

CITY OF OAKLAND  
Agenda Report

2004 JUN -7 PM 3: 31

TO: Office of the City Administrator  
ATTN: Deborah A. Edgerly  
FROM: Finance and Management Agency  
DATE: June 10, 2004

Re: Supplemental Report on Proposed Amendment of Chapter 5, Article 4 of the Oakland Municipal Code (Business Taxes Generally) to Clarify the Penalty for Nonpayment of Business Tax (Section 5.04.190)

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**SUMMARY**

At its May 25, 2004 meeting, the Finance and Management Committee directed staff to provide the fiscal impact of: 1) exempting from the business tax, businesses with gross receipts of \$5,000 or less; 2) exempting from the business tax, businesses with gross receipts of \$2,500 or less; 3) the implementation of a tax structure based upon a graduating scale for those businesses with gross receipts of \$5,000 or less; and 4) maintaining the current tax structure. The Committee also requested staff to provide the feasibility of extending the delinquent date(s) for respondents of the AB 63 program who were informed of their tax liability after March 1, 2004; and clarification if local taxes, penalties and interest assessments are deductible from State and Federal Income Taxes.

In addition, the Committee requested a legal opinion regarding the issuance of an extension and its effect on penalty and interest assessments to respondents of the AB63 program due to non-notification; and a response to the correspondence dated May 13, 2004, from Mr. David A. Rosenfeld. These requests will be submitted as a separate report from the City Attorney's Office.

**FISCAL IMPACT**

The FY 03-05 budget is balanced using current revenues. The budgeted revenues include non-compliant taxes, penalty and interest collection. Any refunds or credits of penalties and interest will require the City to identify additional revenues or reduce expenditures.

The fiscal impacts are comprised of two components. The first component is the potential impact in refunds if the recommendation is implemented retroactively to include tax years 2002, 2003 and 2004. The second is annual lost revenues in the future.

**FISCAL IMPACT SUMMARY**

<i>Scenario</i>	<i>Initial Potential Impact</i>	<i>Future Impact</i>
1. Exempting Business w/Gross Receipts> \$5000	\$1,350,000	\$448,000
2. Exempting Business w/Gross Receipts> \$2500	\$ 800,000	\$280,000
3 A) Creation of a Graduated Tax Structure	\$1,000,000	\$345,000
3 B) Creation of a Graduated Tax Structure	\$ 600,000	\$220,000
4. Status Quo	\$ 0	\$ 0
5 A) Extension of Delinquent Date for 2004 Tax Yr	\$ 190,000	\$ 0
5 B) Extension of Delinquent Date for 2004 Tax Yr	\$1,000,000	\$ 0

**1. EXEMPTING FROM BUSINESS TAX, BUSINESSES WITH GROSS RECEIPTS OF \$5,000 OR LESS**

As stated in the agenda report dated May 25, 2004, under scenario 3, the proposal would be to amend Chapter 5, Article 4 of the OMC to exempt from payment of the business tax those businesses with \$5,000 or less in annual gross receipts (currently taxed based upon gross receipts), excluding rental property operators. The fiscal impact of this scenario is potentially \$1,350,000 in refunds and \$448,000 in annual lost revenues in the future.

**2. EXEMPTING FROM BUSINESS TAX, BUSINESSES WITH GROSS RECEIPTS OF \$2,500 OR LESS**

The proposal would be to amend Chapter 5, Article 4 of the OMC to exempt from payment of the business tax those businesses with \$2,500 or less in annual gross receipts (currently taxed based upon gross receipts), excluding rental property operators. The fiscal impact of this scenario is potentially \$800,000 in refunds and \$280,000 in annual lost revenues in the future.

**3. CREATION OF A TAX STRUCTURE BASED UPON A GRADUATED SCALE FOR THOSE BUSINESSES WITH GROSS RECEIPTS OF \$5,000 OR LESS**

A) The proposal would be to amend Chapter 5, Article 4 of the OMC to impose the payment of business tax on those businesses currently taxed based upon gross receipts, excluding rental property operators, on a graduated scale based on gross receipts in lieu of a flat tax rate. The maximum tax liability for this scenario will range from \$3.00 to \$22.50 (depending on business activity) on \$5,000 of gross

receipts. The fiscal impact of this scenario is potentially \$1 million in refunds and \$345,000 in annual lost revenues in the future.

<u>Tax Rate</u>	<u>Maximum Tax Liability</u>
\$ .60	\$ 3.00
\$1.20	\$ 6.00
\$1.80	\$ 9.00
\$3.60	\$18.00
\$4.50	\$22.50

B) The following scale provides a more feasible approach to this proposal. The fiscal impact would be potentially \$600,000 in refunds and \$220,000 in annual lost revenues in the future.

<u>Gross Receipts Range</u>	<u>Annual Tax</u>
\$ 0-\$1,000	\$15
\$1,001-\$2,000	\$25
\$2,001-\$3,000	\$35
\$3,001-\$4,000	\$45
\$4,001-\$5,000	\$55

#### 4. STATUS QUO

The Business Tax revenues for fiscal year 2003-04 are approximately \$43 million in tax, penalty and interest. In accordance to OMC Section 5.04.190 and 5.04.230, a penalty of 10% for 60 days delinquency (March 2<sup>nd</sup> through May 1<sup>st</sup>) and 25% thereafter, and an interest assessment of 1% per month on any unpaid penalty or tax after March 2<sup>nd</sup> of any specific year are imposed. On average, \$1.9 million are collected and/or assessed annually from business tax penalty and interest assessments. The potential of an additional \$1 million in penalty and interest revenues is anticipated from non-compliant taxpayers identified through the AB 63 project.

