

CITY OF OAKLAND
FINANCIAL MANAGEMENT AGENCY
REVENUE DIVISION

DIRECTOR OF FINANCE AND MANAGEMENT AGENCY RULING NO. 30
DEFINING BUSINESS PRESENCE RELATED TO INDIVIDUALS WHO ARE
INDEPENDENT CONTRACTORS (1099 EMPLOYEE)

Reference: Sections 5.04.020, 5.04.030 and 5.04.040, Oakland Municipal Code

PURPOSE

Reaffirm that any person conducting business in the city must procure a business tax certificate and that a separate certificate must be obtained for each and every branch establishment or separate place of business of which a business is carried on.

Establish guidelines and key points to be considered and used in determining and defining a person as “doing business” in Oakland based on the taxpayer’s reporting of business income received, and expenses taken at their home location. Also, provide and establish guidelines for persons who operate a business that is home based, paid as an “Independent Contractor”, whereas their income is reported on a “1099” and/or files an IRS Form Schedule C or C-EZ.

BACKGROUND

Some self-employed individuals, whose income is reported on a “1099” and/or an IRS Form Schedule C or C-EZ, contend that they are independent contractors, not businesses subject to the provisions of the City’s Business Tax Ordinance.

This ruling is provided to give more clarity to the definition of “business” and ensure uniform application of the Business Tax Ordinance to self-employed individuals.

Under California Business and Professions section 16300, cities may use the way a taxpayer reports income to the IRS and FTB to determine whether the taxpayer performs services as an employee or as a separate business entity (i.e.: sole-proprietorship, partnership, corporation, LLC, etc...). An employee whose compensation is reported on a Federal W-2 is not doing business and not subject to the business tax.

The facts relevant to determining whether a worker is an independent contractor or an employee fall into three main categories:¹

- **Behavioral Control** – The right to direct or control how the worker performs the work.
- **Financial Control** – The right to direct or control the business part of the work. For instance, a worker who makes a significant monetary investment in the work, or is not reimbursed for some or all business expenses, or can potentially realize a profit or incur a loss, may be an independent contractor.
- **Relationship of the Parties** – How the business and worker describe their relationship. Although not necessarily determinative, receipt of benefits such as insurance, pension or paid leave suggest the existence of an employment relationship. The existence and terms of a written contract can also provide evidence of an employer-employee relationship.

In each case, all the facts are considered – no single fact provides the answer.

A taxpayer engaging in a trade or business as a sole proprietor or an independent contractor, is considered self-employed. Therefore, income received and business expenses deducted are reported on IRS Form 1040, Schedule C.

In order to benefit from the write-off of business expenses, the taxpayer acknowledges a business presence, that is, enough business activities at the business location to justify a claim of deduction.

Under Oakland Municipal Code section 5.04.030:

“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.

This definition applies regardless of the amount of time the taxpayer spends engaged in the business activity or the amount of income produced.

Therefore, based on the above authority, the following ruling is set forth herein:

¹ See IRS Publications 1779, “Independent Contractor or Employee...” and IRS Publications 15-A for additional information.

RULING OF THE DIRECTOR OF FINANCE

The following are among the criteria may be considered in determining the existence of a business presence in Oakland:

Factors Suggesting a Local Business Presence:

1. The taxpayer reports and deducts business expenses at home location on a federal or state tax return. Filing of home office deduction form 8829 “Expenses for Business Use of Your Home”, allowing the taxpayer write-off of living space and utilities expenses based on the use of the home for business, leaves no doubt that the taxpayer is engaged in business out of the home.

2. Other business related expenses such as the following are reported in a Schedule C filed by the taxpayer as part of a federal or state tax return:

- **Advertising expense** – Identifying an Oakland location as the place of business.
- **Car and truck expense** – Reporting transportation costs from a home office or other Oakland location qualifying as a principal place of business to another work location in the same trade or business.
- **Other expenses** – In general, if the place where items underlying the deductions, such as, depreciation, supplies, utilities, etc., is within Oakland, an Oakland business activity is present.

Note: Accepting federal or state tax benefits by reporting and deducting expenses in a Schedule C can result in a business presence determination even if the taxpayer received **NO** gross receipts.

3. Other relevant considerations include, but are not limited to, the following:

- Location where billing invoices are generated.
- Place where payments are received.
- Place to which IRS 1099 forms are addressed and/or received.

Factors Potentially Mitigating Determination of a Business Presence:

In determining that a taxpayer does not have a significant business presence and is not subject to the application of business tax, the following criteria may be considered:

- Gross receipts are from a single source.
- All business activity is conducted outside Oakland.

- Taxpayer procurement of a business license / certificate for the same business activity from another city.
- No business expenses taken on state or federal tax returns.
- Low home-based business expenses, including but not limited to
 - ✓ Depreciation of home and home based business equipment
 - ✓ Repair and maintenance expenses related to home based business equipment
 - ✓ Utilities
 - ✓ Office expense
 - ✓ Other expenses such as, internet / on-line services
- Business expenses taken on the schedule C are not directly related to the Oakland location.
- No filing of IRS Form 8829 acknowledging “expenses for business use of your home”.



William Noland
Director, Finance and Management Agency