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CITY OF OAKLAND



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Office of the City Attorney
John Russo
City Attorney

November 6, 2007

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Honorable City Council
Oakland, California

Re: An Ordinance Amending Chapter 5.04 Of The Oakland Municipal Code In Order To Correct And Clarify Various Provisions Of The Business Tax Ordinance, To Establish A Late Filing Fee, To Remove Provisions From The Business Tax Ordinance That Are Obsolete Or Repealed By Operation Of Law Or Court Action, To Exempt Owners Of Low Income Housing Tax-Credit Financed Affordable Housing Developments From The Business Tax, To Grant The Director Of Finance Exclusive Discretionary Authority To Waive Penalties, And To Codify Certain Previously Adopted Business Tax Regulations And Policies Relating To Business Reporting And Other Business Tax Procedural Matters.

Dear President De La Fuente and Members of the City Council:

The Finance Committee has recommended against approval of staff's language included in section 4.05.630(B) at page 27 of the ordinance regarding tax exemptions for affordable housing. Staff's language allowed an exemption only if the entire project was comprised exclusively of low income affordable housing. The Finance Committee recommends that the exemption from the business tax be provided pro rata for any portion of the project that meets the specified affordability requirements.

Accordingly, the language the Committee recommended has been added to the ordinance in bold face on page 27 below the language that was included in the original ordinance that staff submitted.

Very truly yours,

John A. Russo
City Attorney

By: 

Kathleen Salem-Boyd
Deputy City Attorney

KSB:ww

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APPROVED AS TO FORM AND LEGALITY
Debbie C. P. Jackson
for KSB, CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER _____

OAKLAND CITY COUNCIL
ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING CHAPTER 5.04 OF THE OAKLAND MUNICIPAL CODE IN ORDER TO CORRECT AND CLARIFY VARIOUS PROVISIONS OF THE BUSINESS TAX ORDINANCE, TO ESTABLISH A LATE FILING FEE, TO REMOVE PROVISIONS FROM THE BUSINESS TAX ORDINANCE THAT ARE OBSOLETE OR REPEALED BY OPERATION OF LAW OR COURT ACTION, TO EXEMPT OWNERS OF LOW INCOME HOUSING TAX-CREDIT FINANCED AFFORDABLE HOUSING DEVELOPMENTS FROM THE BUSINESS TAX, TO GRANT THE DIRECTOR OF FINANCE EXCLUSIVE DISCRETIONARY AUTHORITY TO WAIVE PENALTIES, AND TO CODIFY CERTAIN PREVIOUSLY ADOPTED BUSINESS TAX REGULATIONS AND POLICIES RELATING TO BUSINESS REPORTING AND OTHER BUSINESS TAX PROCEDURAL MATTERS.

WHEREAS, the City Council of the City of Oakland desires to amend various sections of its Business Tax Ordinance, Chapter 5.04 of the Oakland Municipal Code (OMC) in order to correct and clarify various provisions of the Business Tax Ordinance that are obsolete or repealed by operation of law or court action, to establish a late filing fee, to remove provisions from the Business Tax Ordinance, to grant the Director of Finance exclusive discretionary authority to waive penalties in individual cases, and to codify certain previously adopted business tax regulations and policies relating to business reporting and other business tax procedural matters;

WHEREAS, specifically, the City Council desires to amend the Business Tax Ordinance:

- Clarifying that passive income is excluded from the definition of taxable gross receipts (OMC Section 5.04.030)
- Establishing a late filing fee to cover administrative costs, encourage timely reporting, and minimize unnecessary notifications and problem resolutions (OMC Section 5.04.080 C)
- Codifying of the tax regulation defining pro-ration of taxes for a business that intends to terminate operations and completes that termination prior to April 15th (OMC Section 5.04.090 C)
- Clarifying the requirement that a business that terminates on or before the end of the calendar year of the second year of business operations shall file an amended declaration within 30 days of cessation of business and pay any

second year tax based on the tax base and rate applicable for the period that the business was in operation (OMC Section 5.04.120)

- Requiring businesses ceasing business activity to notify the City within 30 days to avoid unnecessary billing and collection efforts (Section 5.04.095)
- Removing all provisions where a specific fee was stated and replacing said provisions with language that references said fees to those amounts set forth in the City of Oakland Master Fee Schedule (as amended from time to time)
- Clarifying 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 to obtain a business license and/or failure to comply with annual reporting requirements, and while an administrative appeal is pending (OMC Section 5.04.240)
- Clarifying that the business classification of Professional-semi professional connected business includes business management services (Section 5.04.340)
- Clarifies and confirms that the Director of Finance has the exclusive discretionary authority to waive penalties (OMC Section 5.04.520)
- Clarifies and codifies the limits of financial compensation to a taxpayer to the extent of the taxpayer's injury resulting from the event that a provision in this Chapter (Section 5.04, OMC) is found to be invalid (OMC Section 5.04.540)

WHEREAS, there is a dire need for affordable housing within the City of Oakland; and

WHEREAS, through the issuance of tax-exempt revenue bonds or other public financing vehicles, many nonprofit entities acquire, construct and/or rehabilitate affordable housing developments in the City; and

WHEREAS, pursuant to OMC Section 5.04.630, the City of Oakland exempts entities that qualify for nonprofit tax-exempt status from payment of business taxes; and

WHEREAS, for-profit developers that construct, acquire and/or rehabilitate affordable housing developments within the City using federal and/or state low income housing tax credits received in connection with the affordable housing developments are not exempt from the payment of business taxes; and

WHEREAS, low income housing tax credit financings are typically structured as limited partnerships or limited liability companies between nonprofit developers and for-profit investors; and

WHEREAS, the low income housing tax credit programs are administered by the Internal Revenue Service and/or the State of California, and require the same long-term affordability requirements and restrictions on monthly rent and occupant income as a development financed with tax-exempt bonds and other public financing vehicles; and

WHEREAS, the City desires to eliminate the disparate treatment between multifamily residential rental housing developments financed with tax-exempt bonds and multifamily residential rental housing developments financed with federal and/or state

low income housing tax credits, the owners of tax-credit financed multifamily residential rental housing developments and extend the exemption from payment of business taxes to owners of certain low income housing tax-credit financed affordable housing developments; now, therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds and determines the forgoing recitals to be true and correct and hereby adopts and incorporates them into this Ordinance.

SECTION 2. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers, titles, and alternatively proposed amendments are indicated in **bold type**; additions are indicated by underscoring and deletions are indicated by ~~strike-through type~~; portions of the regulations not cited or not shown in underscoring or strike-through type are not changed.

SECTION 3. Chapter 5.04 of the Municipal Code is hereby amended in its entirety to read as follows:

5.04.010 Short title.

This chapter shall be known as the business tax ordinance.

5.04.020 Business tax.

It is unlawful for any person, either for himself or herself or for any other person, to carry on any business taxed pursuant to this chapter in the city, without procuring a business tax certificate from said city; and the carrying on of any business without procuring a certificate from said city shall constitute a violation of this code, for each and every day that such business is so carried on.

5.04.030 Definitions.

Except where the context otherwise requires, the following terms shall, for the purposes of this chapter, have the following meanings:

"Business" means any activity, enterprise, profession, trade or undertaking of any nature conducted or engaged in, with the object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or others. Business shall include any transaction which is or which, in effect results in, a sale, but shall not include the services rendered by an employee to his or her employer.

"Certificate" means business tax certificate.

"City" or "city" means the ~~city~~ City of Oakland.

"Engaging in business" means commencing, conducting or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

"Gross receipts," except as otherwise specifically provided, means the taxpayer's gross receipts of the preceding fiscal year ~~of the taxpayer~~ or part thereof, and is defined

as follows: the total amount actually received or receivable from all sales; the total amount or compensation actually received or receivable for the performance of any act or service, of whatever nature it may be, for which a charge is made or credit allowed, whether or not such act or service is done as a part of or in connection with the sale of materials, goods, wares or merchandise; discounts, rents, royalties, fees, commissions, dividends, and gains realized from trading in stocks or bonds, or other emoluments, however designated.

