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OFFICE OF THE CITY CLERK
OAKLAND

2016 DEC 29 AM 10:44

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Margaret L. O'Brien
Revenue & Tax
Administrator

SUBJECT: Supplemental Report Regarding Tax
& Fee Assessment On TNCs

DATE: January 10, 2017

City Administrator Approval

M. O'Brien for SBL

Date: 12/29/16

RECOMMENDATION

Staff Recommends That The Finance Committee Accept This Supplemental Report Regarding Tax And Fee Assessment On Transportation Network Companies ("TNC") Operating In The City Of Oakland.

REASON FOR SUPPLEMENTAL

At the January 26, 2016, meeting of the Finance Committee, the Committee directed the City Administrator and the City Attorney to explore all viable options for taxing TNCs and the drivers. Staff returned to committee on September 13, 2016 with options for the Committee to consider, (**Attachment A**). The Committee voiced concerns over the impact of paying the business license tax on the non-professional driver. The Committee requested that the City Administrator and the City Attorney seek ways to lower the tax burden on TNC drivers.

Transportation Network Companies ("TNC") Drivers, Business Tax Liability

City Administration met with a representative from Uber (a TNC) for preliminary conversation during development of this supplemental report. The representative noted that Uber is focusing its efforts at the State level. The Tax Administrator reached out to local jurisdictions and the conversation is beginning around a regional approach to taxation. However, given the number of possible jurisdictions involved and the variety of business taxation approaches, this conversation is just beginning.

Pursuant to Oakland Municipal Code ("OMC") Section 5.04.100- *New Business Registration*, TNC drivers applying for a business tax certificate, for a newly established business, shall pay an initial registration fee of the amount set forth in the City of Oakland Master Fee Schedule within thirty (30) days from the date of commencement of business activity. Currently, the total registration fee is \$91.

The Tax Administrator has determined that TNC drivers, who generate revenue derived from the business activities of picking-up fares in Oakland, are subject to the City's Business Tax.

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Best Fit

The TNC driver best-fit category is within OMC Section 5.04.410-*Transportation of Persons and Goods*, at a flat tax rate of \$72 for this category.

- Historically, the City has never apportioned revenues derived from a flat tax category. We are still researching the legality of applying apportionment to this category and should have a preliminary response by April 2017.
- The Small Business Exemption is not applicable to this business category because it pays at a flat tax rate and does not allow application of gross receipts tax to revenue generated from drivers in Oakland.
- Amending the Business Tax Ordinance to include a tax rate for a sub-category specific to TNC drivers may require voter approval. Additional research and discussion is required.
- The total cost to a driver who picks up fares in Oakland under this classification is:
 - \$167 for the first year. (\$91 registration fee + \$72 business tax fee + \$3 State mandated fee and technology fees)
 - \$75 for each successive year. (\$72 business tax fee + \$3 State mandate and technology fee)

Independent Contractor

However, TNC drivers are also independent contractors. Thus, TNCs drivers could fit within OMC Section 5.04.330-*Business and Personal Services* category, allowing the application of gross receipts tax to revenue generated from drivers who pick up fares in Oakland. Although the business and professional services tax category does not specifically list drivers, specific reference to driving passengers is not necessary for an activity to be classified as a business or personal service. The tax applied to an activity should most closely describe the taxpayer's business activity compared with other taxes. This business category is eligible to file annually for an exemption if the driver's annual gross receipts does not exceed \$3,100 and meets the requirements of OMC Section 5.04.620-*Small Business Exemption*.

- Drivers would pay a gross receipts tax of \$1.80 per \$1,000.
- Drivers whose gross receipts are \$33,335 or less would pay \$60.
- Apportionment would apply and be reviewed at the driver's request for annual gross receipts totaling more than \$33,335.
- Drivers whose gross receipts total less than \$3,100 per year would qualify for the small business exemption.
- The total cost to a driver who picks up fares in Oakland under this classification if they generate more than \$3,100 gross receipts:
 - *Minimum* \$154 for the first year. (\$91 registration fee + \$60 business tax fee+ \$3 State mandate and technology fees)
 - *Minimum* \$63 for each successive year. (\$60 business license tax fee + \$3 State mandate and technology fees)

Currently, TNCs such as Uber and Lyft do not provide the City with the names of their contractors and other necessary information required to do business in the City. Thus, the challenge for staff is identifying and noticing TNC contractors. To obtain this information the City Administrator could issue an administrative subpoena requiring TNCs to provide the names and other necessary information to the City to enable the enforcement of the City's Business Tax Ordinance. Alternately, the TNCs could provide the names of the drivers to the City or collect the business tax from the drivers on behalf of the City and remit the revenues to the City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends that the Finance Committee accept this Supplemental Informational Report Regarding Tax And Fee Assessment On Transportation Network Companies ("TNC") Operating in the City Of Oakland.

