

## Legislation for Commission Review

BOS File No: 161225  
Name: Business and Tax Regulations Code - Business Registration with Tax Collector

### Legislation Overview:

Ordinance amending the Business and Tax Regulations Code to remove the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector; and to remove the fee and administrative requirements for obtaining a duplicate registration certificate.

Sponsor(s): TTX  
Date Introduced: 11/15/2016  
Date Referred: n/a (self-referred)  
Scheduled for BOS Committee: TBD (possibly January)

### Description:

#### *Existing Law*

Existing law imposes a penalty for failure to obtain a business registration certificate under Business and Tax Regulations Code (“Code”) Section 6.17-3 (see below). That penalty is in addition to any other liability imposed under Article 6 of the Code (including administrative penalties), and is either \$100, or a percentage of the amount owed per Code Section 6.17-1 (see below), whichever is greater. Existing law provides procedures and a \$25 fee to obtain a duplicate business registration certificate.

Business and Tax Regulations Code requires that every person engaging in business within the City, regardless of whether such person is subject to taxation, must register within 15 days after commencing business within the City. The Business Registration Certificate must be conspicuously displayed at the place of business. Registration fees range from \$75 to \$35,000, based on the type of business activities and annual gross receipts. The voters set rates as part of 2012's Proposition E-- the Gross Receipts Tax and Business Registration Fees Ordinance.

#### *Amendments to Current Law*

This ordinance would alter the calculation of the penalty. Instead of a \$100 minimum penalty for failing to obtain a business registration certificate (under Section 6.17-3), the penalty for failure to obtain a business registration certificate would be based only on a percentage of the amount owed (under 6.17-1).

This ordinance would also delete the required procedures and fee to obtain a duplicate business registration certificate.

### ***Background Information***

In addition to the penalty for failure to obtain a business registration certificate, the Office of the Treasurer and Tax Collector is permitted to impose a \$100 administrative penalty (through the administrative citation process) for the failure to obtain a business registration certificate. Thus, a taxpayer that failed to obtain a business registration certificate but was not subject to a penalty under Code Section 6.17-1 (because, for example, the taxpayer was not required to pay the business registration fee), could still be liable for the \$100 administrative penalty under Code Section 6.19-3.

This legislation was created with input from the Mayor's Quarterly Small Business Leaders' Meeting participants.

### ***Business Registration Fees***

Business Registration Fees for new businesses are based on anticipated payroll expense and gross receipts for the current calendar year, and the business activity types selected.

*Businesses consisting solely of the business activities of Certain Services (e.g. Repair/Maintenance, Personal/Laundry, Civic Orgs), Retail Trade, and/ or Wholesale Trade (described on page 1 of the Application) should use Schedule B. Businesses that do anything else should use Schedule A.*

<b>Anticipated Gross Receipts for Calendar Year</b>	<b>Schedule A</b>	<b>Schedule B</b>	<b>State Fee</b>
\$0 to \$100,000	\$90	\$75	\$1
\$100,001 to \$250,000	\$150	\$125	\$1
\$250,001 to \$500,000	\$250	\$200	\$1
\$500,001 to \$750,000	\$500	\$400	\$1
\$750,001 to \$1,000,000	\$700	\$600	\$1
\$1,000,001 to \$2,500,000	\$300	\$200	\$1
\$2,500,001 to \$7,500,000	\$500	\$400	\$1
\$7,500,001 to \$15,000,000	\$1,500	\$1,125	\$1
\$15,000,001 to \$25,000,000	\$5,000	\$3,750	\$1
\$25,000,001 to \$50,000,000	\$12,500	\$7,500	\$1
\$50,000,001 to \$100,000,000	\$22,500	\$15,000	\$1
\$100,000,001 to \$200,000,000	\$30,000	\$20,000	\$1
\$200,000,001 and over	\$35,000	\$30,000	\$1

(Business and Tax Regulations Code)

SEC. 6.17-1. PENALTIES AND INTEREST FOR FAILURE TO PAY.

(a) Any person who fails to pay any tax to the City, or any operator or other person who fails to collect and remit any third-party taxes shall pay a penalty of 5 percent of the tax, if the failure is for not more than 1 month after the tax became delinquent, plus an additional 5 percent for each following month or fraction of a month during which such failure continues, up to 20 percent in the aggregate, until the date of payment. Any taxes remaining unpaid for a period of 90 days after notification that the tax is delinquent shall be subject to an additional penalty of 20 percent of the amount of the tax. The penalty and interest provided under this Section shall not apply with respect to the payroll expense tax and the gross receipts tax if the sum of the payroll expense tax payments and gross receipts tax payments is equal to or greater than the sum of the payroll expense tax and gross receipts tax liability for that tax year.