Included in "gross receipts" shall be all receipts, cash, credits and property of any kind or nature, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, or losses or other expenses whatsoever, except that the following shall be excluded therefrom:

1. Cash discounts allowed and taken on sales;
2. Credit allowed on property accepted as part of the purchase price and which property may later be sold, at which time the sales price shall be included as gross receipts;
3. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
4. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
5. Receipts from investments where the holder of the investment receives only interest and/or dividends, royalties, annuities and gains from the sale or exchange of stock or securities solely for a person's own account, not derived in the ordinary course of a business;
6. Receipts derived from the occasion sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;
7. Cash value of sales, trades or transactions between departments or units of the same business;
8. Receipts of community chest funds, foundations or corporations organized and operated for religious or charitable purposes, which are not conducted for profit and no part of the net earnings of which inures to the benefits of any private shareholder or individual;
9. Receipts of nonprofit educational institutions of collegiate grade, defined herein to mean institutions incorporated as colleges or seminaries under the laws of the ~~state~~ State of California; receipts of nonprofit secondary schools which are duly accredited by the University of California, and receipts of nonprofit elementary schools in which instruction is given to students in the preprimary grades in the several branches or studies required to be taught in the public schools of the ~~state~~ State of California;
10. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year

they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;

11. Transactions between partnership and its partners;

12. Receipts from services or sales in transactions between affiliated corporations. An affiliated corporation is a corporation:

- a. The voting and nonvoting stock of which is owned at least eighty (80) percent by such other corporation with which such transaction is had, or
- b. Which owns at least eighty (80) percent of the voting and nonvoting stock of such other corporation, or
- c. At least eighty (80) percent of the voting and nonvoting stock of which is owned by a common parent corporation which also has such ownership of the corporation with which such transaction is had.

13. Transactions between a limited liability company and its member(s), provided the limited liability company has elected to file as a subchapter K entity under the Internal Revenue Code and that such transaction(s) shall be treated the same as between a partnership and its partner(s) as specified in subsection 11 above.

"Newly established business" is defined as:

1. A business in operation in the city for the first time;
2. An additional location of an existing business, which location goes into operation in the city for the first time;
3. A business which resumes operation in the city after having been out of operation in the city during the entire previous tax year; or
4. An existing business in the city which in a single tax year sells eighty (80) percent or more of its ownership to the same person, except that such sale shall not create a newly established business if the sale is:

- a. ~~One~~ between departments or units of the same business, or
- b. ~~One~~ between a partnership and its partners, and or
- c. ~~One~~ between "affiliated corporations" as that term is defined in subsection 12 above. ~~of the "gross receipts" definition, such sale shall not create a newly established business.~~

"Person" or "persons" means any natural person, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, limited liability company, municipal corporation, political subdivision of the state of California, domestic or foreign corporation, association, syndicate, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, and the United States or any instrumentality thereof; and any natural person, who as an individual or with a spouse, owns fifty-one (51) percent or more of the capital stock of a corporation obligated to file a declaration and pay tax pursuant to this chapter; and in addition, is a

person with the power to control the fiscal decision-making process by which the corporation allocates funds to creditors in preference to its tax obligations under the provisions of this chapter.

A person as defined herein, who is also an officer or director of a corporation obligated to file declarations and pay tax pursuant to this chapter, shall be presumed to be a person with the power to control the fiscal decision-making process. Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term as applied to association shall mean the owners or part owners thereof, and as applied to corporation, the officers thereof.

"Sale" and "sell" shall be deemed to include and refer to: The making of any transfer of title, in any manner or by any means whatsoever, to property for a price, and to the serving, supplying or furnishing, for a price of any property fabricated or made at the special order of consumers who do or do not furnish directly or indirectly the specifications therefor. A transaction whereby the possession of property is transferred, but the seller retains the title as security for the payment of the price, shall likewise be deemed a sale. ~~The definition of "business" shall not be deemed to exclude any transaction which is or which, in effect, results in a sale within the contemplation of the law.~~

Shall and May. "Shall" is mandatory, "may" is permissive.

5.04.040 Separate certificate for each place of business.

A separate certificate must be obtained for each and every business activity at each and every branch establishment or separate place of business at which such of which a business activity takes place. Notwithstanding the previous sentence, a separate certificate shall not be required for each separate business activity if such activity produces less than twenty percent (20%) of the total gross receipts for all business activity at such place of business.

5.04.050 Revenue measure only does not permit business otherwise prohibited.

The taxes prescribed by the provisions of this chapter constitute a tax for revenue purposes, and are not regulatory permit fees. The payment of a business tax required by this chapter, and its acceptance by the city, and the issuance of a certificate to any person shall ~~not entitle the holder thereof (1) to carry on any business unless he or she has complied with all of the requirements of this Chapter and all other applicable laws, nor (2) to carry on any business activity in any building or on any premises designated in such business tax certificate in the event that such business activity in the building or premises are situated in a zone or locality in which the conduct of such business is in violation of violates any law.~~

5.04.070 Contents of certificate.

Every person required to have a certificate under the ~~business tax provisions~~ of this chapter shall make application for the same to the Business Tax ~~Division Section~~ of the city, and upon payment of the prescribed tax to said Division, said Division shall issue to said person a certificate which shall contain (A) the name of the business; (B) the place where the business is to be carried on; (C) the ~~type of business activity~~; (D) the date of the expiration of such certificate; and such other information as the ~~business tax division Business Tax Section~~ shall determine.

5.04.080 Annual certificate.

A. All ~~annual~~ business tax certificates issued under this chapter, shall be issued on a calendar year basis and shall be considered to be issued on January 1st of each year and shall expire on December 31st of the same year.

B. The Director of Finance may refuse to issue to any person another certificate for the same or any other business until such person has filed all declarations for prior years as required by this Chapter and has paid all liabilities taxes in full.

C. Every person who, without an extension authorized by the Director of Finance, fails to timely file any regular or amended business tax declaration and/or statement of renewal shall pay a late filing fee of fifty dollars (\$50) or in the amount set forth in the City of Oakland Master Fee Schedule (as amended from time-to-time).

5.04.090 Statement for renewal of business tax certificate.

A. Every person who is conducting ~~their~~ usual and customary business activities on January 1st of the current tax year shall pay the annual business tax in full, without proration, and shall, before the business tax become delinquent, file with the Business Tax Section a written statement setting forth the then applicable factor or factors that constitute the measure of the tax, together with such other information as shall be required by the business tax section to enable it to administer the provisions of this chapter and shall pay at such time the amount of the tax computed thereon.

B. The written statement provided for herein shall be on a form prescribed by the Business Tax ~~Division~~ Section and shall include a declaration substantially as follows:

I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct.

C. For purposes of this section, a taxpayer did not intend to carry on "usual and customary business activities" beyond December 31st of any given year if: (1) it is established by written documentation (i.e., opening escrow, bill of sale, etc.) that the taxpayer was in the act of selling, liquidating, transferring or otherwise permanently disposing of its business on or before December 31st of the year preceding the calendar year such business was terminated or transferred. Such transfer, if any, may not be made to a related business with more than 50% financial or equity interest in the business being terminated or transferred; and, (2) such termination, liquidation, transfer or disposition is final with no gross receipts either received or attributable to the taxpayer eligible for the subject proration as of the 15th day of April of the calendar year after action to terminate, transfer, liquidate or otherwise dispose of the business was initiated.

D. Notwithstanding the date provided herein for the payment of tax due hereunder section 5.04.190, the Director of Finance is authorized in the exercise of reasonable discretion to grant extensions not in excess of forty-five (45) days for the payment of such tax and for the making and filing of such declaration. In no event will such an extension be granted for an annual tax on any written application received after the annual March 1st deadline. No penalty shall be added to the amount due and

payable if, and only if, said tax is paid within the extension period granted by the Director of Finance, but during such extension period the amount which is the subject of the extension shall bear interest beginning with the original due date to the date of filing of declaration and payment at the rate of one ~~and one-half~~ percent per month or fraction thereof, notwithstanding the granting of the extension by the Director of Finance.

E. Taxpayers who are unable to provide final figures in order to timely file the business tax declaration must file an estimated return, following the procedures established by the Director of Finance.

