

May 20, 2004

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OFFICE OF THE CITY CLERK
OAKLAND

2004 MAY 20 PM 4:11

Rockridge Neighbors for Fair Taxation
Contact: Lydia Gans, 6027 Ross Street, Oakland, CA 94618

RE: AB63 Business Tax Registration Project

Dear Councilmembers Brunner, Chang, De La Fuente and Wan:

We are among the 11,000 residents who received tax bills this year as a result of the AB63 Business Tax Registration Project, the recent initiative to collect business taxes in Oakland. We have no argument that Oakland ought to collect all the revenues legitimately due the city. We enjoy the benefits of living in Oakland, and, where appropriate, are happy to do our part to support them. We trust that, fundamentally, this effort is designed to benefit all Oakland residents. Instead, the method currently being used to collect this particular tax is alienating a large number of us. And that's not good for Oakland.

We have a number of difficulties with the way this tax is being assessed and the current effort to collect back taxes is being implemented. This letter outlines our principal common concerns: confusion about tax code semantics, legality and fairness of the tax regulations, and collection of back taxes with interest and penalties. Each is addressed below in more detail.

A. Communications About The Tax Obligation Are Confusing

In reviewing communications received from the City of Oakland, we feel the following items need clarification:

1. **Terminology:** Materials sent refer, in various places, to Business License, Business Tax Registration, Business Tax, and Business Tax Certificate or Certification. These terms are sometimes used as if they refer to different things and other times as if they were synonymous. The terminology is confusing. In some cases, the language may bear on who is required to pay these fees, but without consistent language and definitions, we cannot determine their meaning and applicability to each of our individual cases. In any case, it is unclear whether the city is permitted to collect business tax from an entity that it has not registered as a business, and whether many of the businesses requested to pay taxes would qualify for business registration.
2. **Business categories must be better defined:** Many people receiving the letters had no idea that they would be obligated to pay such taxes. As an example, one woman in our neighborhood is an art teacher (employed) but occasionally sells a painting on the side. Is this a business? She already collects and pays sales tax on her art. How about a retired person who does \$1000 worth of copy editing a year? How about a babysitter? Is it reasonable to expect these individuals to have known that Oakland would classify them as businesses?

6

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B. Oakland Tax Practices Are Unfair

1. ***It is unclear if Oakland's tax practices are consistent with state tax code:*** State law strictly limits licensing of businesses. Section 16000 of the California Business and Professions Code states that "...The legislative body of an incorporated city may, **in the exercise of its police power, and for the purpose of regulation,** as herein provided, **and not otherwise,** license any kind of business not prohibited by law transacted and carried on within the limits of its jurisdiction...and may fix the rates of the license fee and provide for its collection..."¹. Most of the residents who received business-tax bills for the first time this year do not conduct businesses that meet the state's criteria for licensing. Our self-employment activities neither require the exercise of police power nor are subject to regulation. We seriously question whether the city can legally collect business tax from an entity that it has not registered as a business.
2. ***The tax is regressive at the lower end:*** Oakland residents whose business income falls below a certain threshold level are nonetheless required to make a minimum payment, generally \$60 per year. This inflicts an unfair burden on those at the lowest income levels. Why should someone earning \$1000 in a given year be obligated to pay a \$60 tax? *We believe that those under a certain threshold level should not be obligated to pay the business tax; their income is insignificant and the tax burden is disproportionate.*
3. ***Business categories and tax rates are arbitrary:*** Some of the criteria for determining type of business appear arbitrary and unfair. For example, to qualify as an Administrative Headquarters, the business has to have other business offices outside of Oakland. However, some businesses have only an Oakland office but broker services primarily outside of Oakland. What makes one qualify as an Administrative Headquarters and not the other? Why do Business/Personal Services pay a rate that is half that for Professional/Semi-Professionals? Why Automobile Dealers even less? *Business categories should be made more consistent.*
4. ***Taxes should be based on income for work performed in Oakland:*** Section 16000 of the California Business and Professions Code states that "...any legislative body, including the legislative body of a charter city, that fixes the rate of license fees pursuant to this subdivision upon a business operating both within and outside the legislative body's taxing jurisdiction, shall levy the license fee so that the measure of the fee **fairly reflects that proportion of the activity actually carried on within the taxing jurisdiction...**"² This wording suggests that taxes should not apply to income earned outside of Oakland. Yet, Oakland is requesting taxes on 30 percent of such income. (Actually, this is being handled inconsistently. Some people who work outside Oakland called the tax office and were told not to pay. And people who don't know the state law may just pay the bill without asking whether out-of-city income is

¹ Bold added for emphasis

² Bold added for emphasis

exempt.) *Oakland business tax should pertain to business conducted in Oakland and only business conducted in Oakland.*

