



CITY OF SANTA BARBARA

CITY COUNCIL AGENDA REPORT

AGENDA DATE: October 7, 2014

TO: Mayor and Councilmembers

FROM: Administration Division, Finance Department

SUBJECT: Consideration Of Potential Amendment To The Municipal Code, Title 5, Affecting Business License Taxes Payable By Artists

RECOMMENDATION:

That the City Council direct the City Attorney to draft an ordinance to amend Title 5 of the Municipal Code pertaining to business license taxes to add an exemption for artists with annual gross receipts of less than \$5,000.

DISCUSSION:

The Business License Tax Ordinance (Ordinance) was adopted in 1963 and was enacted solely to raise revenue, similar to other local taxes, for municipal purposes; it was not intended for regulatory purposes. The business license tax rate is structured either on a gross receipt basis or a flat fee basis, depending on the type of business (see Attachment 1). Per the Ordinance, the tax rate is applied based on business category or business type as defined in the code. The Ordinance also provides for certain exemptions to the tax, such as charitable, educational and religious organizations; minors; and disabled individuals. In addition, there is a reduced tax rate of \$5 for businesses with annual gross receipts of \$1,200 or less.

Starting in Fiscal Year 2013, the Finance Department hired a consultant to assist in identifying businesses in the City that may not be in compliance with the City's business license tax ordinance. This effort augmented existing audit efforts related to the City's Transient Occupancy Tax and Utility Users' Tax ordinances, and the collection of sales taxes per State law.

As a result of this audit effort, many artists were identified and, where appropriate, requested to come into compliance with the business license tax requirements.

Representatives from various arts organizations and associations raised a number of concerns and questions with City Council and staff over the applicability of the Ordinance to artists given that many of the artists do not generate a significant amount of money from the sale of their art work.

Over the past few months, Finance Department staff has responded to questions and concerns regarding the business license tax requirements for artists. Finance staff provided a fact sheet to the artist community (see Attachment 2) and attended the Santa Barbara Arts Advisory Committee in May 2014 during which City staff presented additional information and clarification of the business license tax requirements per the City's Ordinance. Staff also provided an amnesty program that allowed artists additional time to comply with the Ordinance without the penalties.

Tax Rates for Artists

For artists preferring to be categorized as a "professional artist," the amount of tax is \$100 per year, pursuant to the Ordinance, Section 5.04.420. For all other artists, the amount of tax is based on annual gross receipts with a minimum tax of \$30 for the Arts/Crafts – Home Occupation category (5.04.450). However, if an artist has annual gross receipts of \$1,200 or less then the tax rate is \$5 (Section 5.04.730).

Potential Change to the Business License Tax Ordinance

In response to a request from Council and the concerns raised by the artist community, staff has developed a potential change to the Ordinance, exempting any artist from the business license tax requirements that generates less than \$5,000 in gross earnings in any year. If approved by Council, this change would effectively exempt many artists that are not actively engaged in the sale of art, which is consistent with the intent of the ordinance and addresses many of the concerns of the artist community.

Staff presented this item to the Finance Committee on September 23, 2014 and the Committee unanimously voted to recommend approval of a proposed change for Artists which would exempt them from the business license tax for gross receipts of less than \$5,000.

BUDGET/FINANCIAL INFORMATION:

Business license taxes generate approximately \$2.55 million in tax revenue each year, and the Artist category currently represents approximately \$10,000 of that amount. Staff estimates that the exemption for annual gross receipts of less than \$5,000 for Artists will result in a reduction of revenue by approximately \$3,000 to \$5,000 annually.

ATTACHMENTS: 1. Business License Tax Rates
 2. Business License Frequently Asked Questions (FAQs)