5.04.095 Notice of business termination.

Any business that ceases their normal and customary business activities must notify the Business Tax Section within thirty (30) days of cessation of business activities. This notification must be in writing and signed by the registered business owner or authorized agent. Failure to file a timely notification will be subject to a late filing fee as specified in Section 5.04.080(C).

5.04.100 New business registration.

Every person applying for a first certificate for a newly established business shall pay a registration fee in the amount set forth in the City of Oakland Master Fee Schedule (as amended from time-to-time) of thirty dollars (\$30.00) within thirty (30) days from the date of commencement of business activity. The purpose of this fee is to offset a portion of the administrative costs. Failure to register shall subject the taxpayer to penalty and interest as provided for by Sections 5.04.190 and 5.04.230, respectively.

5.04.110 First year estimated tax.

Upon making application for the first certificate to be issued for a newly established business, an applicant may furnish to the Director of Finance, for guidance in ascertaining the amount of tax to be paid, a written statement, upon a form provided by the Director of Finance, setting forth such information as may be required to properly determine the amount of the tax liability at the time of the statement.

The applicant may estimate gross receipts, gross payroll, average number of employees, value added, manufacturing expense, number of permits or number of vehicles (hereinafter referred to as "tax base"), for the period covered by the certificate to be issued. Such estimate, if accepted by the Director of Finance as a reasonable one, shall be used in determining the amount of tax to be paid by the applicant; if such estimate is found to be unreasonable or the applicant elects not to estimate the tax base, the Director of Finance ~~may~~ shall use the average tax base for the industry. Said industry code ~~Industry Code~~ average is to be prorated on a one-twelfth basis for each month remaining in the calendar year in which the newly established business commences. The estimated tax is determined by multiplying the tax rate times the tax base applicable to the business classification.

The applicant may ~~either pay the full estimated tax at the time of registration or pay the amount of estimated tax in quarterly increments with the first quarterly payment due and payable at the time of registration;~~ or the taxpayer may elect to file and pay the first year tax on or before March 1st of the second year.

If the business terminates on or before the end of the calendar year in which the business began, the taxpayer shall file an amended declaration within thirty (30) days for the of cessation following the procedures established by the Director of Finance and pay a first year tax based upon the tax base and rate applicable to the business classification for the period that the business was in operation.

5.04.120 Second year renewal tax.

If the business continues operation after December 31st of the year in which it began, the taxpayer shall file a renewal declaration and pay by March 1st the full amount of the renewal tax. The second year renewal tax shall be based upon an estimate of or the actual tax base for a twelve (12) month period or shall be based upon any factual information which is in the Director of Finance's possession or which may come into the Director's possession, and shall be determined by the rate applicable to the business classification. If the taxpayer elects not to estimate or if the estimate submitted is determined to be unreasonable, the average tax base as set forth in Section 5.04.110 shall apply.

If the business terminates on or before the end of the calendar year of the second year, the taxpayer shall file an amended declaration within thirty (30) days of cessation following the procedures established by the Director of Finance and pay any second year tax based upon the tax base and rate applicable to the business classification for the period that the business was in operation.

5.04.130 Declaration, additional statement by applicant for first renewal business tax certificate.

In addition to the information required to be included in the written statement of the applicant for a first business tax certificate and of the taxpayer for a renewal of certificate, as provided in Sections 5.04.090, each applicant who is subject to the contractors license law, shall state that he is licensed under such law, that this license is in full force and effect, and the number thereof.

5.04.140 Declaration--Confidential documents.

The statements filed pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration of this chapter.

Any officer or employee who shall willfully violate any provision of this section shall be deemed guilty of an infraction, and such violation shall be cause for discharge from the city's service.

5.04.150 Disclosure of business taxpayers, etc. limitation on rule.

Notwithstanding any other provision of any city ordinance, the Director of ~~the Office of Budget and Finance~~ is authorized to enter into agreements with the California Franchise Tax Board, the State Board of Equalization, and/or the Internal Revenue Service providing for the exchange of information for official purposes of said agencies, and to implement any such agreement through the exchange of information.

5.04.151 Tax abatement and liability caps.

A. For years one through ten, starting with the first year the business is enrolled in the tax abatement program, the annual tax liability of a taxpayer within the targeted industries designated below will be calculated as per the rate applicable to that industry. Once calculated, a reduced tax liability will be determined by applying the percentage, as per Schedule A, to the initial calculation above. This reduced figure will not exceed the current cap in effect adjusted by the CPI as described in subsection B of this section.

B. The business tax will be capped at one hundred fifty thousand dollars (\$150,000.00) for all new and existing businesses whose business activity is classified by the ~~Financial Services~~ Finance and Management Agency to be within one of the five targeted industries (food processing, transportation, bioscience/biotechnology, software/multimedia, and telecommunications). Thereafter, the cap will be adjusted every odd year to reflect cost of living increases as reflected in the Consumer Price Index for Urban Consumers (CPI-U).

C. All new businesses in one of the five targeted industries shall be eligible to receive a phased-in abatement of their business tax for a period of ten years (see Schedule A). The abatement will amount to a tax calculated in increments of ten percent of the full tax liability annually until the full tax liability without abatement is reached. In the eleventh year, the business shall pay the full measure of tax that is then applicable to the taxpayer pursuant to this Chapter ~~the Business Tax Ordinance~~, provided that the tax does not exceed the current cap in place. There will be no collection of that portion of taxes abated during the prior ten years.

D. A new business is defined as one conforming to the provisions of Section 5.04.030 of this code, except the following shall be excluded therefrom:

1. An existing business that changes its business name, but does not satisfy change of ownership requirements under Section 5.04.030 of this code;
2. A business that does not conform to the provisions of the Business Tax Ordinance by the March 1 following its application to the program;
3. A business of short term, promotional or infrequent event in nature;
4. Building contractors (general or subcontractor) who establish a location within the city for the sole purpose of obtaining and/or working on a job(s) in Oakland.

E. If application to the tax abatement program is received between January 1 and March 1 of any year, the calendar year the application is received will be the "effective year" for purposes of the tax abatement program. If application to the tax abatement program is received at any time between March 2 and December 31, the "effective year" for such business will be the immediately succeeding calendar year.

F. Any existing business in one of the targeted industries also would be eligible for an abatement of its business tax liability. The gross receipts total for the calendar year twelve-month period of business activity preceding a businesses enrollment in the tax abatement program is used to determine the base-year business tax liability (or "benchmark") for an existing business. The benchmark for a new business is sixty dollars (\$60.00). This benchmark does not change and to be the base tax liability to which the following abatement is added: any tax due on growth beyond the benchmark would be prorated at ten percent of this growth factor per year for the next ten consecutive years (see Schedule B). In the eleventh year, the business shall

pay the full measure of tax that is then applicable to the taxpayer's industry classification pursuant to ~~this Chapter the Business Tax Ordinance~~, provided the tax does not exceed the applicable cap in effect at the time.

Notwithstanding anything in this Section to the contrary, if the tax liability for a business participating in the tax abatement program would exceed the tax liability for said business without regard to the tax abatement program, said business shall pay the lesser of the two.

G. No business incentive shall apply to a business that is (or has been at any time during the immediately preceding 3-year period prior to applying for the tax abatement program) delinquent or is identified through the city's noncompliance program.

H. A business may only apply participate once for in the tax abatement program.

I. In order to determine eligibility for the tax abatement program, a business must first complete and submit an application to the Business Tax Section. A business will be enrolled in the tax abatement program, only upon approval of the application by the Director of the Finance and Management ~~Financial Services~~ Agency or her designee. An application may be obtained from the City of Oakland, Finance and Management ~~Financial Services~~ Agency, Business Tax Section, 250 Frank H. Ogawa Plaza, Suite 1320, Oakland, California 94612, (510) 238-3704.