#### 5. EXTENSION OF THE DELINQUENT DATE FOR AB 63 RESPONDENTS WHO WERE INFORMED OF THEIR TAX LIABILITY AFTER MARCH 1, 2004

The OMC Section 5.04.220 states that "...The Director of Finance is not required to send a renewal, delinquency or other notice or bill to any person subject to the provision of this chapter and failure to send such notice or bill shall not affect the validity of any tax or penalty due ..." Accordingly, notification of the tax is a courtesy that is extended by the City.

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A) The City of Oakland has received and has posted receivables of approximately \$10,000 in penalty and interest payments for tax year 2004 from respondents of the AB 63 project who were informed of their tax liability after March 1, 2004. The fiscal impact of the extension of the renewal period for the 3,980 who were informed after March 1, would result in the refunding or crediting of that amount (for tax year 2004). In addition, the City will not collect approximately \$180,000 of anticipated penalty and interest (for tax year 2004) from the remaining 9,105 who have yet to receive official notification and those who have not yet responded, for a total fiscal impact of \$190,000.

B) The City Attorney's Office has stated that an extension of the delinquent date(s) only for respondents of the AB 63 project who were informed of their tax liability after the March 1, 2004 raises constitutional concerns. Therefore to provide such an extension, all 2004 taxpayers, including non-registrants, AB63 respondents, and delinquent accounts, would have to be provided the same extension. Thus the result would be a potential loss of \$1 million (inclusive of the \$190,000 from AB63 respondents) if the extension were offered to August 31, 2004.

## **BACKGROUND**

In February 2003, the City received a file from the Franchise Tax Board containing 28,092 records with addresses within the jurisdictional boundaries of the City of Oakland, reporting business income on their 2001 State Income Tax returns. Staff was able to verify that 11,162 records matched the City's business tax database, resulting in a difference of 16,930 non-registered businesses. Staff has notified 7,825 of these businesses and the remaining 9,105 notifications have been delayed pending Council direction.

## **KEY ISSUES AND IMPACTS**

The Committee requested clarification if local taxes, penalties and interest assessments are deductible from State and Federal Income Taxes. The Enrolled Agent on staff has informed us that the tax and interest on the tax are deductible on State and Federal Income Taxes; however, the penalty and interest on the penalty are not.

In order to constitutionally waive the retroactive penalty and interest assessments for the respondents of the AB63 tax compliance project, all penalty and interest assessments paid to the City for business taxes would have to be waived retroactively. Any lesser provision would be subject to claims of discrimination. The potential fiscal impact is a loss of \$5.9 million in business tax penalty and interest revenue.

## **PROGRAM DESCRIPTION**

The City established the Non-Compliance Tax Program in 1995 to identify and notify persons engaged in business within the City that are not currently in the City's business tax database. The program was so successful that a tax compliance unit was established in 1999.

## **SUSTAINABLE OPPORTUNITIES**

Economy: By identifying non-compliant businesses subject to the provisions of the Business Tax Ordinance, the City will have more funds at its disposal to provide continued services to its citizens. The amount of revenue generated by the identification of these revenues last fiscal year totaled over \$2.5 million.

Equity: All taxpayers are treated fairly and impartially.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Not applicable

## **RECOMMENDATION AND RATIONALE**

The FY 03-05 budget is balanced using current revenues. Any refunds or credits of penalties and interest will require the City to identify additional revenues or reduce expenditures. Given this, staff is recommending that Council take no action on the proposal to amend Chapter 5, Article 4 of the Oakland Municipal Code.


## **ALTERNATIVE RECOMMENDATIONS**

Not applicable.

## **ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that Council take no action on the proposed amendments to Chapter 5, Article 4 of the Oakland Municipal Code.

Respectfully submitted,



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WILLIAM E. NOLAND  
Director, Finance and Management Agency

Prepared by:  
Debra Taylor Johnson  
Revenue Manager

APPROVED FOR FORWARDING TO THE  
CITY COUNCIL:



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OFFICE OF THE CITY ADMINISTRATOR

