

CITY OF OAKLAND
FINANCIAL SERVICES AGENCY
REVENUE DIVISION
DIRECTOR OF BUDGET AND FINANCE RULING NO. 28
EXEMPTION FOR MAJOR RENOVATIONS

Reference: Section 5.04.430 of the Oakland Municipal Code.

Purpose

To establish guidelines for the provision of the exemption for new construction and major renovations on commercial/industrial rental property

Background

The Oakland business tax ordinance imposes a tax on persons engaged in renting or letting a building or portion thereof for commercial/industrial purposes. The fact that one or more persons may dwell, lodge or sleep in the building does not exempt the lessor from the business tax as long as the primary purpose of the structure is for purposes other than sleeping, dwelling or lodging.

Section 5.04.430 does provide, however, an exemption for new buildings or buildings that are the subject of major renovations, as defined, for a 5-year period after the completion date.

Two issues have surfaced that are the subjects of this Ruling: 1) the year in which the exemption (reduced business tax rate) commences and 2) how to address the applicability, if any, of structures that present a “live/work” rental situation. The Financial Services Agency has been approached by taxpayers wishing to secure a favorable determination for exemption reading both the live/work rental property and deferred commencement of the exemption year to the first full year after the issuance of the certificate of occupancy.

The “live/work” term applies to those hybrid structures where commercial/industrial activities are carried on and those same premises are also used for residential, i.e., dwelling, purposes.

Section 5.04.430C.3. states that this exemption will commence the year in which the new building or major renovation is completed, irrespective of the date on which an application is filed, without proration and no matter when in the year the work is completed.

RULING OF THE DIRECTOR, FINANCIAL SERVICES AGENCY

1. As per section 5.04.430, the 5-year exemption for business taxes is effective the year of completion. “Completion” is not defined with sufficient certainty. Therefore, and in order to avoid hardships and inequities that might occur, it is hereby determined that buildings or structures eligible for the subject exemption will be deemed “completed” the first full calendar year of at least 270 days after lessor has been issued a certificate of occupancy from the City of Oakland.

For the purposes of calculating the minimum number of days required to constitute the first period of operation, the following criteria for determining the completion date will be applied: the structure in question will be deemed completed as of the first day of the month following the date of 90% occupancy, i.e., as indicated by tenant move-in or lessor's right to collect rent, whichever is earlier, but no later than 12 months after the building is legally available for occupancy as evidenced by a final certificate of occupancy or a notice of completion in the event of rehabilitation not needing a certificate of occupancy.

The year of completion shall be considered the initial year of business for the purposes of calculating the reduced business tax. That is, in lieu of basing the current year's business tax on the prior year's gross receipts, only the actual receipts in the year of completion will be the measure of taxation for the commencement of the years subject to the exemption, i.e., as if the business had no prior year receipts.

2. As section 5.04.430 is silent on the issue of a live/work situation, but contains the language "letting a building or portion thereof" [Emphasis added.] the following provision will serve to address this situation. Persons that perform, or cause to be performed, new construction of or major renovation on, as defined in section 5.04.430, a building or structure that contains units classified as "live/work" shall be eligible for the 5-year exemption contemplated therein, provided that less than half of the rental units that compose the new or renovated structure are purely residential. That is, commercial or industrial activities must be carried on in at least 51% of the units that make up the building or structure. This percentage refers to number of units with separate addresses or apartment/suite designations and not a percentage of total area within the building or structure.

Notwithstanding the foregoing, where units in an eligible structure are clearly divisible and there exists a significant disparity in square footage between the smallest and the largest unit, a finding of commercial /industrial use shall be made, for the purposes of this exemption, if the threshold of 80% of the rental income from the entire eligible structure is from the non-residential units thereof.

Evidence of this ratio shall be substantiated by submission of the business tax account names and numbers of the units, where the requisite commercial/industrial activities are carried out, to the Director along with any other reasonable corroborative documentation needed by the Director or his/her designee(s). This Ruling in no way places a duty upon the lessor seeking this exemption to enforce business tax registration or compliance on behalf of or instead of the businesses that are the subject of the building or structure in question.

Deborah Edgerly
Director, Financial Services Agency

Affirmed: October 20, 2000

Lauren La Pietra
Board of Review