(b) If the failure to pay any tax is due to fraud or an intent to evade the Business and Tax Regulations Code or the Tax Collector's rules and regulations, an additional penalty in the amount of 50 percent of the amount due, in addition to any other penalties and interest, shall be added thereto. A taxpayer or other person against whom a fraudulent failure to pay penalty is asserted is entitled to a notice of such determination to be issued in accordance with the provisions of Section 6.11-1et seq. and to the appeal rights set forth in Section 6.13-1et seq.

(c) Unpaid taxes shall also accrue interest at the rate of 1 percent per month, or fraction of a month, from the date the taxes become delinquent through the date the taxpayer or operator pays the delinquent taxes, penalties, interest and fees accrued to the date of payment in full.

(Added by Ord. 18-98, App. 1/16/98; amended by Ord. 93-99, File No. 990303, App. 4/30/99; Ord. 26-04, File No. 031990, App. 2/19/2004; Ord. 291-10, File No. 101099, App. 11/18/2010; Ord. 271-13, File No. 131031, App. 11/27/2013, Eff. 12/27/2013, Oper. 1/1/2014; Ord. 222-14, File No. 140798, App. 11/7/2014, Eff. 12/7/2014)

(Business and Tax Regulations Code)

**SEC. 6.17-3. NEGLIGENCE PENALTIES FOR FAILURE TO REGISTER, MISSTATEMENTS IN REGISTRATION, FAILURE TO TIMELY UPDATE REGISTRATION, FAILURE TO ALLOW INSPECTION OF RECORDS UPON REQUEST, AND FAILURE TO FILE A RETURN; SANCTION FOR FAILURE TO PRODUCE REQUESTED RECORDS.**

(a) Any person who fails to register, fails to amend a registration within 7 days of a material change or who makes a material misrepresentation in a registration or who fails to comply with a rule or regulation promulgated by the Tax Collector in a timely manner shall pay, in addition to any other liability that may be imposed under the provisions of this Article, a penalty in an amount equal to either \$100 or the penalty assessed pursuant to Section 6.17-1, whichever is greater.

(b) The Tax Collector may impose a penalty upon any person who fails to file a return or returns required under this Article on or before the date prescribed for filing up to \$500 for each such failure. The penalty under this provision shall be in addition to any other liability that may be imposed under the provisions of this Article. Filing a return that the Tax Collector determines to be incomplete in any material aspect may be deemed failure to file a return in violation of this Section. Any return required to be filed on a combined basis, and which is not filed on that basis, is an incomplete return. In addition, any return required to report worldwide gross receipts and payroll of a person or combined group under Section 956.2, which does not report gross receipts and payroll on a worldwide basis, is an incomplete return.

(c) Any person who fails to allow a full inspection of records pursuant to a request made by the Tax Collector within the time prescribed by the Tax Collector shall pay, in addition to any other liability that may be imposed under the provisions of this Article, a penalty in the amount of \$500 for each such failure.

(d) Unless the failure to allow inspection was due to reasonable cause and not willful neglect, any person who fails to provide records pursuant to a written request made by the Tax Collector may not contest the Tax Collector's decision regarding the amount of such person's liability for any taxes, administrative collection costs, interest, penalties or other costs and charges imposed under the Business and Tax Regulations Code, or oppose the collection of such amount, in any subsequent administrative or judicial proceeding, on the basis of any record the Tax Collector previously requested in writing that such person failed to make available to the Tax Collector on or before the earliest to occur of the following:

(1) The conclusion of the hearing on a petition for redetermination held pursuant to Sections 6.12-5 or 6.13-2;

(2) The date the jeopardy determination became final under Section 6.12-5 if such person did not request hearing thereon;

(3) The date the deficiency determination became final under Section 6.13-4 if such person did not request a hearing thereon.

(Added by Ord. 18-98, App. 1/16/98; amended by Ord. 94-99, File No. 990304, App. 4/30/99; Ord. 26-04, File No. 031990, App. 2/19/2004; Ord. 291-10, File No. 101099, App. 11/18/2010; Ord. 206-13, File No. 130784, App. 10/11/2013, Eff. 11/10/2013; Ord. 271-13, File No. 131031, App. 11/27/2013, Eff. 12/27/2013, Oper. 1/1/2014)