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# ATTACHMENT

## BUSINESS TAX CLASSIFICATION AND RATES

### TAX TABLE 1

<u>BUSINESS CLASSIFICATION</u>		<u>TAX CALCULATION METHOD</u>	
<u>CODE</u>	<u>DESCRIPTION</u>	<u>TAX BASE</u>	<u>TAX RATE</u>
A	Retail Sales	Gross Receipts	\$1.20 per \$1,000
B	Grocers	Gross Receipts	\$ .60 per \$1,000
C	Automobile	Gross Receipts	\$1.20 per \$1,000
D	Wholesale Sales	Gross Receipts	\$1.20 per \$1,000
E	Business/Personal Services	Gross Receipts	\$1.80 per \$1,000
F	Professional/Semi-Professional	Gross Receipts	\$3.60 per \$1,000
G	Recreation/Entertainment	Gross Receipts	\$4.50 per \$1,000
H	Construction Contractors	Gross Receipts	\$1.80 per \$1,000
I	Manufacturing (A)	Value Added*	\$1.20 per \$1,000
J	Manufacturing (B)	Mfg. Expenses	\$1.20 per \$1,000
K	Administrative Headquarters	Gross Payroll	\$1.20 per \$1,000
L	Transportation	# of Employees	See Tax Table II
M	Rental Residential (5 or more units)	Gross Receipts	\$13.95 per \$1,000
N	Rental Commercial/Industrial	Gross Receipts	\$13.95 per \$1,000
O	Rental Comm/Ind. (5-year Exempt)	Gross Receipts	\$ 1.80 per \$1,000
P	Rental Hotel/Motel	Gross Receipts	\$ 1.80 per \$1,000
Q	Rental Residential (1-4 units)	Gross Receipts	\$13.95 per \$1,000
T	Media Firms	Gross Receipts	\$ 1.20 per \$1,000
U	Public Utility	Gross Receipts	\$ 1.00 per \$1,000
W	Miscellaneous	Gross Payroll	\$ 1.20 per \$1,000
X	Taxicabs	# of Permits	\$180 per Permit
Y	Ambulances/Limousines	# of Vehicles	\$ 75 per Vehicle
Z	Firearms Dealers	Gross Receipts	\$24.00 per \$1,000

### TAX TABLE II – INDUSTRY CODE L TAX RATE PER EMPLOYEE

For the first person employed (business owner)	\$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 the all other persons employed, per person	\$ 4.50

\*Value Added = Total gross receipts less the cost of raw materials used to make the product.

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# CITY OF OAKLAND

## Office of the City Attorney

**TO:** Councilmember Brunner and  
Members of the Oakland City Council

**FROM:** John A. Russo  
City Attorney

**DATE:** June 10, 2004

**RE:** Business Tax Ordinance

### I. QUESTIONS

*Extension of Business Tax Payment Date.* Will an extension of the date for payment of business taxes affect businesses that have already paid penalties and interest for late payment?

*Apportionment.* May the City impose a business tax upon a business for income received for services provided outside the City's jurisdiction? Does the City allow for the apportionment of gross receipts?

### II. SUMMARY CONCLUSION

*Extension of Business Tax Payment Date.* If the City were to extend the date for the payment of the businesses tax, businesses that have already paid penalties and interest on delinquent taxes are entitled to a refund upon request.

*Apportionment.* The City may only tax businesses activity that occurs within the City. The Municipal Code of the City of Oakland (the "Code") authorizes businesses to apportion taxes and sets forth guidelines for apportionment. The Director of Finance in Rulings Number 7, 8, 9 and 10 has established apportionment guidelines for staff to use in determining the measure of tax. The rulings do state that any person who believes that the percentage of gross receipts determined to be subject to tax under the guidelines is greater than the facts justify, may apply to the Director of Finance for modification of the percentage.



### **III. BACKGROUND**

The Business Tax Ordinance for the City of Oakland is set forth in Title 5 of the Code. Sections 5.04.100 and 5.04.120 of the Code require every person to register and obtain a business tax certificate in order to carry on any business within the City within thirty (30) days from the date of commencement of business.

### **IV. ANALYSIS**

Extension of Business Tax Payment Date. Section 5.04.190 of the Code provides that “[e]very annual business tax or portion thereof that is not paid on or before *March 1st* of each year” is delinquent. Penalty and interest charges are imposed on all delinquent accounts pursuant to Code Sections 5.04.190 and 5.04.230.

If the City were to amend the municipal code to extend (or change) the date of payment of business tax from March 1 to July 1, businesses that paid penalties and interest charges on past due taxes between March 1 and July 1 will be entitled to a refund upon request since the change in date means that no tax was due on March 1.

Further, if the City retroactively extended the date for payment only for a limited group of businesses (for example, businesses that received a notice of delinquency from the City of Oakland), businesses that paid penalties and interest charges may argue that the imposition of penalties and interest charges discriminates against businesses that did not receive a notice.

The Equal Protection Clause of the U.S Constitution (Fourteenth Amendment, Clause 1) prohibits local laws from being applied in a manner which results in disparate treatment amongst similarly situated persons. (See *Allegheny Pittsburgh Coal Co. v. Webster County* (1989) 488 U.S. 336.) A similarly situated business that did not receive a notice of delinquency and is denied the benefits of the new payment date (either assessed penalties and interest for past due taxes or denied a refund for penalties and interest paid before the new payment date for the applicable tax year) may challenge the City’s action under the Equal Protection Clause.

Apportionment. The City may legally tax only that tax business activity which occurs within the City. Complete Auto Transit v. Brady (1977) 430 U.S. 274, sets forth the legal standard under which the City may impose a business tax. A business tax will be sustained if it: (a) is applied to an activity with a substantial nexus with the taxing jurisdiction; (b) is fairly apportioned; (c) does not discriminate against interstate commerce; and (d) is fairly related to the services provided by the taxing jurisdiction.