PREPARED BY: Genie Wilson, Treasury Manager

SUBMITTED BY: Robert Samario, Finance Director

APPROVED BY: City Administrator's Office

BUSINESS TAX RATES CITY OF SANTA BARBARA

ATTACHMENT 1

SECTION	A	GROSS RECEIPTS				
<p>This table is to be used for business description A1 through A5. Your first payment should be based on your estimated first year's gross sales. Your estimate should agree with the estimate provided to the State Board of Equalization to obtain a resale number/Seller's Permit. If an overpayment is made, a credit can be applied at renewal time. An underpayment must be added at renewal time.</p> <p>Select the gross receipts range in the left column within which your estimate falls. The number to the right in the column designated for your business description is the amount to pay. Example: Your estimated first year gross is \$185,000. Your business is a café description A2. Use column 2. The tax amount due is \$90.00.</p>						
If Annual Gross Receipts in dollars are:	1	2	3	4	5	
	Your tax is:					
0 - 20,000	25	25	25	30	30	
20,001 - 25,000	31	25	25	30	30	
25,001 - 30,000	35	25	25	35	30	
30,001 - 35,000	37	28	25	37	30	
35,001 - 40,000	39	30	25	39	30	
40,001 - 45,000	41	31	25	41	30	
45,001 - 50,000	43	32	25	43	30	
50,001 - 60,000	45	34	27	45	30	
60,001 - 70,000	49	37	29	49	30	
70,001 - 80,000	53	40	32	53	32	
80,001 - 90,000	58	44	35	58	35	
90,001 - 100,000	64	48	38	64	38	
100,001 - 125,000	75	57	45	75	45	
125,001 - 150,000	91	68	55	91	55	
150,001 - 175,000	106	80	64	106	64	
175,001 - 200,000	120	90	72	120	72	
200,001 - 250,000	142	107	85	142	85	
250,001 - 300,000	168	126	101	168	101	
300,001 - 350,000	195	146	117	195	117	
350,001 - 400,000	221	166	133	221	133	
400,001 - 450,000	242	182	145	242	145	
450,001 - 500,000	266	200	160	266	160	
500,001 - 600,000	292	219	175	292	175	
600,001 - 700,000	325	244	195	325	195	
700,001 - 800,000	360	270	216	360	216	
800,001 - 900,000	374	281	224	374	224	
900,000 - 1,000,000	400	300	240	400	240	
Over 1,000,000 +\$20 per 100,000 over one million (in \$20 increments-round up)	400+	300+	240+	400+	240+	
Over 3,000,000 +\$15 per 100,000 over three million (in \$15 increments-round up)	800+	700+	640+	800+	640+	
Over 6,000,000 +\$10 per 100,000 over six million (in \$10 increments-round up)	1,250+	1,150+	1,090+	1,250+	1,090+	
DO NOT REPORT THE SALE OF ALCOHOLIC BEVERAGES						

SECTION	B	CONTRACTORS
<p>These rates apply to all building trades contractors working in the city:</p> <p>State Classes: A and B, C-12, C-21, C-32, C-34 and C-42 pay \$100.00. (Engineering, General, Earthwork and Paving, Building Moving/Wrecking, Parking and Highway Improvement, Pipeline/Sewer and Sanitation Systems)</p> <p>All other classes: pay \$80.00</p>		

SECTION	C	PROFESSIONALS
<p>These rates apply to all professional businesses with a business location in the city. Professional businesses are listed in the Santa Barbara Municipal Code or classified as professional in the Directory of the Occupational Titles. The minimum is \$100.00 in this classification. Professionals from outside the city pay the minimum rate.</p> <ol style="list-style-type: none"> For the first person, and each additional professional (partner or paid commission basis) pay \$100.00. For each salaried professional or semi-professional, pay \$40.00. For each non-professional or clerical, pay \$20.00. 		

SECTION	D	RENTAL PROPERTIES
<p>The tax amount is \$15.00 for the first \$10,000 annual gross rent estimate, and \$1.00 for each additional \$1,000 or fraction thereof.</p>		

SECTION	E	REAL ESTATE
<ol style="list-style-type: none"> Each broker must pay \$100.00, plus \$40.00 for each salaried agent and \$20.00 for each clerical or non-licensed employee. Each sales agent must pay \$40.00. Brokers or sales agents whose business office is located outside the city must pay \$10.00 for each transaction involving property in the city (maximum \$100.00 for brokers, \$40.00 for sales agents). <p>REAL ESTATE DEVELOPERS - Fee is based on value of building permits on land located within the city. If permit value is \$0 to \$250,000, fee is \$100.00. If permit value is \$250,001 to \$500,000, fee is \$150.00. If permit value is \$500,001 or more, fee is \$200.00.</p>		

SECTION	F	SPECIAL CATEGORIES
<p>These businesses require special permits or registration:</p> <p>Approval is required prior to beginning business operations -</p> <ul style="list-style-type: none"> Dances, Dance Halls, Café Entertainment Dating and Escort Services Firearms Sales Fortunetellers Massage Establishments or Practitioners Paratransit Service (Taxi, Limousine, etc.) Peddlers Private Handbill Distributor Video Arcade and Electronic Game Machines <p>Limited operation may be permitted pending approval -</p> <ul style="list-style-type: none"> Coin-operated machines (vending or amusement) Pawnbrokers Pool and Billiard Rooms Secondhand or Junk Dealers Towing Service Uniformed Security/Private Patrol Operators 		

City of Santa Barbara Business License Information Sheet for the Art Community

The City of Santa Barbara is currently in the process of addressing questions and concerns regarding the Business License requirements for Artists. The most recent mass mailing from the City's audit firm, Muni Services, has created some confusion with the Artist Community. City staff would like the opportunity to address these concerns and clarify any misunderstanding of the City's business license program.

The City has contracted for business license audit services with Muni Services for the past two years. The Business License Audit Program is a comprehensive revenue audit program and general mailings are sent out to all the businesses identified by Muni Services as potentially non-compliant with the City's Municipal Code related to the assessment and collection of business license taxes. Muni Services does not target specific groups or segments of the business community.

City staff anticipates working with the various Artist organizations over the next several weeks to help continue to clarify the business license requirements and to provide an opportunity for feedback. We recognize that many local artists are likely not aware that they may have been subject to a City business license tax, so we will be flexible with respect to the penalties that would normally be assessed.

In the meantime, the following questions and answers may help to better inform the artist community of the City's business license regulations.

When is a business license required?

