and their appointed insurance producers whose revenue is exempt from the business license tax;
 - (ii) Businesses that only sell, manufacture, or distribute motor vehicle fuel as defined in RCW 82.38.020 and exempted under RCW 82.38.080;
 - (iii) Businesses that only distribute or sell liquor as defined in RCW 66.04.010 and exempted under RCW 66.08.120;
 - (iv) Federal and State government agencies and any local governmental entity.
- (e) To the extent that a business has activities listed in Section (4)(d) that are pre-empted from taxation, but the business also engages in activities not preempted from taxation, the business will be allowed to exclude the payroll expense attributable to those activities preempted from taxation by:
 - (i) excluding compensation of employees exclusively engaged in supporting those activities preempted from taxation; and or
 - (ii) that portion of compensation paid to employees engaged in supporting those activities preempted from taxation but also not preempted from taxation equal to such employee compensation multiplied by a ratio equal to the gross income of the business from activities preempted from taxation over the total gross income of the business.

Example 24: Company L is a distributor of alcohol in Seattle. In addition to distributing alcohol products, Company L also distributes some non-alcoholic drink items such as mixers and soda. Ninety percent of Company L's revenue is from the sales of alcohol and ten percent is from the sale of non-alcoholic items. In addition, all of Company L's employees support activities in selling and

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distributing both alcohol and non-alcoholic items. Assuming Company R is subject to the payroll expense tax, Company L would be able to exclude 90% of their payroll expense.

- (5) **Temporary or contracted employees.** Businesses that hire temporary or contracted employees shall include the temporary or contracted employees' compensation in their payroll expense, regardless of if the temporary or contracted employees are from an employment agency.

Example 25: Company A engages Temp Agency Corp to recruit and fill a temporary position at Company A. Temp Agency Corp performs all recruiting, interviewing, and background check services and identifies individual T as its top candidate for Company A. Individual T is hired by Company A on a temporary basis. Company A is individual T's employer and responsible for individual T's employment costs (including but not limited to employment taxes and state unemployment insurance). Assuming Company A is subject to the payroll expense tax, compensation paid to individual T is included in Company A's payroll expense tax calculation because individual T is an employee of Company A.

Example 26: Company B hires Temp Agency Corp to provide temporary staff. Temp Agency Corp employs several individuals that it hires out to companies that require temporary labor solutions. Company B contracts with Temp Agency Corp to fill two temporary positions for a project expected to last through the year. Temp Agency Corp schedules two of its employees, individuals X and Y to Company B. Temp Agency Corp regularly invoices Company B at the agreed rates for the temporary staff working for Company B during the year. Individuals X and Y are employed and paid by Temp Agency Corp for their services. Assuming Temp Agency Corp is subject to the payroll expense tax, Temp Agency Corp would include compensation paid to individuals X and Y in its payroll expense because individuals X and Y are employees of Temp Agency Corp.

(6) **Deductions.**

- (a) From Jan. 1, 2021, through Dec. 31, 2023, taxpayers that are non-profit healthcare entities may deduct from the measure of the tax the payroll expense of employees with annual compensation of \$150,000 to \$399,999.99.
- (i) **"Life Science"** means scientific research whose primary purpose is to understand human biology or pathology, or to improve human health, or to identify appropriate treatment (including ethical and policy aspects) of human disease, including basic research in non-human models (including in silica models).
- (ii) **"Research and Development"** means activities performed to discover technological information, and technical and non-routine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software.
- (A) Research and Development includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the United States Food and Drug Administration under Chapter 21 in the Code of Federal Regulations, as amended.

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- (B) Research and Development does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies not related to development, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

Example 27: Company M is a non-profit healthcare entity and has employees in Seattle. In 2020, Company M had \$9 million of payroll expense and \$10 million of payroll expense in 2021. In 2021, Company M has 55 employees that earn \$100,000 per year, ten employees that earn \$200,000 per year, and five employees that earn \$500,000 per year. Assuming Company M is subject to the payroll expense tax, Company M would deduct the compensation of employees with annual compensation of \$150,000 to \$399,999.99 from their payroll expense.