J. Tax incentives are applicable to any firm in one of five targeted industries:

1. Food processing
2. Telecommunications;
3. Transportation;
4. Bioscience/biotechnology;
5. Software/multimedia.

Schedule A

BLT Payment Schedule for New Businesses	Year Effective
\$60	Year 1
10% of tax due above benchmark	Year 2
20% of tax due above benchmark	Year 3
30% of tax due above benchmark	Year 4
40% of tax due above benchmark	Year 5
50% of tax due above benchmark	Year 6

60% of tax due above benchmark	Year 7
70% of tax due above benchmark	Year 8
80% of tax due above benchmark	Year 9
90% of tax due above benchmark	Year 10
Firm pays full tax liability, not to exceed the cap	Year 11

Schedule B

BLT Payment Schedule for Existing Businesses	Year Effective
Benchmark** (which never changes)	Year 1
Benchmark + 10% of tax due above benchmark	Year 2
Benchmark + 10% of tax due above benchmark	Year 3
Benchmark + 10% of tax due above benchmark	Year 4
Benchmark + 10% of tax due above benchmark	Year 5
Benchmark + 10% of tax due above benchmark	Year 6
Benchmark + 10% of tax due above benchmark	Year 7
Benchmark + 10% of tax due above benchmark	Year 8
Benchmark + 10% of tax due above benchmark	Year 9
Benchmark + 10% of tax due above benchmark	Year 10
Firm pays full tax liability, not to exceed the cap	Year 11

** The benchmark for calculating the base-year tax liability of an existing business is defined as the gross receipts total for the calendar year preceding a business enrollment in the tax abatement program.

The benchmark for a new business is \$60.00

The city relies on the integrity of the taxpayer in the filing of business tax declarations and, therefore, if a subsequent audit reveals that a taxpayer has misreported or underreported ~~been misreporting or underreporting~~ the measure of the tax, the benchmark is subject to change or this incentive cancelled.

K. The first and second year taxes to be paid by new businesses enrolled in the tax abatement program shall be calculated in accordance with Sections 5.04.110 and 504.120 of this Chapter.

L. The last date for enrollment in the tax abatement program provided in this Section is December 31, 2003, unless extended by the City Council of the City of Oakland.

5.04.152 Review and modification of policy.

A. City staff shall review the impact of the policy every three years and to recommend changes if necessary. If the City Council modifies the program or policy, such changes would apply only to new and existing businesses not yet covered by the policy. Any abatement agreements between the city and individuals or corporate entities already in force at the time of the review will not be modified.

B. Any abatement agreements between the city and an individual or corporate entity will be guaranteed for the life of the policy except in the event of natural disaster or other crises during which the city may be at risk due to limited resources to cope with the disaster or crisis. At such time, the City Council may terminate the abatement program if it is in the best interest of the city to do so.

C. City staff shall review the level of the business license cap every odd year following the inception of the program and adjust it to reflect cost of living increases as reflected in the Consumer Price Index for Urban Consumers (CPI-U).

**5.04.160 Procedure for Changes to Transfer of business tax certificate.
~~procedure.~~**

No certificate granted or issued under the business tax provisions of this chapter shall be in any manner transferred or assigned, or authorize any person other than the person named in the certificate to carry on the business therein named or to transact such business in any place other than the place or location therein named without the written consent of the ~~business tax division~~ Business Tax Section endorsed thereon. At any the time such certificate is assigned or transferred or the place of location for the carrying on of such business and/or the business name is changed, the person applying for such transfer or change shall pay to the ~~business tax division~~ Business Tax Section a fee in the amount set forth in the City of Oakland Master Fee Schedule (as amended from time-to-time) of ~~fifteen dollars (\$15.00)~~ for each assignment or transfer.

**5.04.170 Business tax certificate to be conspicuously posted--
Exception.**

Every person having a business tax certificate and carrying on a business at a fixed place of business shall keep such certificate conspicuously posted and exhibited while in force in ~~some conspicuous~~ a part of said place of business accessible to the view of the public.

Every person having such a certificate and not having a fixed place of business shall carry such certificate with him or her at all times while carrying on the business for which the same was granted.

5.04.180 Lost certificate.

The Business Tax ~~Division~~ Section shall issue a duplicate business tax certificate to replace any certificate issued under the ~~business tax~~ provisions of this chapter ~~which that~~ has been lost or destroyed at no cost to the taxpayer for the first duplicate certificate. Each replacement certificate issued thereafter will be issued ~~at a cost of twenty five dollars (\$25.00)~~ for the amount set forth in the City of Oakland Master Fee Schedule (as amended from time-to-time).

5.04.190 Penalty for nonpayment of annual business tax.

A. The following are declared delinquent:

1. Every annual business tax or portion thereof that is not paid on or before March 1st of each year; and

2. Every registration fee and portion thereof for a newly established business, as defined in Section 5.04.030 that is not paid within thirty (30) days after commencing business.

~~B. In the case of a delinquent annual tax liability incurred prior to January 1, 1993, the aggregate total of all applicable penalties shall be:~~

~~March 2nd - April 1st 10%~~

~~April 2nd - May 1st 25%~~

~~May 2nd and thereafter 50%~~

~~BC. In the case of delinquent annual tax liability arising after January 1, 1993, the~~ The aggregate total of all applicable penalties shall be:

~~March 2nd--May 1st 10%~~

~~May 2nd and thereafter 25%~~

CD. For newly established businesses, the aggregate total of all penalties shall be:

1 day delinquent--60 days delinquent. . . 10%

61 days delinquent and thereafter. 25%

DE. Proof of payment of Business Tax or Registration Fee. If a dispute arises regarding the date a payment was received by the city, the burden of proof is on the taxpayer. Only the following are considered proof of timely payments:

1. ~~Cash register receipt issued by the city's Office of Finance~~ City of Oakland through an authorized employee to those taxpayers making payment in person at 250 Frank H. Ogawa Plaza, Suite 1320, Oakland, California City Hall;
2. Certificate of mailing issued by the U.S. Post Office;
3. Certificate of registered or certified mail issued by the U.S. Post Office;
4. Receipt of delivery to private mail services; or
5. Postmark issued by the U.S. Post Office.

~~F. For those taxpayers who either paid penalties on their 1987 business tax or who are liable for penalties in 1987 due to nonpayment of their 1987 business tax, the following special dispensations will be effective during the grace period herein prescribed:~~

- ~~1. All penalties applicable to business tax accounts for the 1987 tax year will be waived if the full business tax owing and its concomitant interest accrued to date are received during the thirty (30) day period allowed.~~
- ~~2. Payments for penalties received prior to the enactment date of this amendment will be carried as a credit in such amount toward each business tax account for the 1988 business tax year. Interest received on 1987 payments are not subject to this credit to accounts.~~
- ~~3. In order to qualify for the applicable waiver or credit of penalties, the following criteria must be met by business taxpayers:
 - ~~a. Their business tax account is current as of December 31, 1986 with all taxes (penalties and interest if applicable) paid for years 1984 through 1986. A taxpayer who is not current for these years because of lack of notification is not considered to have a current account.~~
 - ~~b. If a taxpayer has more than one business tax account, each account stands alone in determining whether it is current or not. A taxpayer who files combined gross receipts as provided by Section 5.04.450 is considered to have one account.~~
 - ~~c. To avoid a penalty for unpaid 1987 business tax, payment must be received by the city's Revenue Division on or before July 15, 1987.~~~~

~~G. For those registered or non-registered businesses that are liable for late registration and/or renewal penalty and interest assessments for the current and/or prior years, the following special dispensation will be effective during the grace period herein prescribed:~~

- ~~1. All penalties applicable to business tax accounts for current and/or prior tax years will be waived if the full business tax and interest assessments are paid during the two month period allowed, from June 19, 1989 through August 19, 1989.~~

~~H. For those property owners engaged in the renting or leasing of single-family houses or dwellings, townhouses, duplexes, co-operatives, condominiums, triplexes and fourplexes who are liable for late registration and/or renewal penalty assessments for the current and/or prior years, the following special dispensation will be effective during the grace period herein prescribed:~~

- ~~1. All penalties and interest on penalty applicable to the business tax accounts for current and/or prior years will be waived if the full business tax is or has been paid during the amnesty period allowed, from January 1, 1991 through October 15, 1991.~~
- ~~2. Any penalty and interest on penalty amount(s) paid by the taxpayer during the amnesty period on the business tax liability will be refunded.~~

~~I. For those registered or nonregistered property owners engaged in the renting or leasing of one and only one property, classified and defined under the Alameda County Assessor's Office Use Code (said use code shall govern the property classification regardless of how an owner utilizes such building structure) as a single-family house or dwelling, townhouse, duplex, cooperative, or condominium, the gross~~

receipt of which is not required to be combined for business tax purposes as provided under Section 5.04.450, the following penalty shall apply:

1. ~~In the case of a delinquent annual tax, the aggregate total of all penalties are to be:~~

~~For payments received March 2nd - May 1st 10%~~

~~For payments received May 2nd and thereafter 25%
(maximum rate)~~

2. ~~For newly established residential rental business qualifying under this provision, the aggregate total of all penalties for late registration are to be:~~

~~For payments received 1 day - 60 days delinquent 10%~~

~~For payments received 61 days delinquent and thereafter 25%
(maximum rate)~~

5.04.200 Return check penalty.

Whenever a check is submitted for payment of a business tax and said check is subsequently returned unpaid by the bank upon which said check is drawn, and the check is not redeemed prior to the expiration of the renewal or registration due date, the taxpayer will be liable for the tax amount due plus penalties and interest as provided for in Sections 5.04.190 and 5.04.230.