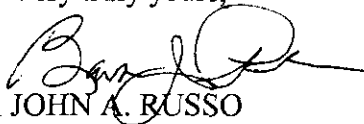
Section 5.04.570 of the Code provides that any business that believes that the City’s business tax places an undue burden upon interstate commerce or violates certain constitutional

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clauses, may apply to the Director of Finance for an adjustment of the tax. A business must request for an adjustment in writing within one-year after the date of payment of the tax.

Further, Director of Finance Revenue Rulings 7, 8, 9 and 10 provide apportionment guidelines for various business classifications that the City employs to determine the business tax due and payable to the City of Oakland. In most cases, the City assumes a minimum of 30% of gross receipts from work performed outside the City in the measure of the tax. However, any business that believes that 30% is greater than the facts justify may apply to the Finance Director for modification of the percentage.

Very truly yours,

  
for JOHN A. RUSSO  
City Attorney

Attorney Assigned: Michelle W. Sexton

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

CITY OF OAKLAND 2004 MAY 13 PM 4:09  
Agenda Report

TO: Office of the City Administrator  
ATTN: Deborah A. Edgerly  
FROM: Finance and Management Agency  
DATE: May 25, 2004

Re: Report and Ordinance Amending Chapter 5, Article 4 of the Oakland Municipal Code (Business Taxes Generally) To Clarify the Penalty for Nonpayment of Business Tax (Section 5.04.190) and to Provide for a Refund of Penalty and Interest Charges Collected by the City During Calendar Years 2002, 2003, and 2004 (Section 5.04.540)

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**SUMMARY**

The passage of Assembly Bill 63 (AB63) authorized the State of California's Franchise Tax Board (FTB) to provide confidential tax information to city business tax officials. This new data advises cities of individuals and business entities that have reported business income on State Income Tax returns and provides a valuable tool to assist efforts to administer and enforce local business tax laws.

The City of Oakland, through the Finance and Management Agency's Revenue Division, subscribed to this data to enhance its existing pool of resources to identify and bring businesses into compliance with the provisions of Chapter 5, Article 4 of the Oakland Municipal Code (OMC), as part of the City's Non-Compliance Tax Program.

At the Rules Committee's direction, staff has reviewed the possibility of amending the OMC to allow for the waiver of retroactive penalties and interest assessments as a result of the AB63 tax compliance project. It has been determined that in order to constitutionally waive the retroactive penalty and interest assessments for respondents of this project, the City would also be required to waive all penalty and interest assessments paid retroactively for business taxes by anyone. Any lesser provision would be subject to claims of discrimination.

Although the constitutional issues prohibit the waiver of penalties and interest for only those taxpayers who were identified through the AB63 project, an ordinance has been prepared in order to address the Rules Committee's direction to provide waivers for anyone who is subject to the penalties and interest for the previous three years.

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However, staff recommends that the Council take no action on the proposed ordinance. The potential fiscal impact of \$5.9 million would adversely impact the City's budget. It is recommended that the City maintain its current policy, which assesses penalty and interest on non-compliant businesses.

In order to provide penalty and interest relief, staff has proposed three alternatives that are presented in this report.

### **FISCAL IMPACT**

Waiver of all penalty and interest assessments paid retroactively to the City for business taxes could potentially result in an impact of approximately \$5.9 million, as this is the amount collected and/or assessed in penalty and interest charges for the past three years. Taxpayers would be given 180 days to request a refund or credit for penalties and interest paid for business activities that took place during the past three years.

The FY 03-05 budget is balanced using current revenues. Any refunds or credits of penalties and interest will require the City to identify additional revenues or reduce expenditures.

### **BACKGROUND**

In February 2003, the City received a file from the Franchise Tax Board containing 28,092 records (19,916 individuals with reported business activities and 8,176 business entities) with addresses within the jurisdictional boundaries of the City of Oakland, reporting business income on their 2001 State Income Tax return. Staff was able to verify that 11,162 records matched the City's business tax database, resulting in a difference of 13,085 non-registered individuals and 3,845 non-registered business entities.

Due to the high volume of non-registered business entities and individuals, the records were divided into two groups. The first group notified was the business entities. On August 25, 2003, staff mailed 1,923 notices, followed by the remaining 1,922 notices on October 16, 2003. This notice was a "Request for Business License Tax Registration" that also advised of the City's business tax requirements (see Attachments A & B). As of April 29, 2004, 1,533 responses have been received.

		<u>Delinquent Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Paid in full	193	\$425,000	\$76,000	\$78,000	\$579,000
Partial payment	23	\$51,000	\$0	\$0	\$51,000
Receivable	70	<u>\$34,000</u>	<u>\$21,000</u>	<u>\$26,000</u>	<u>\$81,000</u>
		\$510,000	\$97,000	\$104,000	\$711,000
To be reviewed	1181				
Non-applicable	<u>66</u>				
	1533				
Returned mail	879				
No response	<u>1433</u>				
	3845				

The second group notified was individuals with reported business activities. On March 12, 2004, staff mailed 3,980 notices advising of the City's business tax requirements. As of April 29, 2004, 1,683 responses have been received.