Company M’s 2021 Seattle Payroll Expense Tax would be:

COMPANY M							
Payroll in Seattle (2020)		\$ 9 million					
Payroll in Seattle (2021)		\$ 10 million					
Compensation	# of Emp.	Ann. Salary	Payroll Exp	Deduction	Taxable Payroll Exp	Rate	Tax
\$0 – \$149,999.99	55	\$100,000	\$ 5,500,000		\$0	N/A	\$0
\$150,000.00 – \$399,999.99	10	200,000	2,000,000	2,000,000	0	0.70%	0
\$400,000 and greater	5	500,000	2,500,000		2,500,000	1.70%	42,500
TOTAL			\$10,000,000		\$2,500,000		\$42,500

Company M may deduct the compensation of employees with annual compensation of \$150,000 to \$399,999.99 because it qualifies as a non-profit healthcare entity.

(7) Allocation and apportionment.

- (a) The Director may adopt procedures to allow taxpayers who have payroll expenses consisting of work done and services provided within and outside Seattle to use a representative test period or conduct a survey based on factual data to arrive at a formula with which to calculate the percentage of payroll expense attributable to Seattle. Any formula so established will be subject to review and correction by the Director. This section is strictly used to determine and establish a method to determine if an employee is primarily assigned to the business location of the taxpayer.
- (b) If the allocation and apportionment provisions of Chapter 5.38 of the Seattle Municipal Code, do not fairly represent the extent of the taxpayer’s business activity in the city, the taxpayer may petition for or the Director may require, in respect to all or any part of the taxpayer’s business

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activity, the employment of any other method to effectuate an equitable allocation and apportionment of the payroll expense tax.

- (c) Taxpayers seeking an alternative apportionment calculation must submit a request to the Director for approval prior to the application of any alternative apportionment formula
 - (d) The party petitioning for, or the Director requiring, the use of any method to effectuate an equitable allocation and apportionment of the payroll expense must prove by a preponderance of the evidence:
 - (i) That the allocation and apportionment provisions of this subsection (8) do not fairly represent the extent of the taxpayer's business activity in the city; and
 - (ii) That the alternative to such provisions is reasonable. The same burden of proof shall apply whether the taxpayer is petitioning for, or the Director is requiring, the use of an alternative, reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income.
 - (e) If the Director requires any method to effectuate an equitable allocation and apportionment of the taxpayer's income, the Director cannot impose any civil or criminal penalty with reference to the tax due that is attributable to the taxpayer's reasonable reliance solely on the allocation and apportionment provisions of this subsection (7).
 - (f) A taxpayer that has received written permission from the Director to use a reasonable method to effectuate an equitable allocation and apportionment of the taxpayer's income shall not have that permission revoked with respect to transactions and activities that have already occurred unless there has been a material change in, or a material misrepresentation of, the facts provided by the taxpayer upon which the Director reasonably relied in approving a reasonable alternative method.
 - (g) Nothing in rule shall be construed as requiring the payment of any tax for engaging in business when such payment would be in violation of the Constitution or a statute of the United States or of the Constitution or a statute of the State of Washington.
 - (h) A business is allowed a credit to the extent necessary to preserve the validity of the City's tax, and still apply the City's tax to as much of the business's activities as may be subject to the City's taxing authority.
- (8) When due.**
- (a) All taxes due for the calendar year 2021 shall be due and payable on the fourth quarter tax filing due date of Jan. 31, 2022. For tax years after 2021, the payroll expense tax shall be due and payable on a quarterly installment basis unless assigned a different reporting period by the Director.

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(b) For periods after Dec. 31, 2021, if taxes are reported by a taxpayer on a basis more frequent than once per year, taxpayers may use the Seattle payroll expense in the prior calendar year to estimate reporting in the current calendar year and correct the reporting for the current year amount on the fourth quarter return. Amounts reported on the fourth quarter return would be adjusted in such a way to make correct the payroll expense due for the current calendar year.