5.04.210 Prior year registration assessments.

If any person has failed to apply for and secure a valid business tax certificate, the business tax due shall be that amount due and payable from the first date on which the person was engaged in business in the city, together with applicable penalties and interest.

5.04.220 Notice not required.

The Director of Finance is not required to send a renewal, delinquency or other notice or bill to any person subject to the provisions of this chapter and failure to send such notice or bill shall not affect the validity of any tax, or penalty or interest due under the provisions of this chapter.

5.04.230 Interest.

In addition to the penalties imposed, any person who fails to remit any business tax imposed by the provision of this chapter shall pay interest at the rate of one percent per month or fraction thereof, on the amount of the tax inclusive of penalties from the date on which the business tax first became delinquent until paid. Interest is not a penalty. Interest is charged in order to compensate the City for the loss of the use of revenue after the due date of the tax.

5.04.240 Business tax a debt; Liens.

The amount of any business tax and penalty imposed by this chapter shall be deemed a debt to the city; and any person carrying on any business without first having procured a business tax certificate from said city shall be liable to an action in the name of said city in any court of competent jurisdiction, for the amount of tax, penalty and interest and penalties imposed on such business.

An action to collect the business tax or registration fee must be commenced within three years of the date the business tax or registration fee becomes due. An action to collect the penalty and interest for nonpayment of the business tax or registration fee must be commenced within three years of the date the penalty and interest accrues. The statute of limitations on an action by the City to collect unpaid taxes is tolled while City is unaware of the existence or ongoing activities of a business due to the taxpayer's failure to obtain a business license and/or failure to comply with annual reporting requirements. The statute of limitations is also tolled while an administrative appeal is pending.

The amount of tax, penalty and interest imposed under the provisions of this chapter is assessed against the business property on which the tax is imposed in those instances where the owner of the business and the business property are one and the same. If the taxes are not paid when due, such tax, penalty and interest shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record.

5.04.250 Notice of hearing on lien.

The Director of Finance shall file with the City Administrator Manager a written notice of those persons against whose property the city will file liens. Upon receipt of such notice the City Administrator Manager shall present same to the City Council, and the City Council shall forthwith, ~~by resolution,~~ fix a time and place for a public hearing on such notice.

The Director of Finance shall cause a copy of such notice to be served upon the owner of the business/business property not less than ten days prior to the time fixed for such hearing. Mailing a copy of such notice to the owner of the business/business property at the address listed in the most recent property ownership records provided to the city by the County Assessor as of the date that the Director of Finance causes notice to be mailed shall comprise proper service. Service shall be deemed complete at the time of deposit in the United States mail.

5.04.260 Collection of delinquent taxes by special tax roll assessment.

With the confirmation of the report by the City Council, the delinquent business tax charges contained therein which remain unpaid by the owner of the business/business property shall constitute a special assessment against said business property and shall be collected at such time as is established by the County Assessor for inclusion in the next property tax assessment.

The Director of Finance shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of unpaid delinquent business tax charges consisting of the delinquent business taxes, penalties, interest at the rate of ~~twelve (12)~~ one percent per annum-month or fraction thereof from the date of recordation to the date of lien, an administrative charge in the amount set forth in the City of Oakland Master Fee Schedule (as amended from time-to-time) and a release of lien filing fee in an amount equal to the amount charged by the Alameda County Recorder's Office.

Thereafter, said assessment may be collected at the same time and in the same manner as ordinary municipal taxes are collected, and shall be subject to the same penalties and the same procedure of sale as provided for delinquent ordinary municipal taxes. The assessment liens shall be subordinate to health and safety liens except for those of state, county and municipal taxes with which it shall be upon parity. The lien shall continue until the assessment and all interest and charges due and payable thereon are paid. All laws applicable to the levy, collection and enforcement of municipal taxes shall be applicable to said special assessments.

5.04.270 Recordation of lien for delinquent charges.

Upon confirmation of the report of delinquent business tax charges by the City Council, a lien on the real property for delinquent business tax charges which were assessed will be recorded with the Recorder of the County ~~county~~ of Alameda.

5.04.280 Conviction for violation not waiver of business tax.

The conviction and punishment of any person for transacting any business without a business tax certificate shall not excuse or exempt such person from the payment of any business tax due or unpaid at the time of such conviction, and nothing herein shall prevent a criminal prosecution of any violation of the ~~business tax~~ provisions of this chapter.

5.04.300 Grocer.

A. Every person engaged in business as a grocer shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first one hundred thousand dollars (\$100,000.00) or less of gross receipts, plus sixty cents (\$0.60) each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess one hundred thousand dollars (\$100,000.00).

B. For the purpose of this section, "Grocer" means a retailing of perishable and non-perishable food type items, such as, but not limited to, meats, fish, poultry, vegetables, fruits, nuts, breads, dairy products, non-alcoholic beverages, etc...from a fixed location within the city.

5.04.330 Business and personal services.

A. Every person engaged in the business of providing business or personal services not specifically taxed by other business tax provisions of this chapter shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of thirty-three thousand three hundred thirty-five dollars (\$33,335.00) for services performed within the city.

B. "Business and personal services" means any business providing services, website hosting, internet and data exchange, repairs or improvements to or on real and personal property, renting or leasing personal property to businesses or persons, or providing services to persons such as, but not limited to, laundries, cleaning and dyeing, shoe repair, barber and beauty shops, photographic studios, parking lots and garages, title guarantee companies and stevedoring.

C. Parking stall operators who are subject to the parking stall fee shall be exempt from business tax under this section.

5.04.340 Professional-semi-professional connected business.

A. Every person engaged in the business of providing professional services not specifically taxed by other business tax provisions of this chapter shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first sixteen thousand six hundred dollars (\$16,600.00) or less of gross receipts, plus three dollars and sixty cents (\$3.60) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of sixteen thousand six hundred dollars (\$16,600.00) for services performed within the city.

B. Providing professional services shall include, but not be limited to, the following: business management services, website development services, finance, insurance services, real estate services; medical and other health services educational services, legal services; engineering and architectural services; accounting, auditing, and bookkeeping services; commission merchants; savings and loan and other financial institutions.

C. The term "commission merchant" means a person who, for compensation in the form of a commission, engages in selling activities, including the solicitation or negotiation of a sale, or the forwarding of sales orders, which lead to the sale of goods, wares or merchandise owned by some person other than the commission merchant.

The business of a commission merchant shall be deemed to include also the buying and selling of goods, wares or merchandise by a person to the extent that the person

(1) does not engage in the business of manufacturing, refining, fabricating, milling, treating or other processing of the goods, wares or merchandise bought and sold, and does not cause said goods, wares or merchandise to be manufactured, refined, fabricated, milled, treated or otherwise processed; and

(2) does not obtain or retain title to said goods, wares or merchandise except in one or more of the following situations: while such may be in transit or for short periods of time before transportation commences or after it ceases; and

(3) does not store or warehouse such goods, wares or merchandise except during one or more of the following situations: while such goods, wares or merchandise are actually in transit or for short periods of time before transportation commences or after it ceases.