		<u>Delinquent Tax</u>	<u>Penalty</u>	<u>Interest</u>	<u>Total</u>
Paid in full	340	\$132,000	\$28,000	\$32,000	\$192,000
Partial payment	24	\$5,000	\$0	\$0	\$5,000
Receivable	347	<u>\$119,000</u>	<u>\$27,000</u>	<u>\$34,000</u>	<u>\$180,000</u>
		\$256,000	\$55,000	\$66,000	\$377,000
To be reviewed	950				
Non-applicable	<u>22</u>				
	1683				
Returned mail	550				
No response	<u>1747</u>				
	3980				

The remaining 9,105 notices have been held pending Council direction.

### KEY ISSUES AND IMPACTS

In order to constitutionally waive the retroactive penalty and interest assessments for the respondents of the AB63 tax compliance project, all penalty and interest assessments paid to the City for business taxes would have to be waived retroactively. Any lesser provision would be subject to claims of discrimination. The potential fiscal impact is a loss of \$5.9 million in business tax penalty and interest revenue.

### PROGRAM DESCRIPTION

The City established the Non-Compliance Tax Program in 1995 to identify and notify persons engaged in business within the City that are not currently in the City's business tax database. The program was so successful that a tax compliance unit was established in October 1999, in response to the City Manager's request to enhance revenues.

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Accordingly, the unit expanded its scope and focused on the discovery of entities in violation of all the City's tax ordinances, primarily the business tax ordinance, and to bring these businesses into compliance.

The section works in conjunction with the Business Tax Section, the Tax Audit Section, OPD, CEDA, City Administrator Office, City Attorney's Office and other City departments to successfully manage the task of identifying non-compliant taxpayers. The section also performs outreach by presenting the City's tax laws to various organizations, e.g., State of California, Federal Government, Chamber of Commerce, Chinese Chamber of Commerce, Rental Housing Association of Alameda County, Small Business Symposium, etc. In addition, the City's tax laws are publicized through KTOP, all local newspapers, realty companies, title companies and association journals.

The section utilizes a variety of tools to identify non-registered business entities, including, but not limited to:

- Fictitious Business Name Filings
- Haines Reverse Directory
- Sales and Use Tax Reporting
- Vendor Listings
- Referrals/Complaints
- Field Observations
- Alameda County Assessor's Data
- State Board of Equalization's Data

## **SUSTAINABLE OPPORTUNITIES**

Economy By identifying non-compliant businesses subject to the provision of the Business Tax Ordinance, the City will have more funds at its disposal to provide continued services to its citizens. The amount of revenue generated by the identification of these revenues last fiscal year totaled over \$2.5 million.


Equity By capturing additional revenues, the City will have more funds at its disposal to allocate to various projects to enhance the quality of life for its citizens.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Not applicable

## **RECOMMENDATION AND RATIONALE**

Waiving penalties and interest for taxpayers identified through the AB63 project raises constitutional issues for taxpayers who are not afforded the same opportunities. Penalties and interest have to be waived retroactively for anyone who has already paid business tax penalties and interest. The potential fiscal impact of \$5.9 million would adversely impact

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the City's budget. It is recommended that the City maintain its current policy, which assesses penalty and interest on non-compliant businesses.

The Tax Compliance Program is focused on identifying non-compliant activities. The information received through the AB63 program allows for the discovery of noncompliant business activities. Staff utilizes the data for the collection of taxable business-based activity only. No information pertaining to an individual's personal income tax wages is sent to the City. Tax Schedule C identifies income that may be subject to taxation by other governmental agencies. Pursuant to this schedule, business entities and individuals may deduct expenses from gross income, thus reducing their federal and state taxes.

Business tax is applied equitably to all business tax categories and industry types. The current business tax database has over 28,000 accounts that currently pay the business tax based upon \$5,000 or less in annual gross receipts. This represents approximately 49 percent of the total business tax database. Of the accounts identified through the AB63 Project, 30 percent fall within this group.

It should be noted that with the advancement of technology, staff is able to utilize tools that identify those taxpayers that are not paying the applicable City taxes. AB63 is an example of one of the many tools that are now available to assist jurisdictions in identifying non-compliant activities.

### **ALTERNATIVE RECOMMENDATION**

Staff has looked at various other options to provide tax relief to certain small businesses and is providing the following scenarios for Council consideration:

#### **Scenario 1 – Provide Exemption for Senior Citizen, Minors and Teachers/Instructors**

To meet the Mayor's and Council's goal to ensure that all Oakland seniors and youth have the opportunity to be successful and as the data includes a number of senior citizens, minors and home-based teachers of art and music, staff is recommending a modification to Chapter 5.04.440 of the OMC to exempt the following persons:

Senior Citizens – Every natural person of the age of sixty-five (65) years or over whose annual gross receipts from any and all business are five thousand dollars (\$5,000) or less shall be exempt from payment of the business tax, excluding rental property operators.

Minors – Every natural person of the age of seventeen (17) years or under whose annual gross receipts from any and all business are five thousand dollars (\$5,000) or less shall be exempt from payment of the business tax, excluding rental property operators.

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Teachers/Instructors – Every natural person engaged in the teaching of musical, artistic or educational subjects shall be exempt from payment of the business tax currently imposed upon the teaching of these specific activities when the following conditions exist:

- The teaching is done at the residence of the teacher or at the residence of the pupil;
- The person employs no assistants;
- The person does not display any advertising sign at the residence; and
- The person does not sell merchandise in connection with the teaching.