For questions regarding this report, please contact MARGARET O'BRIEN, Revenue & Tax Administrator, 510-238-7480.

Respectfully submitted,



MARGARET L. O'BRIEN
Revenue & Tax Administrator,
Revenue Management Bureau

Attachment (1):

*September 13, 2016 Finance Committee Supplemental Report Regarding
Tax & Fee Assessment On TNCs*

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January 10, 2017



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Attachment A

MID SEP - 1 AM 10: **AGENDA REPORT**

TO: Sabrina B. Landreth
City Administrator

FROM: Margaret L. O'Brien
Revenue & Tax
Administrator

SUBJECT: Supplemental Report Regarding Tax
& Fee Assessment On TNCs

DATE: August 21, 2016

City Administrator Approval

Date:

8/31/16

RECOMMENDATION

Staff Recommends That The Finance Committee Accept This Supplemental Report Regarding Tax And Fee Assessment On Transportation Network Companies ("TNC") Operating In The City Of Oakland.

REASON FOR SUPPLEMENTAL

At the January 26, meeting of the Finance Committee, the Committee directed the City Administrator and the City Attorney to explore all viable options for taxing TNCs and the drivers.

Transportation Network Companies ("TNC") Drivers, Business Tax Liability

The Tax Administrator has determined that TNC drivers who generate revenue derived from the business activities of picking-up and dropping-off fares in Oakland are subject to the City's Business Tax. The TNC drivers are classified under OMC Section 5.04.410-Transportation of persons and goods, and taxed at a flat rate of \$72 annually. Currently, TNCs such as Uber and Lyft do not provide the City with the names of their contractors operating in the City. Thus, the challenge for staff is identifying and noticing TNC contractors.

Staff recommends that the City Administrator issue an administrative subpoena requiring TNCs to provide the names and other necessary information to the City to enable the enforcement of the City's Business Tax Ordinance.

Transportation Network Companies, Business Tax Liability

TNCs are currently regulated by the California Public Utilities Commission ("CPUC"). After extensive research of the CPUC code, it is determined that the City cannot tax TNCs unless the TNC maintains an office in the City. The CPUC classifies TNCs as charter-party carriers.

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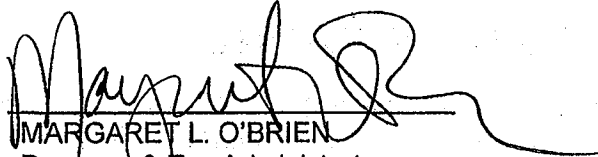
The Public Utilities Code prohibits a city from imposing a business license tax on a charter-party carrier operating limousines unless the company maintains a business office in the City. Furthermore, TNCs appear to operate as a "limousine" defined in CPUC code Section 5359(c).¹ Thus, under section 5371.4² of the CPUC code, the City cannot impose the business license tax until such time a TNC maintains an office within the City.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends that the Finance Committee accept this Supplemental Informational Report Regarding Tax And Fee Assessment On Transportation Network Companies ("TNC") Operating in the City Of Oakland.

For questions regarding this report, please contact MARGARET O'BRIEN, Revenue & Tax Administrator, 510-238-7480.

Respectfully submitted,


MARGARET L. O'BRIEN
Revenue & Tax Administrator,
Revenue Management Bureau

¹ "Limousine means any sedan or sport utility vehicle, of either standard or extended length, with a seating capacity of no more than 10 passengers including the driver, used in the transportation of passengers for hire on a prearranged basis [...]."

² "The governing body of any city [...] may not impose a fee on charter-party carriers operating limousines. However, the governing body of any city [...] may impose a business license fee on, and may adopt and enforce any reasonable rules and regulations pertaining to operations within its boundaries for any charter-party carrier domiciled or maintaining a business office within that city [...]."

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