D. Every person conducting, managing, or carrying on the business of furnishing reports on persons to insurance companies for underwriting purposes, or furnishing reports on persons to mercantile concerns as a basis for extending credit, shall be classified as semi-professional and shall pay an annual business tax based upon the schedule set forth in this section.

E. Every person conducting, managing or carrying on the business of lending money or advancing credit or arranging for the loan of money or advancing of credit as principal or agent, where the obligation to repay the money lent or debt incurred or to compensate for the advance of credit is secured by a lien on real

property, or some interest in real property, unless such business is exempt therefrom by law, shall be classified as semi-professional and shall pay an annual business tax based upon the schedule set forth in this section.

5.04.410 Transportation of persons and goods.

A. Every person engaged in the transportation of goods and/or persons and not otherwise specifically taxed by other business tax provisions of this chapter shall pay an annual business tax based upon the average number of persons employed by such business in the city according to the following schedule:

For the first person employed	\$ 72.00
For the next 19 persons employed, per person	18.00
For the next 80 persons employed, per person	9.00
For the next 100 persons employed, per person	7.50
For all other persons employed, per person	4.50

B. "Average number of persons employed" means the average number of persons employed daily in the applicant's business for the period of one year, and shall be determined by ascertaining the total number of hours of service performed by all employees during the previous year, and dividing the total number of hours of service thus obtained by the number of hours of service constituting a day's work, according to the custom or laws governing such employments, and by again dividing the sum thus obtained by the number of business days in each year. In computing the "average number of persons employed," fraction of numbers shall be excluded.

"Employee," as used in this section, means all persons engaged in the operation or conduct of the business, whether as owner, any member of the owner's family, partner, manager and any and all other persons employed or working in said business.

5.04.420 Rental of residential property-- Gross receipts.

A. Every person engaged in the business of conducting or operating an apartment house, lodging house, and every person engaged in the business of conducting or letting rooms, and/or any building structure, for dwelling, sleeping or lodging, including, and limited to, a single-family house, duplex, townhouse, condominium or co-operative, shall pay a business tax of thirteen dollars and ninety-five cents (\$13.95) or each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

B. Every person engaged in the business of conducting or operating a hotel or motel shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of thirty-three thousand three hundred thirty-five dollars (\$33,335.00), received from rentals to transients, as defined in Section 4.24.020. All other residential rental hotel and motel owners shall be taxed under the provisions of subsection A of this section.

C. The tax basis for persons taxed pursuant to subsection A of this section shall include gross receipts as defined per Section 5.04.030 plus all payments made to the lessor, and/or paid to third parties on behalf of the lessor as part of said lease and/or paid to third parties on behalf of lessor as part of said lease agreement, including but not limited to, all taxes, insurance, mortgage payment, rent, and cash value of all services rendered to or on behalf of the lessor by said lessee in lieu of rental or lease fee payments.

Note: If the city business tax is paid by the lessee on behalf of the lessor, said tax payment, including penalty and interest payments, shall be included in the tax base for the immediately succeeding business tax period.

5.04.430 Rental of commercial/industrial property--Exemption--Gross receipts.

A. Every person engaged in the business of renting or letting a building, structure, or other property for commercial/industrial purposes, or a portion of such building, structure or property within the city for a purpose other than dwelling, sleeping, or lodging to a tenant shall pay a business tax of thirteen dollars and ninety-five cents (\$13.95) for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

B. A lessor otherwise subject to the business tax described in subsection A of this section shall not be exempt therefrom by reason of the fact that one or more persons may reside within a building or structure where the primary purpose of the particular tenancy or the primary use or right to use by the tenant is for some purpose other than dwelling, sleeping, or lodging.

C. Five-Year Exemption.

1. All new buildings and those buildings on which major renovations are completed after July 1, 1981 will be eligible for a five-year exemption from the business tax rate described in subsection A of this section.

2. A lessor that qualifies for this exemption shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first thirty-three thousand three hundred thirty-five dollars (\$33,335.00) or less of gross receipts, plus one dollar and eighty cents (\$1.80) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of forty-four thousand four hundred forty-five dollars (\$44,445.00), during the five-year exemption period.

3. In determining the five-year exemption period:

a. The five-year exemption shall be deemed to commence in the year in which new buildings and/or major renovations are completed and to end in the fifth year from the year of completion irrespective of the date on which an application for exemption is filed.

b. There will be no extensions of the five-year exemption period for subsequent major renovations after the first major renovations are completed.

- c. All lessors are entitled to only one five-year exemption for each business location. The five-year exemption applies to the building or structure and not the lessor.
 - d. There will be no proration in applying for the first year of the five-year exemption. The year in which new buildings are completed or major renovations are completed shall be considered to be a full year regardless of the date of completion.
4. To qualify for an exemption, the lessor of commercial/industrial property must file an annual exemption on a form prescribed by the Business Tax Section.
 5. Definitions applicable to this subsection are as follows:

"Major renovation" means any instance where the cost of renovation is equal to or exceeds fifty (50) percent of the after-renovation appraised value of the building as determined by a certified, independent appraiser.

"New building" means any newly constructed building completed after July 1, 1981 for which a temporary certificate of occupancy or certificate of occupancy has been issued by the city.

"New lessor" means any change which results in an eighty (80) percent or more change of ownership.

D. Gross Receipts for Rental of Commercial/Industrial Property. The tax basis for persons, taxed pursuant to subsection A of this section shall include gross receipts as defined per Section 5.04.030 plus all payments made to the lessor, and/or paid to third parties on behalf of the lessor as part of said lease agreement, including but not limited to, all taxes, insurance, mortgage payment, rent, and the cash value of all services rendered to or on behalf of the lessor by said lessee in lieu of rental or lease fee payments.

Note: If the city business tax is paid by the lessee on behalf of the lessor, said tax payment, including penalty and interest payments, shall be included in the tax base for the immediately succeeding business tax period.

5.04.460 Public utility.

A. Every person engaged in the business of conducting or operating a public utility shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first sixty thousand dollars (\$60,000.00) or less of gross receipts, plus one dollar (\$1.00) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of sixty thousand dollars (\$60,000).

B. This section includes, but is not limited to, establishments providing to the general public or to private business sectors the following services: gas, sanitary and garbage, cable television, and P.U.C.-related telephone services.

5.04.470 Media firms.

A. Every person engaged in the business of conducting or operating a media business shall pay, in January, 1990 a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first sixty thousand dollars (\$60,000.00) or less of gross

~~receipts, plus one dollar (\$1.00) for each additional one thousand dollars (\$1,000.00) of gross receipts; in January, 1991, a business tax of sixty dollars \$60.00 per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross receipts, plus one dollar and twenty cents (\$1.20) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of fifty thousand dollars (\$50,000.00).~~

B. For the purposes of this section, persons engaged in the business of "media firms" means those businesses providing published or electronic media including newspapers, publishing, radio and broadcast television companies.

5.04.480 Electric business. Repealed.

~~A. Every person engaged in the business of conducting or operating an electric business shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first sixty thousand dollars (\$60,000.00) or less of gross receipts, plus six dollars (\$6.00) for each additional one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof in excess of sixty thousand dollars (\$60,000.00).~~

~~B. For the purposes of this section, an "electric business" means and includes any entity selling, reselling, or otherwise providing electrical energy to the consumers, including but not limited to the general public or to business sectors, whether or not such entity is regulated by the California Public Utilities Commission or the Federal Energy Regulatory Commission.~~

5.04.490 Taxi and ambulance.

Every person engaged in taxicab, ambulance or limousine business in the city shall pay an annual business tax as follows:

- | | | | |
|----|---------------------------------|----|--------|
| A. | For each ambulance or limousine | \$ | 75.00 |
| B. | For each taxicab permit | | 180.00 |

5.04.500 Miscellaneous business.

Any person engaged in a business not specifically taxed by other business tax provisions of this chapter and not otherwise exempted shall pay a business tax of sixty dollars (\$60.00) per year or fractional part thereof for the first fifty thousand dollars (\$50,000.00) or less of gross payroll plus one dollar and twenty cents (\$1.20) for each additional one thousand dollars (\$1,000.00) of gross payroll or fractional part thereof in excess of fifty thousand dollars (\$50,000.00).