The Office of the City Attorney has informed staff that the proposed exemption for teachers may raise constitutional issues. By exempting only teachers who teach at their residence or at the residence of the pupil, the City could be challenged by those teachers engaged in similar activities, who teach in other locations. The proposed ordinance would have to identify the specific educational activities to be exempted.

Business owners currently in compliance with the business tax ordinance will be due a refund of any tax, penalty and interest paid for tax years 2002 through 2004. However, age and the home-based teachings of music, art or educational subjects have never been factors in the applicability of the business tax. The business tax system does not currently track these criteria; therefore, the fiscal impact is unknown.

### **Scenario 2 -- Businesses with Gross Receipts Less than \$5,000 Pay at a Reduced Rate**

Amend Chapter 5, Article 4 of the OMC to create a new tax bracket for those businesses with \$5,000 or less in annual gross receipts currently taxed based upon gross receipts, excluding rental property operators. Currently the business tax ordinance requires all businesses taxed based upon gross receipts, excluding rental property operators, to pay a tax of \$60 or a certain rate per \$1,000, whichever is greater. This alternative recommendation would retroactively require all businesses taxed based upon gross receipts with \$5,000 or less in gross receipts, excluding rental property operators, to pay a tax of \$30 annually. The fiscal impact of this recommendation is potentially \$775,000 in refunds and \$258,000 in annual lost revenues in the future.

The Office of the City Attorney has informed staff that Council will need to adopt findings to support its reasons for the creation of a new tax bracket for small businesses.



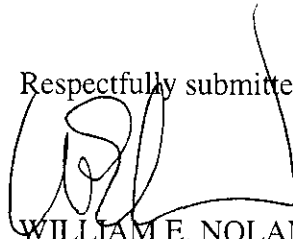
**Scenario 3 – Exempt Businesses with Gross Receipts Less than \$5,000**

Amend Chapter 5, Article 4 of the OMC to exempt from payment of the business tax those businesses with \$5,000 or less in annual gross receipts currently taxed based upon gross receipts, excluding rental property operators. The fiscal impact of this recommendation is potentially \$1,350,000 in refunds and \$448,000 in annual lost revenues in the future.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the Council take no action on the proposed ordinance to amend Chapter 5, Article 4 of the Oakland Municipal Code to allow for the waiver of retroactive penalties and interest assessment as a result of the Non-Compliance Tax Program related to the passage of Assembly Bill 63.

Respectfully submitted,



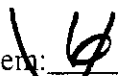
WILLIAM E. NOLAND

Director, Finance and Management Agency

Prepared by:  
Debra Taylor Johnson  
Revenue Manager

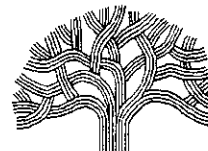
APPROVED FOR FORWARDING TO THE  
FINANCE AND MANAGEMENT COMMITTEE:

  
Office of the City Administrator

Item:   
Finance and Management Committee  
May 25, 2004

# ATTACHMENT A

CITY OF OAKLAND



150 FRANK H. OGAWA PLAZA, SUITE 8333 • OAKLAND, CALIFORNIA 94612

Finance & Management Agency  
Tax Compliance Section  
[www.oaklandnet.com](http://www.oaklandnet.com)

(510) 238-7474  
FAX (510) 238-6092  
TDD (510) 839-6451

«NAME»  
«NUM» «STREET» «SFX»  
«CITY», «STATE» «ZIP»-«ZIPSFX»

REF#:«TRK»

## Request for Business License Tax Registration

Dear Business Owner(s):

The City Of Oakland takes pride in providing professional service to our business community. An important part of providing these services is registering businesses with the City. Since the mid-1980's local government and Franchise Tax Board (FTB) have compared data referencing business representation and conduct within their jurisdictions. The City has recently received information from the FTB that you reported business income or expenses from the above address. Our search of the City's business registration records did not reveal a business license issued in the above listed name and address.

City of Oakland Municipal Code Section 5.04.020 requires all businesses operating within the City to register for a business license tax certificate.

If our records are incorrect, and you already registered your business with the City of Oakland, please provide the required account information in (1) below. If you had previously registered but have since discontinued business, please indicate your previous account number in (2) below along with the date your business ceased operations.

1. Business Tax Account # \_\_\_\_\_
2. Previous Business Tax Acct# \_\_\_\_\_ Date Closed \_\_\_\_\_

**If you check the box below, please include a copy of your 2001 Federal Income Tax Returns.**

I/ we \_\_\_\_\_ declare under penalty of perjury, that I/we have not conducted any business activity within the City of Oakland during the tax years 199\_\_, 200\_\_, 200\_\_, and 200\_\_. My business was discontinued/ sold on \_\_\_\_\_.

***I declare under penalty of perjury that to my knowledge the above statement is true and complete.***

**Signed:** \_\_\_\_\_ **Title:** Owner **Date:** \_\_\_\_\_

If you are unable to provide documentation of a current business license registration in Oakland, simply complete the business license tax declaration form included and **return by 10/28/03**. Your prompt response will prevent further notices from being sent and avoid the imposition of additional late payment penalties. Please note that your local tax will be calculated based upon the date your business started in Oakland. You will be notified if additional tax is due.