Example 28: In 2021, Company A had total payroll expense of \$9 million. Of the \$9 million of total payroll expense it had \$1.5 million payroll expense of employees with annual compensation of \$150,000 to \$399,999.99 and \$2,000,000 payroll expense of employees with annual compensation of \$400,000 or more. In 2021, Company A's total payroll expense tax due for 2021 was \$44,500. It was reported as follows:

Company A			
2021 Payroll in Seattle = \$ 9 million			
Employee Annual Compensation Range	Total Payroll Expense	Rate	Tax
\$0 - \$149,999.999	\$5,500,000	N/A	\$0
\$150,000 - \$399,999.99	1,500,000	0.70%	10,500
\$400,000 or more	2,000,000	1.70%	34,000
	\$9,000,000		\$44,500

In 2022, Company A decides to estimate its payroll expense tax using the prior calendar year information. Therefore, for each of quarters one, two, and three Company A will estimate its returns by dividing the total payroll expense reported under each employee compensation range by 4 to arrive at an estimated amount to report in quarter's one, two, and three of 2022 and report those quarters as follows:

Quarter 1, 2022			
Employee Annual Compensation Range	Total Payroll Expense	Rate	Tax
\$0 - \$149,999.999	\$1,375,000	N/A	\$0
\$150,000 - \$399,999.99	375,000	0.70%	2,625
\$400,000 or more	500,000	1.70%	8,500
	\$2,250,000		\$11,125

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Quarter 2, 2022			
Employee Annual Compensation Range	Total Payroll Expense	Rate	Tax
\$0 - \$149,999.999	\$1,375,000	N/A	\$0
\$150,000 - \$399,999.99	\$375,000	0.70%	2,625
\$400,000 or more	\$500,000	1.70%	8,500
	\$2,250,000		\$11,125

Quarter 3, 2022			
Employee Annual Compensation Range	Total Payroll Expense	Rate	Tax
\$0 - \$149,999.999	\$1,375,000	N/A	\$0
\$150,000 - \$399,999.99	\$375,000	0.70%	2,625
\$400,000 or more	\$500,000	1.70%	8,500
	\$2,250,000		\$11,125

At the end of 2022, before filing its fourth quarter return, Company A determines it had total payroll expense in 2022 of \$10,000,000. Of the \$10 million of total payroll expense it had \$2 million payroll expense of employees with annual compensation of \$150,000 to \$399,999.99 and \$2,500,000 payroll expense of employees with annual compensation of \$400,000 or more. Company A's total annual payroll expense is summarized below:

COMPANY A					
Payroll in Seattle (2022) = \$ 10 million					
Compensation	# of Emp.	Ann. Salary	Payroll Exp	Rate	Tax
\$0 – \$149,999.99	55	\$100,000	\$5,500,000	N/A	\$0
\$150,000.00 – \$399,999.99	10	200,000	2,000,000	0.70%	14,000
\$400,000 and greater	5	500,000	2,500,000	1.70%	42,500
TOTAL	70		\$10,000,000		\$56,500

When Company A prepares its fourth quarter return, it will need to adjust it such a way as to make correct the amount for the entire current calendar year. Therefore, the total left to be reported for employees with annual compensation of \$150,000 to \$399,999.99 is \$875,000 (\$2,000,000 for the entire year less \$1,125,000 [\$375,000 x3] reported in the first three quarters). The total left to be reported for employees with annual compensation of \$400,000 or more is \$1,000,000 (\$2,500,000 for the entire year less \$1,500,000 [\$500,000 x 3] reported in the first three quarters.)