If an artist is conducting business within the City of Santa Barbara and meets one or more of the following criteria, they are subject to a business license tax. If none of these criteria are met, they are exempt.

1. The artist holds a Seller's Permit with the State Board of Equalization.
2. The artist has filed a Fictitious Name Statement (DBA-Doing Business As) with the County Clerk Recorder's Office.
3. The artist conducts business in the City of Santa Barbara. This would include the following scenarios:
 - a. They have a storefront in SB.
 - b. Their place of business is their home and they live in SB.
 - c. They live outside SB and have no storefront in SB, but sell their art in SB.
 - d. They have created a website for the purpose of selling their art and deliver their art to customers in SB.
4. The artist files a 'Schedule C -Business Profit/Loss Statement' with their State/Federal Tax returns.

These criteria are designed to distinguish between those who are **actively engaged in the sale of art as a business enterprise** vs. those for whom it is just a hobby. We believe the criteria are a good indication of whether someone is "in the business" of selling art or not. Obviously, there can be some gray areas, so we also apply some judgment when necessary.

For example, there are many artists who sell their art at consignment shops or galleries but otherwise are not actively engaged in the business (as determined by the criteria above). These artists will not need to obtain a business license.

How much is the business license tax?

For those artists who consider themselves a “professional artist”, the amount of tax is \$100.00 per year, pursuant to the Municipal Code section 5.04.420.

For all other artists, the amount of tax is based on gross receipts with a minimum tax of \$30 for the Arts/Crafts – Home Occupation category (5.04.450). However, for businesses with annual gross receipts of \$1,200 or less, the amount of tax is \$5.00 (Section 5.04.730)

Are there any exemptions?

The Municipal Code does exempt certain businesses from the tax entirely.

1. Charitable, Educational, or Religious Organizations (Section 5.04.690)
2. Minors – Sixteen (16) years and younger (Section 5.04.740)
3. Disabled Veterans (Section 5.04.750)
4. Disabled Persons (Section 5.04.760).

An exemption is also provided for all Veterans per the State Business and Professions Code Section 16001.7

How much are the penalties for late payment or a failure to pay?

Pursuant to the Municipal code section 5.04.370, the penalties for failure to pay the tax on or before the delinquency date shall be 10% for each month the tax is delinquent and an additional 10% for each month thereafter; provided, that the amount of the such penalty added shall in no event exceed 100% of the tax to which penalty rates herein provided for have been applied.

Do I have to pay penalties if I was unaware of the BL requirement?

City staff has some discretion on assessing penalties for those businesses not in compliance with the Business License ordinance. Staff will continue to evaluate to what extent penalties can be waived in these cases.

What if I am donating art that is later sold?

Donating art to a non-profit does not constitute a sale by the artist. So, the mere act of donating art does not subject an artist to the tax even if the non-profit sells it and makes money on it. Again, it’s whether the artist meets any of the criteria above that determine whether an artist is subject to the tax. Additionally, while non-profits are required to register with the City as a “business”, they are NOT subject to a business license tax.

What if I live outside of the City limits and sell my art in the City?

The rules governing the application of business license taxes mirror the rules and laws established by the State governing the collection and allocation of sales taxes.

The general rule is that the place of business is determined not by where the artist lives but where the business is conducted. So, if an artist lives in Goleta but sells their art within the City of Santa Barbara, they would be subject to the City business license tax.

If an artist has a website through which he/she sells artwork, the place of business is determined by the point of delivery. Again, this is consistent with State laws governing the collection and allocation of sales taxes arising from internet transactions.

Note that if an artist is conducting business in multiple jurisdictions, the artist may want to contact the other jurisdictions to determine the applicable business license requirements.

What if I am participating in a special event?

If you do not have a City Business License, a One Day Vendor's License can be issued for special events in the amount of \$10 per day by the City. The One Day Vendor's License application and \$10 per day fee can also be collected by the event promoter for remittance to the City. If you have a City Business License, a special event "One Day Vendor's License" is still required for display at the event; however, the \$10 per day fee is waived.

What if I only sell my art or craft at the Santa Barbara Arts and Crafts Show?

Artists and craftsmen who sell their goods solely at that Santa Barbara Arts and Crafts show are specifically exempt from paying a business license tax pursuant to Municipal Code section 15.08.160. However, they are required to pay the applicable fees to the Santa Barbara Parks and Recreation Department pursuant to the same code section.

Why did I receive a letter from the audit firm, Muni Services?

Our audit firm, Muni Services, has access to various public records identifying businesses that meet the criteria above – that is, businesses that have filed a DBA with the County, have a seller's permit, have filed a Schedule C with the IRS and FTB, or have a website for the purpose of selling. If an artist does not meet any of these criteria, they would not be identified by our auditors.

Does the audit firm share the Business License information with the IRS or the Franchise Tax Board?

No, Muni Services does not provide business tax information to the IRS or the Franchise Tax Board.

Who do I contact if I have any questions regarding the business license tax?

City of Santa Barbara, Business License Office
735 Anacapa St, Santa Barbara, CA 93102
Ph: 805-564-5346

http://www.santabarbaraca.gov/business/license/tax_application/default.asp