5.04.510 Optional method of determining tax.

When a person engages in two or more businesses, other than manufacturing, which are taxed on the basis of gross receipts under different provisions of this chapter, such person may elect to combine all such gross receipts and pay a tax determined by applying the rate of tax applicable to that business activity producing the greatest amount of gross receipts, subject to the following provisions:

A. All businesses must be conducted at the same location; and

B. The gross receipts of all businesses activities, except the business producing the greatest amount of gross receipts, must not exceed twenty (20) percent of the total combined gross receipts of all businesses activities.

C. Each person required to obtain a business tax certificate for engaging in the business of selling firearms or firearms ammunition under the provisions of Section 5.04.485 shall not be required to obtain a business tax certificate for activities covered by any other section of this chapter and shall pay tax on gross receipts derived from any activity covered by any section of this chapter at the rate prescribed for gross receipts from the sale of firearms or firearms ammunition.

5.04.520 Duties of the Director of Finance--Notice of decisions.

It shall be the duty of the Director of Finance, acting by and through the Business Tax Section, to collect and receive all taxes imposed by this chapter and to keep an accurate record thereof. Said Director of Finance, acting by and through the Business Tax Section, is charged with the enforcement of this chapter, except as otherwise provided herein, and may prescribe, adopt and enforce those rules and regulations necessary or advisable to effectuate the purposes of this chapter, including provisions for the re-examination and correction of declarations and payments; the exclusive discretionary authority to waive penalties; and the authority to defer the payment due dates as prescribed by Section 5.04.190 by up to ten calendar days. In individual cases, the Director of Finance may make findings of fact in support of decisions, determinations and rulings enforcing this chapter. The Director of Finance may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

5.04.530 Exhibit of tax certificates.

The Director of Finance and all employees of the Business Tax Section Revenue Division shall have the right to enter free of charge during business hours any place of business for which a tax certificate is required, for the sole purpose of verifying the existence of and to demand the exhibition of such tax certificates for the current term from any person engaged or employed in the transaction of such business.

5.04.540 Refund of tax, penalty or interest paid more than once or erroneously or illegally collected.

A. Illegally Collected Tax. Whenever the amount of any tax, penalty or interest has been illegally paid to, collected or received by, city under Title 5 of the Municipal Code, so much of the tax as has been illegally collected may be refunded, provided a verified claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim was founded, with specificity sufficient to enable the Director of Finance to understand and evaluate the claim, is filed with the Director of Finance within one-year from the date the tax was paid. In the event that a provision in this Chapter is found to be invalid, the taxpayer will be compensated to the extent of the taxpayer's injury from the tax as established by the taxpayer in accordance with the procedures adopted by the Director of Finance.

B. Erroneously Collected Tax. Whenever the amount of any tax, penalty or interest has been, due solely to a clerical, accounting or mathematical error, erroneously paid to, collected or received by, the city under Title 5 of the Municipal Code, so much of the tax collected or received by the city due to said clerical, accounting or mathematical error,

may be refunded, provided a verified claim in writing therefore, stating under penalty of perjury the specific grounds upon which the claim was founded, with specificity sufficient to enable the Director of Finance to understand and evaluate the claim, is filed with the Director of Finance within fifteen months from the date the tax was paid.

C. **Submission of Claim.** A claim shall be on a form furnished by the Director of Finance. A claim for refund may only be signed by the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. No other agent, including the taxpayer's attorney, may sign a refund claim. Class claims for refunds shall not be permitted. If the claim is approved by the Director of Finance, the excess amount collected may be refunded or may be credited on any amount due and payable from the person from whom it was collected, or by whom paid, and the balance may be refunded to such person, his or her administrators or executors. No refund of any tax or registration fee paid under this chapter shall be made by virtue of the discontinuance, dissolution, or other termination of a business. The City Auditor shall annually test audit refunds previously approved by the Director of Finance.

5.04.550 Board of review.

A. **Composition.** A business tax board of review consisting of the City ~~Administrator~~ ~~Manager~~, the City Auditor, an employee of the City selected by the City ~~Administrator~~ ~~Manager~~ and two community members nominated by the Mayor and appointed by the Council each for a term of four years, is hereby created. The Board shall select from its members a chairperson who shall serve at its pleasure. The City ~~Administrator~~ and ~~Manager~~ the City Auditor may each deputize in writing filed with the Board for such period or for such hearings as may be desired, a person to serve as his/her designee to the Board. A majority of members of the Board shall constitute a quorum. The Board shall be deemed to be in the ~~Office of Finance and Management Agency~~, shall meet and keep its files in such office and all filings with the Board relating to appeals or otherwise shall be mailed to Chairperson, ~~Business Tax Board of Review~~ in care of City ~~Financial Services~~ Finance and Management Agency, 250 Frank H. Ogawa Plaza, Suite 1320, Oakland, CA 94612. A Board member may fully participate in all decisions in which such Board member participates while on holdover status and such decisions are not invalid because of the Board member's holdover status. Neither the members of the Board nor the members of their offices deputized to serve in their places at any time shall receive any compensation as such members or acting members for their services on the Board.

B. **Appeals.** Any person whose rights or interests have been directly and adversely affected by a business tax ruling or finding of fact made by the Director of Finance under the authority of this chapter may appeal therefrom in writing to the Board of Review within twenty (20) days from the date of notification, in the manner provided in Section 5.04.640D, of such ruling or finding. The Board of Review in individual cases may, in its exercise of reasonable discretion in administering the provisions of this chapter, enlarge the twenty (20) day period in which to file an appeal. The Board shall make findings of fact in support of its decisions on appeal. The Board shall exercise its reasonable discretion in administering the provisions of this chapter in rendering a decision on appealed rulings and findings. The Board's decision on appeal becomes final upon giving notice thereof to the appellant in the manner provided in Section 5.04.640D. Any tax, penalty, or interest found to be owing is due and payable at the time the Board's decision thereon becomes final.

C. **Extension of Time for Filing and Payment.** On written application showing good cause, the Board or its chairperson may, with or without hearing, by written order

filed with the Director of Finance, extend for not more than forty-five (45) days the time provided in this chapter for the filing of any declaration or making any payment. In no event will such an extension be granted for an annual tax on any written application received after the annual March 1st deadline. For the period of such extension the penalty in regard thereto shall be waived.

D. Exhaustion of Remedies. Any person whose case may be resolved by employing the administrative remedies provided by this section must exhaust those remedies before filing suit for refund, rebate, exemption, cancellation, amendment, adjustment, or modification of tax, interest or penalty.

E. Review of Business Tax Rulings. The Board of Review shall, on motion of any one of its members, hold a hearing to ascertain its position regarding any business tax ruling. The Board may affirm, modify, or reverse such ruling as necessary or advisable to effectuate the purposes of this chapter. The Board of Review's decision on such ruling shall have only prospective effect.

5.04.600 Results of audit.

A. If an audit results in reclassification, not made necessary by earlier misclassification based upon incorrect and/or incomplete information supplied by a taxpayer to the Business Tax Section Department of Finance, the reclassification shall be effective in the current year only and shall not be retroactive. The taxpayer shall have twenty (20) days from notification of audit results in which to pay any additional tax liability resulting from the reclassification. If full payment is not received within the twenty (20) day period, the unpaid amount is deemed to be delinquent. Interest pursuant to Section 5.04.230 shall begin accruing upon delinquent amounts and penalties shall be assessed upon delinquent amounts as follows:

1 day delinquent -- 60 days delinquent	10%
61 days delinquent and thereafter	25%

B. If an audit results in reclassification made necessary by earlier misclassification based upon incorrect and/or incomplete information supplied by a taxpayer to the Business Tax Section Department of Finance, penalties and interest pursuant to Sections 5.04.190 and 5.04.230 shall be retroactively assessed upon amounts underpaid from the date the correct taxes would have been due.

C. The City shall mail notice of the audit results to the taxpayer within ten (10) days from the date of the audit finalized by the City. Any person upon whom an audit is performed has twenty (20) days after notification of audit results to file a petition to question such audit. The Director of Finance in individual cases may, in the exercise of reasonable discretion in administering the provisions of this chapter, ~~enlarge~~ increase the twenty (20) day period.

