

## 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 within 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) **What is the definition of an "employee"?**

The definition for "employee" is as follows:

**"EMPLOYEE"** shall mean any individual in the service of an employer (in a capacity other than as an independent contractor), under an appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes but is not limited to, all of the enumerated categories in Subsections (a) through (f) of California Labor Code Section 3351, regardless of whether Workers' Compensation Benefits, pursuant to Division 4, Part 1, Section 3200, et seq. of the California Labor Code are required to be paid. Nothing herein shall be deemed to incorporate any provisions from said Labor Code relating to scope of employment. An employee receives income that should be reported to the Internal Revenue Service by the principal on IRS Form W2, should not report the income to the Internal Revenue Service on IRS Form 1040, Schedule C and may not deduct the cost of the use of a home for business purposes on said Schedule C.

An individual is an "employee" when the individual has the status of an employee under common law rules applicable in determining the employer-employee relationship. Common law rules provide that an employment relationship exists when the person or persons for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished.



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The following factors indicate whether sufficient control is present to establish an employer employee relationship:

1. Must comply with instructions about when, where, and how he or she is to work;
2. Receives training from the individual for whom services are performed or is required to attend training;
3. Performs services that are integrated into the business operations generally;
4. Renders services personally and does not delegate their performance;
5. Deals with subcontractors and employees only within the framework of the principal's directions or policies;
6. Has a continuing relationship with the person for whom services are provided;
7. Has his or her hours dictated or established by the person for whom services are provided;
8. Must devote substantially full time to working for the person for whom services are provided;
9. Performs his or her work at the premises of the person for whom services are performed;
10. Is subject to control as to the order or sequence in tasks are performed;
11. Is required to submit interim reports;
12. Is paid by the hour, week or month, rather than in a lump sum;
13. Receives reimbursement for business or travel expenses;
14. Does not supply his or her own tools and materials;
15. Does not invest in facilities that are used in performing services, such as an office that is rented from an unrelated party;
16. Does not stand to realize a profit or suffer a loss as a result of the worker's services;
17. Does not perform more than minimal services for other persons or firms at the same time as work is performed;
18. Does not make his or her services available to the general public on a regular and consistent basis;
19. May be discharged at any time.
20. Has the right to end his or her relationship with the person for whom services are provided without incurring liability.

**7) What is the definition of an "independent contractor"?**

The definition for "Independent contractor" is as follows:

**"INDEPENDENT CONTRACTOR"** shall mean: any entity, other than an individual, that performs services for a principal; and any individual who performs services for a principal for a specified recompense for a specified result, under control of the principal as to the result of the work only and not as to the means by which such result is accomplished. An independent contractor receives income that should be reported to the Internal Revenue Service by the principal on IRS Form 1099, should report the income to the Internal Revenue Service on IRS Form 1040, Schedule C and may deduct the cost of the use of a home for business purposes on said Schedule C.

Factors which indicate status as an independent contractor are if an individual:

The following factors indicate whether an individual is an independent contractor, rather than an employee:

- (1) Is not required to follow instructions on how to perform services;
- (2) Possesses the skills necessary to perform the task and does not need additional training;
- (3) Performs services that are not essential to the principal's business or are not incorporated into the product or services sold by the principal;
- (4) Is able to subcontract all or a portion of the project;



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- (5) Can hire and supervise his or her own employees, and is not supervised by the employees of the person for whom services are provided;
- (6) Generally works on one project and moves on, acquiring additional projects when and if he or she is available;
- (7) Establishes his or her hours of work, working as necessary to accomplish the end result;
- (8) Has the right to work simultaneously for the principal and others, as long as the end result is achieved;
- (9) Is able to choose where to perform some, if not all, of the services;
- (10) Can control the manner and method of performing the services;
- (11) Is responsible only for the end result, and is not required to submit interim reports;
- (12) Generally is paid a flat rate for the completion of the project;
- (13) Is expected to assume the burden of business expenses;
- (14) Possesses the tools and equipment necessary to perform the services independently;
- (15) Makes an investment in tools, business equipment, facilities, publications and supplies appropriate for his or her business;
- (16) Accepts both the benefits and risks of a business transaction, in that he or she has the opportunity to profit from the project price and risks a loss if the end result is unacceptable or costs exceed the project price;
- (17) Can and does work for multiple firms simultaneously;
- (18) Offers his or her services to the general public;
- (19) Can be terminated only according to the terms of an agreement, and could recover damages for breach of contract if termination is outside the scope of the agreement; and
- (20) Has as an obligation to complete the work under contract.

**8) 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.

**9) 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.



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**10) 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.

**11) 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.

**12) 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)

**13) 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.

**14) 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.

**15) 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.

**16) 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. Persons seeking an exemption pursuant to this section must submit an annual statement together with a copy of the most current license issued by the State of California Department of Social Services to the Business Tax Section.](#) We will contact you with additional information, if necessary.

**17) 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.

**18) 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.

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

Call our office at (510) 238-7474, please have your account number available. If you wish to review the Oakland Municipal Code, visit: [www.oaklandnet.com](http://www.oaklandnet.com) or "[Oakland Municipal Code](#)".

**20) 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