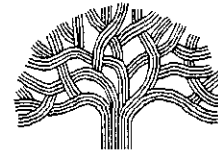
If you need more information, please go to: [www.oaklandnet.com](http://www.oaklandnet.com) or call (510) 238-7474. We appreciate your assistance in this matter and look forward to working with you to service your needs.

Sincerely,

Tax Compliance Section

# ATTACHMENT A

CITY OF OAKLAND



150 FRANK H. OGAWA PLAZA, SUITE 8333 • OAKLAND, CALIFORNIA 94612

Finance & Management Agency  
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(510) 238-7474  
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TDD (510) 839-6451

**10) If my business is located in the City of Oakland but all activities are performed outside of the city limit, do I have a business tax liability?**

Yes. The Director of Finance Ruling numbers 9 and 10 allow you to apportion your gross receipts. Please review these rulings at our website.

[http://www.oaklandnet.com/government/b\\_and\\_f1/revenue/ruling09.pdf](http://www.oaklandnet.com/government/b_and_f1/revenue/ruling09.pdf)

or

[http://www.oaklandnet.com/government/b\\_and\\_f1/revenue/ruling10.pdf](http://www.oaklandnet.com/government/b_and_f1/revenue/ruling10.pdf)

**11) What if I received this notification and I no longer have a business?**

If you previously conducted business in the City of Oakland and never registered your business, please provide gross receipts for the applicable years of business from 2000 through 2003 and the date of termination.

**12) I own residential or commercial property that I lease or rent. Is that considered a business?**

Yes, the revenue collected from such properties located within the city limits is considered income earned and is taxable under the *Oakland Municipal Code*.

**13) If I have a business that needs to be registered but the notification was addressed to the previous owner, what do I do?**

If you are the new business owner and need to apply for a Business Tax Certificate contact our office so that we may assist you.

**14) I run a childcare service, do I have to pay taxes to the City of Oakland?**

The *Oakland Municipal Code* states in Section 5.04.631. 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. Please provide us with a copy of your license issued by the State of California Department of Social Services. We will contact you with additional information, if necessary.

**15) I was unaware of the Business Tax requirements for the City of Oakland and my business has been in operation for some time. Am I subject to any late fees?**

Yes. All delinquent business tax accounts are subject to penalty and interest assessments. NO EXCEPTIONS.

**16) How often do I renew my business tax account?**

The business tax account must be paid annually. Taxes are due on January 1<sup>st</sup> of each year and are delinquent if paid after March 1<sup>st</sup> of each year.

**17) What if I have any other questions?**

You may call our office at (510) 238-7474, please have your account number available. If you wish to review the *Oakland Municipal Code*, please check our website at [www.oaklandnet.com](http://www.oaklandnet.com).

**18) Where do I mail the declaration?**

You may fax the form to (510) 238-6092 or mail the declaration to:

City of Oakland, Tax Compliance Unit  
(AB63 Project)  
150 Frank H. Ogawa Plaza, Suite 8333  
Oakland CA 94612

# ATTACHMENT B

## Frequently Asked Questions for the AB 63

### Tax Compliance Program



**1) What is the AB 63-tax compliance program?**

As a result of state legislation, the California State Franchise Tax Board (FTB) is now authorized to disclose certain records related to the business activities of residents, corporations and other entities within the City of Oakland. By matching the FTB data to our existing records we now have an additional, effective tool to identify unregistered businesses with the City.

**2) Why did I receive a notification?**

Our records show that you are reporting some type of business activity to the FTB and may be located in the City of Oakland but may not have obtained a Business Tax Certificate from our city.

**3) What happens if I do not respond?**

If you do not respond, you may be in violation of Title 5, Chapter 5, Article 4 of the Oakland Municipal Code and your file could be forwarded to the Collection Department for the appropriate follow-up, where you may incur additional penalties, fees and court costs. We would like to assist you to avoid this situation.

**4) I do not consider myself to be in business. What does the City of Oakland consider to be a business?**

Most activities conducted within the City for gain or benefit are considered engaging in business and subject to the business tax. Oakland Municipal Code, Section 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, but shall not include the services rendered by an employee to his or her employer. Please provide us with a written description of your activities to assist us in resolving this matter.

**5) I receive a 1099 form instead of a W-2 for my work. Am I required to have a City of Oakland Business Tax Certificate?**

Those that work as an independent contractor and are paid by 1099 versus W-2 may be liable for the City of Oakland's business tax. Persons that perform work in the City of Oakland as an independent contractor are normally considered to be engaged in business and are liable for the tax.

**6) I conduct a business from my home, am I required to register with the City of Oakland?**

Yes, home-based businesses are subjected to the City of Oakland business tax. In almost all cases, businesses located within the City of Oakland whether at a commercial or residential location require that a Business Tax Certificate be obtained.

**7) Throughout the year, I am involved in consulting on a part time basis. Do I have a City of Oakland business tax liability?**

Yes, businesses, both large and small, are required to obtain a Business Tax Certificate in order to be in compliance with the Municipal Code. If the consulting work is performed and attributable to a location within the City of Oakland, such as your residence, a business tax liability with the City may exist.