D. Audit results become final at the end of the twenty (20) day period unless a petition to question audit has been filed:

1. Within the twenty (20) days period; or
2. Within the extension period granted by the Director of Finance.

- E. The Director of Finance shall provide taxpayer with notice of:
 - 1. Audit results;
 - 2. Decisions on applications for extensions of time in which to file petitions to question audit results; and
 - 3. Decisions on petitions to question audit results in the manner provided in Section 5.04.640D.

F. The taxpayer shall be given twenty (20) days to pay the additional tax liability, resulting from the reclassification. If payments in full is not received within the twenty (20) day period, appropriate penalties and interest shall be assessed from notification date of additional assessment until the total liabilities are paid in full.

**5.04.630 Exemption for nonprofit corporation, association, etc.
Exemption for owners of low income housing tax-credit
 financed affordable housing developments.**

A. Every institution, corporation, organization or association that qualifies for nonprofit tax-exempt status under either state or federal law seeking an exemption pursuant to this section shall submit an application and ~~an annual~~ statement to the Business Tax Section setting forth such information as required to determine eligibility for such exemption. The exempt entity shall file annual statements setting forth such information necessary to determine continued eligibility for exemption.

[Alternative 1: Recommended by Staff:]

B. The owner of an affordable housing project that has received federal and/or state low income housing tax credits in connection with the affordable housing ownership, is exempt from the payment of business taxes pursuant this Chapter in connection with such affordable housing project; provided that the property is used exclusively for low income rental housing, and is owned and operated by a partnership or limited liability company in which the managing partner or member is an eligible nonprofit corporation or partnership. The owner must submit an application and statement to the Business Tax Section setting forth evidence establishing its qualifications for this exemption in form and substance satisfactory to the Business Tax Section. The owner shall file annual statements setting forth such information necessary to determine continued eligibility for the exemption.

[Alternative 2: Recommended by the Finance Committee:

B. The owner of an affordable housing project that has received federal and/or state low income housing tax credits in connection with the affordable housing ownership, is exempt from the payment of business taxes pursuant this Chapter in connection with such affordable housing

project; provided that the property is owned and operated by a partnership in which the managing partner is an eligible nonprofit corporation or limited liability company and provided that the property qualifies for the property tax exemption pursuant to Section 214(g) of the California Revenue and Taxation Code. To the extent that a portion of the property is eligible for the Section 214(g) exemption, the property shall be exempt from the Business Tax in the same proportion as the Section 214(g) exemption. The owner must submit an application and statement to the Business Tax Section setting forth evidence establishing its qualifications for this exemption, including a copy of the Section 214(g) exemption, in form and substance satisfactory to the Business Tax Section. The owner shall file annual statements setting forth such information necessary to determine continued eligibility for the exemption.]

5.04.631 Exemption for family daycare.

Every person licensed by the State of California Department of Social Services as a family daycare provider, and maintaining a state license permitting up to fourteen (14) children or less per facility, shall be exempt from the business tax imposed under this chapter. Persons seeking an exemption pursuant to this section must submit an annual statement, as described in Section 5.04.090, together with a copy of the most current license issued by the State of California Department of Social Services to the Business Tax Section.

5.04.640 Deficiency determination.

A. Recomputation of Tax--Authority to Make--Basis of Recomputation. If the Director of Finance in the exercise of reasonable discretion is not satisfied with the declaration or declarations of the tax or the amount of tax computed therefrom, the Director may compute and determine the amount required to be paid upon the basis of the facts contained in the declaration or declarations or upon the basis of any factual information within the Director of Finance's possession or that may come into the Director's possession. One or more deficiency determination may be made of the amount due for one or for more than one period.

B. Interest on Deficiency. The amount of the determination in excess of that amount timely paid by the taxpayer, inclusive of penalties, shall bear interest in the amount and manner set forth in Section 5.04.230 of this Chapter. ~~at the rate of one and one-half percent per month or fraction thereof, from March 2nd of the year in which the amount should have been paid until the date of payment.~~

C. Offsetting of Overpayments. In making a determination, the Director of Finance may offset overpayments for a period or periods against underpayments for any period or periods, and against any city debt.

D. Notice of Director of Finance's Determination--Service Of. The Director of Finance shall give to the taxpayer written notice of the Director's determination, and of any interest and penalty which are due. The notice may be served personally or mailed; if mailed, such service is complete upon mailing to the taxpayer at the taxpayer's last address shown on the Business Tax Section records.

5.04.650 Determination if no declaration filed.

A. Estimate of Gross Receipts or Other Measure of Tax--Computation of Tax--Penalty. If any person fails to file a declaration as required by this chapter, the Director of Finance shall in the exercise of reasonable discretion make an estimate of the amount of the gross receipts or other measure of tax applicable to the person or persons subject to the tax. The estimate shall be made for the period or periods for which the person failed to file a declaration and shall be based upon any factual information which is in the Director of Finance's possession or which may come into the Director's possession. Upon the basis of this estimate, the Director of Finance shall compute a determination of the amount required to be paid to the city. The Director shall add to the determination a penalty, pursuant to Section 5.04.190. One or more determinations may be made for one or for more than one period.

B. Offsets. In making the determination, the Director of Finance may offset overpayments for a period or periods against underpayments for any period or periods, and against any city debt.

C. Interest on the Amount Due. The amount of the determination, exclusive of penalties, shall bear interest in the amount and manner set forth in Section 5.04.230 of this Chapter. ~~at the rate of one and one half percent per month or fraction thereof, from March 2nd of the year in which the tax based upon declaration would have been due until the date of payment.~~

D. Giving of Notice--Manner of Service. Promptly after making a determination, the Director of Finance shall give to the person whose tax has been determined pursuant to this section written notice of the estimate, determination, interest and penalty. The notice shall be served personally or by mail in the manner prescribed for service of notice of deficiency determination in Section 5.04.640D.

5.04.660 Redetermination.

A. Right of Petition For--Time to File Petition. Any person against whom a determination is made under this chapter or any person directly interested may petition for a redetermination within twenty (20) days after service of notice of determination. The Director of Finance in individual cases may, in the exercise of reasonable discretion in administering the provisions of this chapter, enlarge the twenty (20) day period. If a petition for redetermination is not filed within the twenty (20) day period or within the extension period granted by the Director of Finance, the determination becomes final at the expiration of the twenty (20) day period. The Director of Finance's decisions on applications for extension of time in which to file petitions for redetermination must be served in the manner provided in Section 5.04.640D.

B. Grant of Oral Hearing--Notice--Continuances. If a petition for redetermination is filed within the twenty (20) day period, the Director of Finance shall reconsider the determination and, if the petition includes a request for hearing, shall grant the person an oral hearing, giving the person ten days' notice of the time and place thereof. The Director of Finance may continue the hearing from time to time as may be necessary. The Director of Finance shall exercise reasonable discretion in the decision on redetermination.

C. Alteration of Determination--Limitation on Right to Increase Amount. Once petition for reconsideration has been filed, the Director of Finance may increase or decrease the amount of the determination until the determination becomes final; however, the Director of Finance must assert a claim for increase at or before the hearing, if a hearing has been requested. If no hearing has been requested, or if the

Director of Finance asserts a claim before the hearing without reasserting it at the hearing, notice of the increase must be served on the person in the manner provided in Section 5.04.640D.

D. Finality of Order on Petition. The order or decision of the Director of Finance upon a petition for redetermination becomes final thirty (30) days after service upon the petitioner of notice thereof in the manner provided in Section 5.04.640D, unless appeal of such order or decision is filed with the Board of Review pursuant to Section 5.04.550B.

E. Time for Payment of Amounts Found Due-- Penalty for Delinquency. All determinations made by the Director of Finance or Board of Review are due and payable at the time they become final.

SECTION 4. This ordinance shall be effective immediately, if passed by the affirmative vote of at least six City Council members; if this ordinance is passed by the affirmative vote of five City Councilmembers it will be effective seven days after final passage.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2007

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION

ATTEST:

LaTonda Simmons
City Clerk and Clerk of the
Council of the City of Oakland, California