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## FAQ FOR REAL ESTATE FIRMS ON SEATTLE'S PAYROLL EXPENSE TAX

### Background:

On July 6, 2020, the Seattle City Council passed Ordinance 126108, which imposes a "payroll expense tax" on businesses in Seattle with annual payrolls in excess of \$7,000,000.00. The tax is computed on the total payroll expense paid in Seattle to employees who receive compensation of \$150,000.00 or more. Real estate brokers are considered employees, even though they may be independent contractors, and commission income is considered to be compensation.

The tax must be paid by the brokerage, rather than the individual brokers, and applies to compensation paid in Seattle under three conditions:

- The employee is "primarily assigned" within Seattle; or
- The employee is not primarily assigned to any place of business, but he or she performs 50% or more of their services in Seattle; or
- The employee is not primarily assigned to any place of business, does not perform 50% of their services in Seattle, but the employee resides in Seattle.

The tax became effective on January 1, 2021. The first installment will be due on January 31, 2022, but for tax years 2022 and beyond, the tax will be due quarterly. Companies are required to keep detailed records for five (5) years. The Ordinance contains a mechanism to challenge the apportionment of the tax, as well as a process to calculate estimated quarterly payments.

On December 8, 2020, the Seattle Chamber of Commerce filed a lawsuit against the City, challenging the tax as an unlawful tax on the "right to earn a living". Both parties anticipate filing cross motions for summary judgment to be heard in May, 2021. It is unknown how long it will take the Court to rule on these motions, or whether an appeal will be filed afterward.

The Ordinance is very general in nature and does not speak directly to real estate brokerage services.

FAQ:

**Q. I operate a real estate brokerage firm in Seattle. Am I subject to the tax?**

A. Yes, if your total commission payouts exceed \$7,000,000.00 in a calendar year.

**Q. My brokers are independent contractors and not employees. Do I still have to pay the tax?**

A. Yes, for purposes of the tax, independent contractors are considered employees, and their commission income is considered as part of your payroll.

**Q. My company is headquartered outside of Seattle, but I have branch offices and/or brokers who operate in Seattle. Am I exempt from the tax?**

A. The tax is applicable to commission income in excess of \$150,000.00 generated by brokers “primarily assigned” in Seattle, those that perform 50% or more of their “duties” in Seattle, or on any brokers who live in Seattle. This assumes that your company exceeds the \$7,000,000.00 threshold. If it doesn’t, there is no tax. (Refer to the applicability criteria on page 1 for more details.)

**Q. I have brokers who reside in Seattle, but do not perform brokerage services there. Does the tax apply to their income?**

A. Unbelievably, yes, assuming your company’s Seattle commission payouts meet the \$7,000,000.00 threshold, and the broker meets the \$150,000.00 threshold.

**Q. What does “primarily assigned” to Seattle mean?**

A. A broker is “primarily assigned” to Seattle if they spend 50% or more of their time working in Seattle.

**Q. What does it mean to “perform your duties” in Seattle?**

A. Hypotheticals in the Director’s Rule supporting the Ordinance suggest that “performing your duties” means that a broker spends more than 50% of their time working in Seattle.

**Q. My company is not headquartered in Seattle, but I have franchises that are. Am I subject to the tax?**

A. Franchises are not mentioned in the Ordinance, however the Ordinance defines “business” as “activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly”, and a “taxpayer” as anyone who is required to have a business license in the City. The answer therefore suggests that only franchisees in Seattle will have to pay the tax.

**Q. My brokers work mainly out of their homes, which are not in Seattle, but they come to my office in Seattle occasionally to meet with clients or to use the office equipment. Am I subject to the tax?**

A. The answer to this question is unclear. On one hand, if they spend less than 50% of their time working in Seattle, their income is exempt. On the other hand, your brokerage is considered a “businesses operating in Seattle”, your brokers are licensed in Seattle, and the commission income will be “paid in Seattle”, which would be subject to the tax. SKCR is seeking clarification on this issue.

**Q. Is the tax imposed on only that portion of the compensation that exceeds \$150,000.00?**

A. No, once that threshold is reached, the tax is imposed on the total company payroll expense paid to those brokers who exceed the threshold.

**Q. What if my brokers form LLC’s or Subchapter S Corporations?**

A. A hypothetical in the Director’s Rule states that the LLC or corporation would be liable for the tax rather than your brokerage. This means that the \$7,000,000.00 threshold would apply to the LLC or corporation, rather than to your brokerage.

**Q. How is the tax collected?**

A. The first payment will be due on January 31, 2022 for the calendar year 2021. Starting in 2022, the tax will be due quarterly. The Ordinance contains a process to calculate ‘estimated’ quarterly payments, however any shortfalls must be reconciled in the final payment.

**Q. What if I disagree with the amount of the tax being imposed?**

A. The Ordinance contains a mechanism to establish a “representative test period” or create a “survey” to identify the proper allocation.

**Q. What is the tax rate?**

A. For businesses with payrolls of less than \$100,000,000.00, the rate is 0.7% for total annual compensation between \$150,000.00 - \$399,999.00 and 1.7% for compensation of more than \$400,000.00.

Contact Russ Hokanson, SKCR CEO at [rhokanson@nwrealtor.com](mailto:rhokanson@nwrealtor.com) or Mike Spence, SKCR Legal Counsel, at [mspence@helsell.com](mailto:mspence@helsell.com) with questions.

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