**8) I am liable for City of Oakland business tax for the past three years. What kind of penalties and interest are involved?**

Penalties and interest will be applied pursuant to Sections 5.04.190 and 5.04.230 of the Oakland Municipal Code. Taxes are due on January 1<sup>st</sup> of each year and are delinquent if paid after March 1<sup>st</sup> of each year. Submit your gross receipts on the declaration form and we will send you a bill for the total amount of your liability.

**9) I live in Oakland but my business is located outside of the city limits. What are my liabilities for the City of Oakland business tax?**

You may have a business tax liability. To assist us with this determination, please provide a written detailed description or brochure that explains your business activities and where these activities are performed.

*Michelle Smith*  
CITY ATTORNEY

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2004 MAY 13 PM 1:05 ORDINANCE NO. \_\_\_\_\_ C.M.S.

**AN ORDINANCE AMENDING CHAPTER 5.04 OF THE OAKLAND MUNICIPAL CODE (BUSINESS TAXES GENERALLY) TO CLARIFY THE PENALTY FOR NONPAYMENT OF BUSINESS TAX (SECTION 5.04.190); AND TO PROVIDE FOR A REFUND OF PENALTY AND INTEREST CHARGES COLLECTED BY THE CITY DURING CALENDAR YEARS 2002, 2003 AND 2004 (SECTION 5.04.540)**

**WHEREAS**, Section 5.04.190 of the Oakland Municipal Code (the "Municipal Code"), authorizes the City to collect a penalty for nonpayment of annual business tax; and

**WHEREAS**, Section 5.04.540 of the Municipal Code authorizes the City to refund illegally or erroneously collected penalty or interest charges; and

**WHEREAS**, the City of Oakland recognizes that many persons subject to the business tax ordinance are unaware of the City of Oakland's business tax requirements; and

**WHEREAS**, the City of Oakland desires to provide a method for the City Oakland to refund penalty and interest charges collected for tax years 2002 or 2003 and/or 2004;

**NOW, THEREFORE, THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY 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 and titles 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. Section 5.04.190 of the Municipal Code is hereby amended in its entirety to read as follows:

**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:~~

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**JUN 10 2004**

**FINANCE & MANAGEMENT CMTE.**

**MAY 20 2004**

- ~~March 2nd--April 1st 10%~~
- ~~April 2nd--May 1st 25%~~
- ~~May 2nd and thereafter 50%~~

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

- March 2nd--May 1st 10%
- May 2nd and thereafter 25%

C. ~~D.~~ 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%

D. ~~E.~~ 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 issued to those taxpayers making payment in person at 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;
5. U.S. Postmark.

~~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)~~

SECTION 4. Section 5.04.540 of the Municipal Code is hereby amended by adding the following paragraph:

**5.04.540 Refund of tax, penalty or interest paid more than once or erroneously or illegally collected; Six-month limited refund of penalty and/or interest.**

D. Six-Month Limited Refund of Penalty and/or Interest.

(1) Refund.

(a) Any person that paid any penalty pursuant to Section 5.04.190 of the Municipal Code and/or any interest pursuant to Section 5.04.230 of the Municipal Code for tax years 2002 or 2003 and/or 2004, and files within six months of the effective date of this Paragraph D a verified claim for refund thereof, on a form prescribed by the Finance Director, shall be allowed a refund in an amount and in a manner determined under this Paragraph D.

(b) The Finance Director shall notify every person who paid a penalty or interest as described in clause (a) of above, at the person's last known address, that such person may be entitled to a refund. The Finance Director shall furnish such person with a form upon which to claim the refund specified in this Paragraph D.

(2) Determination of Refund.

(a) Amount of Refund. The City shall refund an amount equal to the penalty and/or interest actually paid. The amount of any refund required by this Paragraph D shall not earn interest thereon. The refund shall be paid to the person in accordance with the provisions of clause (b) of this Section (2).

(b) Payment of Refund. The amount the City shall refund to each person pursuant to clause (a) of this Section (2) shall be paid within six (6) months of receipt by the Finance Director of a complete verified claim establishing the person's entitlement to the refund pursuant to this Paragraph D.



SECTION 5. This ordinance shall become effective immediately upon its final adoption by a three-fourths vote of all members of the City Council of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2004

**PASSED BY THE FOLLOWING VOTE:**

AYES-                BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND PRESIDENT DE LA FUENTE  
NOES-  
ABSENT-  
ABSTENTION-

ATTEST: \_\_\_\_\_  
CEDA FLOYD  
City Clerk and Clerk of the  
Council of the City of Oakland, California

*Michelle Smith*

**NOTICE AND DIGEST**

ORDINANCE AMENDING CHAPTER THE OAKLAND MUNICIPAL CODE TO CLARIFY THE PENALTY FOR NONPAYMENT OF BUSINESS TAX AND TO PROVIDE FOR A REFUND OF PENALTY AND INTEREST CHARGES COLLECTED BY THE CITY DURING CALENDAR YEARS 2002, 2003 AND 2004

This Ordinance amends the Oakland municipal code to clarify the penalty for nonpayment of business tax and to provide a method for the City of Oakland to refund penalty and interest charges collected for tax years 2002 or 2003 and/or 2004.

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**CRA/COUNCIL**  
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**FINANCE & MANAGEMENT CMTE.**  
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