

CITY OF OAKLAND
AGENDA REPORT

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OAKLAND

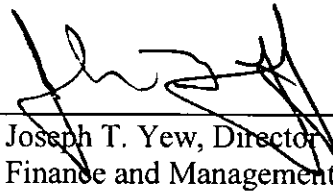
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TO: Office of the City Administrator
ATTN: Dan Lindheim, City Administrator
FROM: Finance and Management Agency
DATE: February 10, 2009

RE: **Information Report on the Business Tax Board of Review Meeting for the Fourth Quarter of Calendar Year 2008**

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

Respectfully submitted,

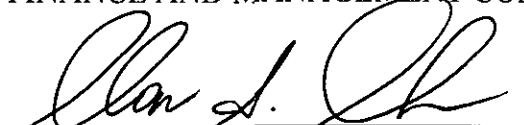


Joseph T. Yew, Director
Finance and Management Agency

Prepared by: Terry Adelman
Revenue Manager
Revenue Division

Attachments

FORWARDED TO THE
FINANCE AND MANAGEMENT COMMITTEE



Office of the City Administrator

Item: _____
Finance and Management Committee
March 10, 2009

HONORABLE CITY COUNCIL
Oakland, California

Subject: Information Report on the Business Tax Board of Review Meeting for the Fourth Quarter of Calendar Year 2008

Members of the City Council:

This is an informational report on the Business Tax Board of Review meeting held during the 4th quarter of calendar year 2008. 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 fourth quarter of calendar year 2008. The meeting was held on December 18, 2008. The following is a summary of the decisions rendered by the Board:

There were three (3) Board members present at this meeting, which was scheduled to hear four (4) cases. The Board heard all cases and three (3) were referred back to the Finance Director for resolution and one (1) decided in favor of the appellant. The four (4) cases heard were:

1 & 2) James Redmond and Cynthia Padnos - The issue before the Board was that the taxpayers feel that the City of Oakland has not established a sufficient nexus and that they were not noticed timely regarding their business tax accounts.

James Redmond requested to represent himself and his wife, Cynthia Padnos, who was not able to attend the meeting. All Board members agreed to hear the cases of James Redmond and Cynthia Padnos together, presented by James Redmond.

The taxpayers disputed that the City has or can establish sufficient nexus to justify the requirements of the City of Oakland business license tax regime. While their home is located in Oakland, their consulting work is highly mobile, conducted remotely primarily via laptop computers and mobile phones for clients that are entirely outside of the City of Oakland for Cynthia Padnos and a very small percentage for James Redmond.

After filing a Schedule C with their federal and state tax returns, the taxpayers were contacted by the City to provide a tax return sometime in 2003 or 2004. At that time, the taxpayers attempted to contact staff by means of phone calls and correspondence and stated their attempts were unsuccessful. In 2006, the taxpayers again attempted to contact Revenue staff and sought assistance through their City Councilmember. Taxpayers state that they received no response until April 2008 when they received a Notice of Determination.

The taxpayers stated that the basis of their complaint is that the Revenue Division's actions deprived them of the opportunity to resolve their issues at an earlier stage. Had they received any communication earlier, they feel they would have had the opportunity to make a decision to acquiesce and pay the taxes demanded, appeal for relief, and avoid interest and penalties.

Frank Mosley presented for the City stating that Revenue Ruling 30 of the Business Tax Ordinance applies to James Redmond and Cynthia Padnos. He stated that the factors that

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potentially mitigate the determination of the presence of the business did not apply. The taxpayers both filed form Schedule C as a part of their federal or state tax returns, suggesting they have a presence in the City of Oakland. Although there was some delay in processing, their cases started from a new beginning point and years that could have been assessed were left out so the City believes that all the penalties and interest assessed on the account to date are accurate. His compliance inquiry with the taxpayers began in 2003 and the penalties and interest were assessed only for years 2005-2008. Staff advised the Board that they had no record of earlier taxpayer contacts, however it was noted that given the thousands of calls and correspondence routinely received it's possible that there could have been a communications problem that contributed to a timely resolution of the case.

The Board found and determined that according to Revenue Ruling 30 of the Business Tax Ordinance, the tax does apply to the taxpayers. The taxpayers' business activity in the City of Oakland suggests the tax liability is appropriate. The Board also found that the taxpayers attempted to provide the Revenue staff with information to determine the business tax liability in a timely manner and that Revenue staff may not have acted in a timely manner for this specific incident. Therefore, the Board suggested that the cases be referred back to the Revenue Division for action in determining the liability for penalties and interest.

