

Business License FAQ's

General

Do I need a business license?

City law states that no person shall engage in business or represent and carry on a business, trade, profession or occupation in the city without first having obtained a license from the city. A separate license must be obtained for each and every branch establishment or separate place of business.

The City of Emeryville defines business as “all activities engaged in...within this City with the object of gain, benefit, or advantage...to the taxpayer or to another or to others...” (Municipal Ordinance 3-1.102). Even if you are self-employed, you are still considered a business because you carry on activities applicable under the definition of a business. Additionally, all income reported under IRS Form 1040 Schedule C tax returns is considered business income, and is thus subject to the laws regarding business entities.

My business is based in Emeryville, but I conduct most of my business outside of the city. Do I still need to register as a business in Emeryville?

Yes, you do still need to register as a business in Emeryville because your business is considered to be based here.

However, you are not required to pay a business tax in Emeryville for any business conducted outside of the City's jurisdiction. Your business will not be taxed on gross receipts earned outside of Emeryville if you can provide proof that you paid business taxes on those gross receipts in another jurisdiction before the City can apportion your tax liability. For example, if 20% of your gross receipts were earned in Emeryville and 80% in other jurisdictions, you would be liable to pay business tax on the 20% of your business conducted in Emeryville as well as provide copies of the business licenses and payment tax receipts to account for the other 80% of your business.

Nevertheless, you will still be responsible for Emeryville's minimum business tax of \$25.00 plus \$10.00 renewal fee, which applies to all businesses in Emeryville, regardless of gross receipts apportionment.

I live in Emeryville, but my business is located outside the city limits. What are my liabilities for the City of Emeryville?

As long as *all* business activity is conducted outside Emeryville, there is no need to obtain a City of Emeryville Business License. Please note that the receipt of business mail at a P.O. Box is considered business in the City.

My business entity (corporation, LLC, partnership, etc.) is entirely passive and/or dormant and it is just paying minimum tax to the Secretary of State. Is it still required to obtain a business license?

Yes. If your business is registered active with the Secretary of State and reporting on a business return with the Franchise Tax Board and IRS, it will need a Business License

with the City of Emeryville. By maintaining a business entity within the City, whether it is transacting public business or not, it is considered operating a business under the Municipal Ordinance.

I don't believe that I need a business license. What recourse do I have?

First, please consider carefully the definition of a business provided in the Emeryville Municipal Code 3-1.101:

Business shall include all activities engaged in or caused to be engaged in within this City with the object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or to others, but shall not include the services rendered by an employee to his employer or to a casual or isolated transaction. Although an activity of a taxpayer may be incidental to another or others of his business activities, each such activity shall be considered to be a business engaged within the meaning of this article.

Additionally, please consider that Internal Revenue Service Form 1040 Schedule C tax form reports business income. If you have completed Schedule C tax forms, that business income is also subject to local taxes and business licenses. If you still believe that a business license is not required in your case, you may submit for consideration a "Request for Business Tax Review Form" located on the City of Emeryville website. Please include all pertinent information to the determination of business presence in the City of Emeryville.

How often do I have to pay an administrative fee?

The \$57 Administrative Fee is a one-time registration fee to establish a new business in Emeryville. There is a \$10 Renewal Fee to renew your Business License each year.

Why do I have to pay a business license tax?

The Business License Tax Ordinance was adopted in 1985 and has required that all businesses pay a tax on gross receipts derived from business activities. In addition, payment of this tax will ensure that the City can continue to deliver the best possible services for Emeryville residents and businesses.

What is the tax rate?

The tax rate for most businesses is 0.10% (.0010) per calendar year on the gross receipts earned during the prior year. The minimum tax rate is \$25.00 per year.

Why is there a tax on gross receipts instead of net income?

The City of Emeryville Municipal Code states that business license taxes, with the exception of certain enumerated businesses (Section 3-1.125), must be calculated using the gross receipts from each business. Personal income is not the same as business gross receipts. Individuals should not confuse personal income tax with the business license tax. The City is not taxing personal income; it is taxing business activities.

I have high overhead costs. May I take a deduction?

The City does not allow for deductions before calculating gross business receipts. All businesses are responsible for paying the tax based on their gross receipts *before* deductions are taken.

Am I liable for tax returns on prior years? Do I need to pay penalties and interest?

California Code of Civil Procedures, Section 338 provides that the City may collect the current year's taxes, as well as taxes owed for the three previous years plus all applicable penalties and interest. For assistance calculating penalty and interest, please contact the Finance Department.

What is the penalty for late or non-payment of taxes, and how do I calculate it?

