

CITY OF OAKLAND
Agenda Report

OFFICE OF THE CITY CLERK
OAKLAND

2005 DEC -1 PM 6:43

TO: Office of the City Administrator
ATTN: Deborah A. Edgerly
FROM: Finance and Management Agency
DATE: December 13, 2005

RE: **INFORMATIONAL REPORT ON THE BUSINESS TAX BOARD
OF REVIEW MEETING FOR THE FIRST QUARTER OF FISCAL
YEAR 2005-2006**

Attached is the first quarter report from the Business Tax Board of Review. A representative from the Board will be available to answer questions.

Respectfully Submitted,



WILLIAM E. NOLAND, Agency Director
Finance and Management Agency

Prepared by: Terry Adelman,
Revenue Manager
Revenue Division

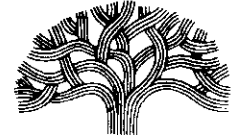
Attachments

APPROVED AND FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE


OFFICE OF THE CITY ADMINISTRATOR

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Finance and Management Committee
December 13, 2005

CITY OF OAKLAND



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December 13, 2005

HONORABLE CITY COUNCIL
Oakland, California

Subject: Informational Report on the Business Tax Board of Review Meeting for the First Quarter of FY 2005/2006

Members of the City Council:

This is an informational report on the Business Tax Board of Review meeting held during the first quarter of fiscal year 2005/2006. Per the request of the Finance and Management Committee, a brief narrative on the decisions by the Board, as well as appeals made by taxpayers, are outlined. The Business Tax Board of Review has convened one (1) regular meeting in the first quarter of fiscal year 2005/2006. The meeting was held on September 26, 2005. The following is a summary of the decisions rendered by the Board:

There were four (4) Board members present at this meeting, which was to hear a total of twelve (12) cases originally scheduled involving various disputes. The Board heard eleven (11) cases and one case was resolved before the hearing. In six (6) instances, the Board voted to deny the appellants' requests, in two (2) cases, the Board voted to grant the appellants' requests and in three (3) cases, the Board voted to refer them back to staff for further research and resolution. In four (4) cases, the appellants failed to appear, and the Board rendered its decisions in their absence, and in two (2) cases, the appellants requested a hearing without their presence. The eleven (11) cases heard were:

- 1) A request for exemption from the tax and subsequent waiver of the penalty and interest with respect to the AB63 issue. The appellant appealed her case to the Board because she was not aware she was actually conducting business in Oakland. Her argument was that she had an office in Berkeley and paid business taxes to them until the time she closed her business in January 2005. However, her income tax records also indicated a home office in Oakland; she claimed that only a very small amount of administrative work was done there. In addition, the appellant disputed the apportionment percentage as applied to her tax base. However, based upon the gross receipts originally reported, the appellant

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was already subject to the minimum tax and changing the tax base to reflect the apportionment would not change the liability due. *The Board was split on a 2-2 tie vote. Ultimately, they voted to refer this case back to staff to try to come to an agreement based on today's discussion. The Board also ruled that the appellant would have the option to re-appeal her case to the Board if no resolution can be reached.*

- 2) A request for a waiver of the penalty and interest on the delinquent business tax account, with respect to the AB63 issue. The appellant appealed his case to the Board because he was unaware of the City's business tax requirements on independent contractors. He said the majority of his work—done on a contractual basis—is in San Francisco but his Schedule "C" listed his Oakland home as his business office. However, his income tax returns did not indicate that he had claimed his home as the principle place of business nor was there a home-office deduction taken. *The Board, on a 4-0 decision, voted to grant the appellant's request for a waiver of the penalty and interest.*
- 3) A request for exemption from the tax and subsequent penalty and interest with respect to the AB63 issue. The appellant appealed her case to the Board because she was not aware she was actually conducting business in Oakland. She said she worked as an independent contractor for a company based in San Anselmo and that no work is done in Oakland. However, she stated that she used her home to store samples and thus claimed her Oakland home as the business address and also wrote off some home-office expenses on her tax returns. *The Board, on a 3-1 decision, voted to deny the appellant's request for an exemption from the tax and subsequent waiver of the penalty and interest.*
- 4) A request for exemption from the tax and subsequent penalty and interest with respect to the AB63 issue. The appellant appealed his case to the Board because he was not aware he was actually conducting business in Oakland. He is an English teacher and also plays the piano upon request, for which he receives a Form 1099. He said all of his performances are conducted outside of Oakland and the only expenses he takes are for parking at the airport and for meals while on the road. He said he does not use his home for business purposes and does not take any home-office deductions on his tax returns. *The Board, on a 4-0 decision, voted to grant his request for exemption from the business tax and subsequent penalty and interest as long as the situation does not change.*
- 5) A request for a change of tax base and subsequent tax. This case involved a general contractor and several sub-contractors who completed construction of an apartment complex. The general contractor is required to report and pay the tax on the total gross receipts of the project, including monies paid to their sub-contractors. In addition, each sub-contractor is also required to report their respective gross receipts and pay the appropriate tax. The appellant's attorney is arguing that this is double-taxation, in that the general contractor is merely a "conduit" for the monies received for their sub-contractors and should not be charged a business tax on money they did not actually receive. It was his position that the only gross receipts that the general contractor should report and remit the business tax for is the fee they charge to their sub-contractors. The City Attorney stipulated that the general contractor and each sub-contractor are separate legal entities and therefore subject to the tax as prescribed by the Business Tax ordinance.