The Board voted 4 to 0 to refer the case back to the Finance Director for resolution. The Revenue Division, in consultation with the taxpayer, reduced the penalty and interest charges as a consideration for the alleged untimely communications and the case was settled.

3) Rathlin Properties, LLC - The issue before the Board was that Rathlin Properties LLC claimed waiver/relief of penalties and interest for delinquent business tax liabilities due for tax years 2006 and 2007.

The taxpayer built the property at 2300 Broadway, Oakland and sold 14 of the 25 units during 2006 and 2007. It was discovered on April 2, 2007 that the taxpayer had not registered for a business tax certificate for the business activity of real estate developer and was contacted by staff.

The taxpayer provided the sales receipts of the properties sold and had communicated with staff to send necessary documentation for registration and billing for business taxes due for the sale of the units. The taxpayer made attempts to contact city staff for follow up; leaving messages and stating that none were returned. Staff advised that it was possible that the information provided regarding the sale of the property may have been lost or misdirected during the peak workload period.

Pursuant to applicable provisions of Title 5, Chapter 5.04 Business Taxes Generally of the Oakland Municipal Code (OMC), notice was sent to the taxpayer with a tax liability was calculated through September 2008. The taxpayer paid the principal amount of the business tax and submitted an appeal to the Board contesting the application of penalties and interest.

The Board found and determined that the business tax is due. However, the evidence establishes that Rathlin provided staff with sufficient information to determine the business tax liability in a timely manner and that the business tax liability should be reviewed, taking

in to account that the lapse of time was not by the taxpayer. The matter was referred back for review and the liability should be adjusted and based upon a reasonable date supported by the date(s) of communication between the taxpayer and staff.

The Board voted 4 to 0 to refer the case back to the Finance Director for resolution. The Revenue Division revised the taxpayer's liability calculation and satisfactorily settled the case with the taxpayer.

4) 8th & Castro LLC – The issues before the board were whether 8th & Castro LLC was subject to application of delinquent business taxes, penalties and interest for the business activity of real estate developer due to non-registration .

The taxpayer built the property at 663-675 8th St., Oakland and sold 15 of the 18 units during 2003 and 2004. It was discovered on April 2, 2007 that the taxpayer had not registered for a business tax certificate for the business activity of real estate developer and was contacted by staff.

The taxpayer provided the sales receipts of the properties sold and had communicated with staff to send necessary documentation for registration and billing for business taxes due for the sale of the units. The taxpayer made attempts to contact city staff for follow up; leaving messages and stating that none were returned.

Pursuant to applicable provisions of Title 5, Chapter 5.04 Business Taxes Generally of the Oakland Municipal Code (OMC), notice was sent to the taxpayer with a tax liability was calculated through September 2008. The taxpayer paid the principal amount of the business tax and submitted an appeal to the Board contesting the application of penalties and interest.

The taxpayer's attorney argued the City could not collect the liability since it's out of the three years according to OMC § 5.04.240. He also stated that the City was aware that the taxpayer sold these units since it was written on the taxpayer's Business Tax Declaration for rental property, "Sold units in 2003, own only 3 now". In addition, the taxpayer faxed a letter to Revenue staff, itemizing and disclosing each of the 15 units sold.

Revenue staff rebutted that OMC § 5.04.240 applies if a business is registered; the statute of limitations would apply. This would be appropriate for their established account pertaining to rental property. The issue that was appealed is separate and the business activity of real estate development was established as a result of the taxpayer failing to register for and secure a business tax certificate per OMC § 5.04.210.

Three (3) board members voting for the taxpayer, found and determined that the evidence establishes that the taxpayer provided the revenue staff with sufficient information to determine the business tax liability in a timely manner and that revenue staff did not act in a timely manner for this specific incident.

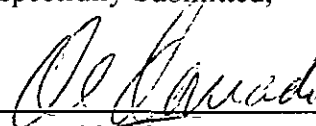
One (1) board member, voting for the City, found and determined that "The statute of limitations on an action by the city to collect unpaid taxes is tolled while the city is unaware of the existence or ongoing activities of a business due to the taxpayer's failure

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to obtain a business license and/or failure to comply with annual reporting requirements.” OMC § 5.04.240

The Board voted 3 to 1 in favor of the taxpayer, relieving them of the business tax liabilities due for the years 2003 and 2004.

Respectfully Submitted,



CHARLES CONRADI

President, Business Tax Board of Review