Company A will report the following on its fourth quarter return for 2022:

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Quarter 4, 2022			
Employee Annual Compensation Range	Total Payroll Expense	Rate	Tax
\$0 - \$149,999.99	\$1,375,000	N/A	\$0
\$150,000 - \$399,999.99	\$875,000	0.70%	6,125
\$400,000 or more	\$1,000,000	1.70%	17,000
	\$3,250,000		\$23,125

Company A's total payroll expense tax due for 2022 was \$56,500 of which it made total estimated payments of \$33,375 in the first three quarters (\$11,125 x 3) and filed its fourth quarter return in such a way as to report \$23,125 tax due, making correct the amount due for the current year.

Example 29: Similar to Example 28, Company A had total payroll expense of \$9 million in 2021. Of the \$9 million of total payroll expense it had \$1.5 million payroll expense of employees with annual compensation of \$150,000 to \$399,999.99 and, \$2,000,000 payroll expense of employees with annual compensation of \$400,000 or more. Company A estimates its 2022 first, second, and third quarter returns based on its total payroll expense of 2021, same as in Example 28.

However, at the end of the year in 2022, Company A determines its total payroll expense for 2022 was only \$5 million. Of Company A's \$5,000,000 of total payroll expense, it only had \$1,000,000 of payroll expense for employees with annual compensation of \$150,000 to \$399,999.99 and \$1,000,000 payroll expense for employees with annual compensation of \$400,000 or more. At the end of 2022, Company A determines its payroll expense tax due is \$24,000 as follows:

COMPANY A					
2022 Payroll in Seattle = \$5 million					
Compensation	# of Emp.	Ann. Salary	Payroll Exp	Rate	Tax
\$0 – \$149,999.99	30	\$100,000	\$3,000,000	N/A	\$0
\$150,000.00 – \$399,999.99	5	200,000	1,000,000	0.70%	7,000
\$400,000 and greater	2	500,000	1,000,000	1.70%	17,000
TOTAL	37		\$5,000,000		\$24,000

When Company A prepares its fourth quarter return, it will need to adjust it such a way as to make correct the amount for the entire current calendar year.

Therefore, the amount to be reported in quarter four for employees with annual compensation of \$150,000 to \$399,999.99 is \$250,000 (\$1,000,000 for the entire year divided by 4) and the amount to be reported for employees with annual compensation of \$400,000 or more is also \$250,000 (\$1,000,000 for the entire year divided by 4).

Company A will report the following on its fourth quarter return for 2022:

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Quarter 4, 2022			
Employee Annual Compensation Range	Total Payroll Expense	Rate	Tax
\$0 - \$149,999.999	\$750,000	N/A	\$0
\$150,000 - \$399,999.99	\$250,000	0.70%	1,750
\$400,000 or more	\$250,000	1.70%	4,250
	\$1,250,000		\$6,000

Company A will then amend its returns for first, second, and third quarters to arrive at the correct amount due for the current year because it estimated and reported \$11,125 tax due based on the payroll expense of the prior calendar year. Therefore, each of quarter one, two, and three will be amended to reflect \$6,000 in payroll expense tax due. This will result in a refund to Company A equal to \$15,375 (3 x [\$11,125 reported less \$6,000 as amended]).

- (9) **Records to be kept by the taxpayer.** Businesses subject to the payroll expense tax are required to maintain and keep complete and adequate records. Records must be kept in such a manner as to enable the Director to determine the payroll expense tax liability of the taxpayer. Such records shall be retained for a period of not less than five (5) years. Records retained must be presented upon request of the Director and demonstrate the payroll expense of the business, including but not limited to; where employees are primarily assigned, perform their duties, and reside, and employee compensation. Examples include but are not limited to; W-2 and earnings summaries and workpapers and other employment tax records; work location schedules; teleworking agreements between employee and employer; payroll expense reports; copies of state employment security returns and their workpapers; etc.
- (10) **Payroll expense tax is levied on employers.** The payroll expense tax is levied on employers, not on employees. Under no circumstance may the payroll expense tax be deducted or withheld from employee compensation. The payroll expense tax is levied upon the person engaging in the business activities and constitutes a part of the operating overhead or cost of doing business.