5. ***Taxes should be based on adjusted gross income:*** Currently, Oakland business tax is calculated based on gross receipts. All other taxes are calculated based on adjusted gross income, which takes into account the expenses paid in generating that income. The current structure arbitrarily and unfairly favors those engaged in businesses with low expense margins. *The City of Oakland should be consistent with Federal and State code, which base taxes on Adjusted Gross Income rather than on gross receipts.*
6. ***Double taxation on sub-contractors:*** Some businesses employ sub-contractors to perform some portion of the business' work. Where those sub-contractors are not located in Oakland, no portion of their work is performed in Oakland. The portion of the Oakland-based businesses operator's income involved in hiring and overseeing the sub-contractors is already addressed in their own business tax. Furthermore, the sub-contractors will be paying their own tax on the same income, resulting in double taxation, either in Oakland or—if the sub-contractors' is in a different location—in two or more different jurisdictions. *If the tax code is corrected to base Oakland business tax on adjusted gross income, this issue will be addressed. If not, it must be addressed by removing sub-contractors from the equation by subtracting them from gross receipts.*

C. Collection Of Back Taxes With interest And Penalties Is Inappropriate

1. ***Penalties are unfair:*** For those who were not aware of their obligation to pay taxes, and who paid them promptly upon being informed of them, we see no reason to impose punitive penalties and interest. Such measures should be reserved for those who willfully withhold payment after proper notification, with ample time to respond. Moreover, taxes should be collected only for the current year and moving forward, and not for past years where taxpayers were not aware of the obligation.
2. ***Deadlines for payment are unrealistic:*** Federal and state income tax is due on April 15. Most people prepare their taxes with this date in mind. Under the current guidelines, taxes to the City of Oakland are due January 1, with penalties imposed after March 2 and interest apparently accruing retroactively to January 1. We think it unrealistic to expect residents to make tax calculations in advance of April 15. *Taxes should be due April 15, with no penalties or interest accruing before that date.*
3. ***Request did not allow sufficient time to respond:*** Oakland residents believed to be responsible for taxes received a letter in early March (the letter was dated March 26, 2004) requesting payment of back taxes with a deadline of March 26, 2004. Responding to the letter required time for researching the code and obligations under it, as well as time to locate past tax returns and identify the required figures. Some needed to consult with tax preparers or accountants, others with attorneys or colleagues. For some, taxes and penalties over the four-year period involve a substantial financial burden. In the meantime, interest continued to accrue. We believe the requirement to respond so quickly is not justified.

4. ***Timing of request for back taxes is unreasonable:*** The March mailing and due date of the letter furthermore assured that every taxpayer owed penalties for the current tax year, as the deadline of March 26 was beyond the late payment date of March 2. Even those responding to the letter in a timely manner were assessed a 25% penalty and interest for the current tax year. We find this unconscionable.

In conclusion, we ask that you consider the following measures to make the Oakland Business Tax fair and reasonable to the residents it is designed to support:

1. Clarification of terminology and business tax categories.
2. Adjustment of Business Tax Classification Rates to make them more reasonable and consistent.
3. A legal review of the practice of collecting business tax from entities that California law forbids cities to license as businesses because they require no policing and receive no regulation.
4. A baseline threshold below which no taxes are due.
5. Restriction of Oakland Business Tax base to work performed in Oakland.
6. Taxes calculated based on adjusted gross income (net income) rather than on gross receipts. If taxes continue to be based on gross receipts, payments to subcontractors should be subtracted to avoid double taxation.
7. Begin taxation with the current year (2004), offering tax amnesty and relief of penalties and interest on back taxes from the time before residents were notified of their tax obligation.
8. No penalties for 2004, in which payment was demanded by March 26, which falls after the March 2 delinquency date.
9. A reasonable time period to bring current taxpayers into compliance with the tax, without payment of back taxes, penalties, or interest.
10. A future due date of April 15 for annual tax reporting and payment.

Thank you for your consideration.

Respectfully,

David Abel, Rephah Berg, Karen Carbone, Gail Coney, Lauren Elder, Ann Fox, Pete Fraser, Lydia Gans, Julie Harris, Nanci Hinks, Dan Holland, Harriet Kasden, Dee Dee Lozier, Claudia Mansbach, Sharon Miller, Susan Montauk, Pat Parker, Michael Reardon, Nancy Sale, Jennie Schacht, Carson Sipes, Elizabeth Watson, Patricia Whaley

Cc: Montclarion, Bruce Gerston

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May 13, 2004

Melinda Wagner
 President
 Musicians Union Local 6
 116 - 9th Street
 San Francisco, CA 94103

Re: City of Oakland Business License

Dear Ms. Wagner:

You have asked me to review the current Oakland City Business License to determine whether its application violates the state law.

The current city business license taxes those who have business in the City of Oakland. Some of your members have probably been taxed upon their income, including the income generated by musical performance outside of the City of Oakland. For example, you have some members who maintain their place of residence and business address in Oakland but who spend much of their time performing in other venues. The City apparently has attempted to tax them according to the total income.

To the extent that the city license tax imposes a rate which taxes the income received from outside the jurisdiction, this violates California Business & Professions Code §16000 (a). The state legislatures make clear that any such license tax may only be proportional to the activity carried on within the jurisdiction imposed in the license fee. Because many of your members perform this activity outside of the jurisdiction, the license fee cannot be based upon the total income already measured other than which fairly reflects the actual musical activity within the jurisdiction.

I am enclosing a copy of Business & Professions Code Section 16000 for your reference.

Sincerely,

David A. Rosenfeld
 David A. Rosenfeld

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