The penalty rate for late payment of taxes is 5% per month with a maximum rate of 25% of the taxable amount. The interest on delinquent accounts is 1.5% on the total outstanding balance (tax + penalty) with no cap. In addition to accruing penalties described above, any person carrying on any business without first obtaining a business license is subject to criminal prosecution. (Municipal Ordinance 3-1.123)

My business is just starting and has no history of gross receipts. How do I pay my business license tax for the first year?

For new businesses with no history of gross receipts, estimate the gross receipts for the current calendar year. For new businesses in the City of Emeryville that do have a history of gross receipts, your tax will be based on the actual gross receipts of the preceding year, regardless of previous location of business.

After calculating my business license tax as a new business owner, my gross receipts were less than estimated. When I renew, can I take a credit on my current year's tax?

No. You must still pay based on your gross receipts for the prior year, and you may not offset your current taxes with a credit.

How can I go about getting a refund on my business license tax?

As per Section 3-1.135:

- (A) No business license tax collected under the provisions of this chapter shall be refundable or prorated in any manner, unless the business subject to the tax:
 - (1) Establishes that it has paid the tax more than once, the tax was erroneously or illegally collected, or it has paid in excess of the correct amount, and;
 - (2) Files a claim with the City within one year from the date of the payment in accordance with all applicable statutes, regulations and ordinances.
- (B) If the claim for a refund is accepted by the City Council, the City may remit the entire amount to the business or credit the refund against any amounts then due and payable to the City from the business.
- (C) No refund of any tax or registration fee paid under this article shall be made by virtue of the discontinuance, dissolution, or other termination of business.

My business does not generate gross receipts. How should I calculate my Business License Tax?

Whenever there are no gross receipts within the City of Emeryville, the following alternate method of calculating business tax under Section 3-1.127 shall be used: (a) Whenever there are no gross receipts within the City of Emeryville, the business shall pay a business tax pursuant to the tax rate set forth in Section 3-1.124, computed on all expenses incurred on an annual basis at the business location or administrative office within the City of Emeryville for payroll, utilities, depreciation and/or rent.

(b) A business taxed under this section shall not be considered either a retailer or wholesaler with respect to the sale of goods manufactured by such business within the City of Emeryville.

(c) When a person engages in two (2) or more businesses, one or more having gross receipts and one or more not having gross receipts, such person shall combine the annual gross receipts of the business(es) having gross receipts with the annual payroll, utilities, depreciation and/or rent of the business(es) not having gross receipts, and pay a business tax on the combined sum pursuant to the tax rate set forth in Section 3-1.124, provided that all businesses are being conducted at the same location.

When is my first Business License Application and payment due?

New businesses must apply for a Business License within 15 days of business activity commencement.

When is my annual renewal due?

Courtesy renewal notices will be mailed each December, and payment is due by January 1st of each year. Any renewal received or postmarked after March 1st will be considered delinquent and is subject to penalties and interest.

I did not receive a business license renewal notice. Do I still owe a business license tax?

You are still required to pay the Business License Tax if you do not receive a courtesy notice from the City's Finance Department. Failure to pay based on non-receipt of the notice does not grant forgiveness of the payment. (Municipal Ordinance 3-1.118)

Residential Landlords

Why do I have to pay this Business License tax?

The Business License Tax Ordinance was adopted in 1985 and has required that all businesses pay a tax on gross receipts from business activities engaged in. Emeryville commercial landlords have been paying this tax since its inception. Because residential landlords possess rental properties that also generate revenue, they are subject to the same laws as commercial landlords. In addition, payment of this tax will ensure that the City can continue to deliver the best possible services for Emeryville residents and businesses.

My property did not generate any income during the calendar year because the unit was vacant; am I still required to pay a business license tax?

Yes, you are required to pay a minimum annual license tax of \$25 plus a \$10 renewal fee.

If my tenant sub-leases the unit, is he/she also responsible for paying a business license tax?

Yes. When you receive the notice, you should advise the City's Business License Desk that the property is being sub-leased and provide the name of your tenant (lessee) so that we may send them a courtesy notice.

Must I pay a business license tax if I rent out a portion of my home?

Yes. You must calculate your tax based on gross receipts for the previous year (\$25 minimum).

What should I do when renting to a family member?

You are still required to pay a Business License tax even if you are renting to a family member.

I sold the property and am no longer the owner of record, what should I do?

If you receive a courtesy notice and you are no longer the owner of record, please notify the Finance Department immediately. You may also complete the business closure form which informs the Finance Department that you are not the current owner.

If my tenant moves out or I sell the property, do I get a rebate?

No. Payment of Business License tax for Residential Landlords is based on your prior year's revenue.

Whom do I contact if I have questions or concerns?

Feel free to contact the Business License desk at (510) 596-4325 or e-mail: dvink@emeryville.org