

## 2017 Los Angeles Business Tax renewals due February 28

### Overview

This Tax Alert summarizes the Los Angeles Business Tax ("LABT"), discusses some recent developments, and provides taxpayer considerations.

### Summary of the Tax

The LABT is a gross receipts tax imposed on most businesses operating within the City of Los Angeles ("Los Angeles" or the "City").<sup>1</sup> Generally, the tax separates business activities into a number of tax classifications, each with its own tax rate. In addition, the LABT is a location-based tax that requires taxpayers to register and obtain a business license for each business location within the City. The following is a summary of the more significant characteristics of the tax:

- Nexus is broadly asserted and applies to most individuals and businesses "engaged in business" in the City. This includes, but is not limited to the following:
  - Maintaining a fixed place of business within the City;
  - Owning or leasing real property within the City for business purposes;
  - Maintaining inventory in the City;
  - Regularly soliciting business within the City;
  - Performing work or services in the City on a regular and continuous basis, involving not less than seven working days per year; and
  - Operating a motor vehicle on City streets for business purposes.<sup>2</sup>
- For 2017, Tax rates for the various tax classifications range from \$1.01 (for wholesalers and retailers) to \$4.50 (for professions and occupations) per \$1,000 of gross receipts.<sup>3</sup>
- The tax is apportioned so that it falls on gross receipts derived from business done in the city.
- When a taxpayer is involved in two or more business activities, a single primary tax classification election is generally available allowing a taxpayer to compute the tax using a single tax rate if at least 80% of the taxpayer's gross receipts fall within that tax classification.<sup>4</sup>
- The statute of limitations for assessments is generally three years,<sup>5</sup> but is extended to six years where there has been a substantial understatement of tax (at least 25%)<sup>6</sup> and to eight years for non-filers.<sup>7</sup>
- A Voluntary Disclosure Program ("VDP") went into effect in October 2011 that currently limits the look-back period for non-filers to five years.<sup>8</sup>

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<sup>1</sup> Los Angeles Municipal Code, Chapter II, Article 1. Unless provided otherwise, all references are to the Los Angeles Municipal Code ("LAMC"), Chapter II, Article 1.

<sup>2</sup> LAMC § 21.00(i).

<sup>3</sup> LAMC § 21.33(f).

<sup>4</sup> LAMC § 21.06.1.

<sup>5</sup> LAMC § 21.16(a)(1)(A).

<sup>6</sup> LAMC § 21.16(a)(1)(B).

<sup>7</sup> LAMC § 21.19(a).

<sup>8</sup> LAMC § 21.16.1.

## External Multistate Tax Alert

- Claims for refund due to an overpayment must be filed within one year from the date of payment to receive a cash refund.<sup>9</sup> After one year, taxpayers are entitled to a credit of the overpaid amount, which may be applied to offset any LABT liability for up to three years from the date of overpayment.<sup>10</sup>
- Tax exemptions are currently in place for qualifying Small Businesses<sup>11</sup> and qualifying Creative Artists.<sup>12</sup> However, both exemptions require the taxpayer to register and file annual renewals with the City on a timely basis.
- The City allows for apportionment based on various City administrative rulings.

### Filing Requirements

The 2017 LABT renewal along with the required payment of tax became due on January 1, 2017, and will be deemed delinquent if the filing and payment of tax<sup>13</sup> are not made by February 28, 2017 (the "Filing Deadline").<sup>14</sup> Filings not received by the Filing Deadline will incur delinquency penalties of 5% of the tax due plus 5% per month for the first three months of delinquency, plus interest. For example, the cumulative delinquency penalty applicable in the third month is 20% of the tax due. An additional 20% penalty may be imposed for long-term delinquencies (four months and beyond), bringing the maximum delinquency penalty to 40% of the tax due, plus interest. A written request for a 45-day extension may be made for good cause without imposition of penalties so long as 90% of the liability is paid and the request is made on or before the Filing Deadline.<sup>15</sup>

### Recent Developments

In prior years, there was a New Business tax exemption where qualifying businesses were exempt from paying any tax to the City for the first two annual business tax renewals. Qualifying businesses were those that relocated or first established a fixed location in the City on or after January 1, 2010 and on or before December 31, 2015. This exemption has expired, and is not available for businesses that relocated to, or first established a fixed location in the City after, December 31, 2015.

As discussed in a prior Tax Alert,<sup>16</sup> the City Council adopted an ordinance that created two new categories for internet-based businesses beginning in 2010: "Internet-Based Application Service Providers" and "Internet-Based Data Manipulation." The business tax rate for these classifications is \$1.01 per \$1,000 of gross receipts.<sup>17</sup> These classifications and rates, adopted in 2010 and extended in 2014, are currently set to expire after the 2018 tax period.<sup>18</sup>

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<sup>9</sup> LAMC § 21.07(a).

<sup>10</sup> LAMC § 21.05(b)(4).

<sup>11</sup> LAMC § 21.29(a). Any business that has total taxable and nontaxable gross receipts that do not exceed \$100,000 in any year is eligible for the small business tax exemption.

<sup>12</sup> LAMC § 21.29(b). Artists and businesses in the entertainment industry with total taxable and nontaxable gross receipts that do not exceed \$300,000 in a year are eligible for the creative artist business tax exemption.

<sup>13</sup> Note that businesses with a tax liability of \$50,000 or more are required to submit payment electronically by Automated Clearing House.

<sup>14</sup> Generally, LABT renewals along with the required payment are deemed delinquent if they are not made by the last day of February.

<sup>15</sup> LAMC § 21.15(e).

<sup>16</sup> Available [here](#).

<sup>17</sup> The Internet-Based Application Service Provider classification applies to businesses that provide customers access, exclusively through the internet, to electronic applications that are available exclusively on computer devices operated by or on behalf of the application service provider. The Internet-Based Data Manipulation classification applies to businesses that exclusively provide access to internet-based applications that allow a user to search, compile, and otherwise manipulate data, including but not limited to a business that operates or provides access to one or several search engines. However, any business that utilizes an internet-based application or data manipulation to sell goods or further its business is specifically excluded from qualifying for either of the internet-based business categories.

<sup>18</sup> See City of Los Angeles, City Clerk Council File: 14-0945, available [here](#).

## Considerations

As the February 28, 2017 filing deadline approaches, taxpayers may wish to consider revisiting their LABT filing methodologies to ascertain whether their business activities in Los Angeles are properly classified and apportioned for LABT purposes. Please note that using an incorrect tax classification or apportionment methodology can result in a deficiency assessment.

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