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After further discussion, the Board, on a 4-0 decision, voted to have the appellant submit additional written argument to the City Attorney's office for further review within thirty (30) days of this hearing and to explore the idea of drafting a Revenue Ruling relative to this type of situation.

- 6) This appellant was not present at the meeting but did not notify the Board Secretary to request a postponement; the Board heard her case and made its decision in her absence. She was appealing the penalty and interest on her delinquent rental tax account because she was unaware of the City's business tax requirements on rental properties. *One Board member recused herself from the vote. The Board, on a 3-0 decision, voted to deny her request for a waiver of the penalty and interest.*
- 7) This appellant also was not present at the meeting but did not notify the Board Secretary to request a postponement; the Board heard his case and made its decision in his absence. A request for an exemption from the tax and subsequent waiver of the penalty and interest with respect to the AB63 issue. The appellant appealed his case to the Board because he was not aware he was conducting business in Oakland. The City stipulated that he had filed a Schedule "C" showing his Oakland home as his business address and also claimed car and truck expenses on his Schedule "C" as well. As per Publication 17 of the IRS Code, this deduction is allowed as long as one has an office in one's home that qualifies as a principle place of business. *The Board, on a 4-0 decision, voted to deny his request from an exemption from the tax and subsequent waiver of the penalty and interest.*
- 8) This appellant also was not present at the meeting, but had previously requested that his case be heard and decided upon in his absence. A request for an exemption from the tax and subsequent waiver of the penalty and interest with respect to the AB63 issue. The appellant appealed to the Board because he did not believe he was conducting any business activity in Oakland. He was an investment broker and had claimed he was receiving commissions from sales transactions consummated in prior years. His tax returns indicated that he had filed Schedule "C" forms for several years and claimed business expenses for that period of time. Although he did not take a home-office deduction, he did claim commuting expenses as well as other expenses on the Schedule "C". It was the City's position that a person cannot deduct expenses on a Schedule "C" unless he or she is in business. *The Board, on a 3-1 decision, voted to deny the appellant's request for an exemption from the tax and subsequent waiver of the penalty and interest.*
- 9) This appellant also was not present at the meeting, but had previously requested that her case be heard and decided upon in her absence. A request for an exemption from the tax and subsequent waiver of the penalty and interest with respect to the AB63 issue. The appellant had said that she was in the computer programming business and discontinued her business activity in 1999 at the time she moved to Oakland. However, it was the City's position that since the appellant had continued to file annual Schedule "C" forms after 1999 and also claimed depreciation and business expenses, she was subject to Oakland's business tax. As noted, one must be in business to be able to deduct expenses

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on one's tax returns. *The Board, on a 4-0 decision, voted to deny the appellant's request for an exemption from the tax and subsequent waiver of the penalty and interest.*

- 10) This appellant also was not present at the meeting but did not notify the Board Secretary to request a postponement; the Board heard her case and made its decision in her absence. A request for a waiver of the penalty and interest with respect to the AB63 issue. The appellant is a thespian by trade and furnished her annual gross receipts to the City upon request. She said she was unaware of the City's business tax requirements and requested that the penalty and interest be waived due to financial hardship, although she had paid the business tax account in full. The City's representative stated that the appellant did not furnish any tax returns; therefore, it could not be determined if she had taken a home-office deduction, which would subject her to the tax. She also had not given any indication that any or all of her performances take place in Oakland. *The Board, on a 4-0 decision, voted to refer this case back to staff, since information vital to making a final decision was missing.*

- 11) This appellant also was not present at the meeting but did not notify the Board Secretary to request a postponement; the Board heard her case and made its decision in her absence. A request for an exemption from the tax and subsequent penalty and interest, with respect to the AB63 issue. The taxpayer had stated in her appeal letter that she worked as a bar grader for the State of California and is an independent contractor. It was her belief that, since over 90% of her work took place outside of Oakland, she should either be exempt from the tax or be allowed to apportion her gross receipts to reflect 10% of the total earned. However, based upon the gross receipts originally reported, the appellant was already subject to the minimum tax and changing the tax base to reflect the apportionment would not change the liability due. It was the City's position that this appellant was in business since she had filed a Schedule C-EZ and Schedule SE (Self-Employment Tax) for several years and also used her Oakland home address as her business address. *The Board, on a 4-0 decision, voted to deny the appellant's request for exemption from the tax and subsequent penalty and interest.*

Respectfully Submitted,



JAY SHAH
Chairperson, Business Tax Board of Review