

## LABT March 2<sup>nd</sup> Filing Deadline; Internet Business Classifications Extended

February 2, 2015

### Overview

This Tax Alert summarizes the Los Angeles Business Tax (“LABT”), while highlighting the upcoming March 2, 2015, filing deadline and the extension of the internet-based tax classifications through the 2018 tax period.

### 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> 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.
- Tax rates for the various tax classifications range from \$1.01 (for wholesalers and retailers) to \$5.07 (for professions and occupations) per \$1,000 of gross receipts.
- 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.
- The statute of limitations for assessments is generally three years, but is extended to six years where there has been a substantial understatement of tax (at least 25%) and to eight years for non-filers.
- A Voluntary Disclosure Program (“VDP”) went into effect in October 2011 that currently limits the look-back period for non-filers to five years. Without the VDP, the maximum look-back period is eight years.
- Claims for refund due to an overpayment must be filed within one year from the date of payment to receive a cash refund. 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.
- Tax exemptions are currently in place for qualifying New Businesses<sup>2</sup> and qualifying Small Businesses.<sup>3</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 several City administrative rulings.

<sup>1</sup> Los Angeles Municipal Code, Article 1, Chapter 2.

<sup>2</sup> For those qualifying businesses that relocate or first establish a fixed location in the City on or after January 1, 2010, and before January 1, 2016, there is an exemption from paying any tax to the City for the first two annual required business tax renewals.

<sup>3</sup> 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.

## Filing Requirements

The 2015 LABT renewal along with the required payment of tax became due on January 1, 2015, and will be deemed delinquent if the filing and payment of tax<sup>4</sup> are not made by March 2, 2015.<sup>5</sup> Filings not received by the filing deadline will incur delinquency penalties of 5% of the tax due per month for the first four months of delinquency, plus interest. For example, the cumulative penalty due in the fourth month is 20% of the tax due. An additional 20% penalty is imposed for long-term delinquencies (five months and beyond), bringing the maximum 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 (i.e., March 2, 2015).

As the 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.<sup>6</sup>

## Extension of Internet-based Tax Classifications through 2018

Prior to 2010, internet-based businesses did not fit into any specific tax classification and were consequently taxed under the catch-all category of “professions and occupations” at the highest tax rate of \$5.07 per \$1,000 of gross receipts. In 2010 the City Council adopted an ordinance that created two new categories for internet-based businesses – “Internet-Based Application Service Providers” and “Internet-Based Data Manipulation” – and reduced business tax rates for these types of businesses to \$1.01 per \$1,000 of gross receipts.

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.

The reduced tax rates adopted in 2010 were originally set to expire after the 2014 tax period. In an effort to provide more time to further analyze the effectiveness of the lower tax rates, the City Council unanimously approved an extension of the ordinance through the 2018 tax period.<sup>7</sup> The extension of the ordinance was approved by the mayor and went into effect on October 21, 2014.<sup>8</sup>

## Contacts

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<sup>4</sup> Note that businesses with a tax liability of \$50,000 or more must submit payment electronically by Automated Clearing House.

<sup>5</sup> Generally, LABT renewals along with the required payment are deemed delinquent if they are not made by the last day of February. However, because the last day of February for this year falls on a Saturday, the payment and filing deadline is extended until Monday, March 2, 2015.

<sup>6</sup> An incorrect classification or apportionment can result in a deficiency assessment.

<sup>7</sup> See City of Los Angeles, City Clerk Council File: 14-0945, available at:

<http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=14-0945>.

<sup>8</sup> See City of Los Angeles, Ordinance No. 183256, available at: [http://clkrep.lacity.org/onlinedocs/2014/14-0945\\_ord\\_183256.pdf](http://clkrep.lacity.org/onlinedocs/2014/14-0945_ord_183256.pdf).

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