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*See inside for a complete list of cities requesting information on potential business license debtors from the FTB.*

## California Cities Asking For Business Licenses



**Esther Brumleve, MBA**

Many cities in California have recently been on the hunt to determine which businesses have a business license and which ones are not in compliance. If you have a business with an address in San Jose, and have not obtained a business license from the City of

San Jose, you can expect a letter from the Department of Finance requesting that you file an Application for Business License and pay the annual fee. You may also be asked to pay penalties and interest for any years in which the business was operating and did not have a business license.

So where are the cities finding your information? They're requesting the information from the Franchise Tax Board and then sending out letters to businesses based on the address used on the Schedule C.

In San Jose, for example, a business must have a business license if it conducts business in the City of San Jose. So what is considered "engaging in business" in the City of San Jose? "Commencing, conducting, operating managing or carrying on of business from a fixed location within the city or from a

fixed location outside of the city but coming into the city to conduct the business are all considered "engaging in business." (San Jose Municipal Code §4.76.070) "Business" includes all activities engaged in or caused to be engaged in within the city limits including any commercial or industrial enterprises, trade, profession, occupation, vocation, calling or livelihood including rental or lease of residential or nonresidential real estate and mobile home parks, or independent contractors, whether or not carried on for gain or profit." (San Jose Municipal Code §4.76.050)

What should you do if you receive a letter from the City of San Jose? If you are conducting business in San Jose, complete the Registration Form for Business Tax and pay the annual fee. If your business accrued any penalties and interest for previous years, pay those as well.

What if you receive a letter and you are not engaged in business in San Jose? The Finance Department must be informed that no business is being conducted in the City of San Jose. We recently helped a client avoid registering with the City of San Jose and paying late fees and penalties for a business license.

## Success Story



Structure Law Group, LLP's client sold real property and was then sued by the purchasers in a multi-million dollar lawsuit for alleged defects. The case went to trial and after the plaintiffs put on their evidence, SLG's attorneys convinced the judge to throw out most of plaintiffs' case before SLG's client even presented its defense. After trial, plaintiffs did get a judgment in their favor for about three percent of the amount they sought. However, SLG then assisted its client appeal that decision. The Court of Appeals overturned the trial court, resulting in a complete defense and a complete victory for SLG's client.

## LLC Fee Update



In previous newsletters (available at [www.structurelaw.com](http://www.structurelaw.com)) we have discussed the *Northwest* case (*Northwest Energetic Services LLC v. FTB* (April 13, 2006) Super. Ct. S.F. City and County No. CGC-05-437721) and the *Ventas* case (*Ventas Finance I, LLC v. FTB* (Nov. 7, 2006) Super. Ct.

S.F. City and County No. CGC-05-437721). Now, we have the *Bakersfield Mall* case (*Bakersfield Mall, LLC*, San Francisco Superior Court Docket No. CG07462728). In *Northwest*, an out-of-state LLC registered in California did not do any business in California. In *Ventas*, a California LLC did business both in and out of California. Now, in *Bakersfield Mall*, a California LLC does business solely within California. In the other cases, the FTB argued that the Superior Court's decision that the fee is unconstitutional does not apply to LLCs wholly within California. Now, we will see if the courts agree.

Meanwhile, all LLCs must continue to pay the LLC fee and file protective claims for refund. If you filed a protective claim for refund in the past citing either *Northwest* or *Ventas*, you do not need to file a new claim under *Bakersfield Mall*, as long as your claim includes this language: "The annual fee under

R&TC §17942 is unconstitutional..."

However, protective claims may not be useful for California LLCs not doing business out of state. The legislature's new Assembly Bill 198 says that, beginning on January 1, 2007, the fee will be based on total income derived from or attributable to California. AB 198 also says that if the taxpayers win in *Northwest* and/or *Ventas*, the fee must be apportioned for years prior to 2007 and LLCs operating only in California will not be entitled to any refund at all, despite the unconstitutionality of the fee. Now we wait to see if the governor vetoes it...

Source: Spidell's California Taxletter, June 1, 2007, vol. 29, no. 6, August 1, 2007, vol. 29, No. 8, October 1, 2007, vol. 29, No. 10.

*If you filed a protective claim for refund in the past, you do not need to file a new claim as long as your claim includes the right language.*

## Tax Corner

### • Employee Cell Phones

You can provide cell phones to your employees as a tax free fringe benefit, but only if the employees keep detailed records on personal and business usage. The value of any personal use is taxable. Source: Kiplinger Tax Letter, Vol. 82, No. 14, July 13, 2007.

### • Holiday Party Taxes!

The IRS says that if a prize won at a company party is not available to the general public, it must be treated as wages. Income taxes and payroll taxes are due on the value of the prize. Inexpensive prizes like a holiday turkey are exempt from this rule as de minimis. Source: Kiplinger Tax Letter, Vol. 82, No. 14, July 13, 2007.



### Cities Requesting Information From FTB

Albany	Gardena	Pleasant Hill	Santa Ana
Alhambra	Gilroy	Pleasanton	Santa Barbara
Auburn	Huntington Beach	Rancho Palos Verdes	Santa Monica
Bellflower	Irvine	Rialto	Santa Rosa
Brea	Livermore	Richmond	Seal Beach
Burbank	Long Beach	Roseville	South Lake Tahoe
Carmel-by-the-Sea	Los Angeles	San Clemente	Torrance
Carson	Merced	San Diego	Ventura
Cathedral City	Millbrae	San Dimas	Vernon
Colton	Newport Beach	San Francisco	Vista
Corona	Oakland	San Jose	Walnut Creek
Corte Madera	Orange	San Juan Capistrano	Westminster
El Segundo	Pasadena	San Rafael	Yuba City
Fremont	Paso Robles	Source: Spidell's California Taxletter, July 1, 2007, Vol. 29, No. 7.	

## New Rules for California Limited Partnerships

Effective January 1, 2008, California has adopted the Uniform Limited Partnership Act of 2008 ("ULPA 2008"). What does this mean for existing California limited partnerships? They have two options: either do nothing, and keep certain rights under the old law until January 1,

### *New Rules....What does this mean for existing California limited partnerships?*

2010 when they will default to the new rules; or elect by unanimous vote of the partners to amend the partnership agreement to adopt ULPA 2008.

What are the major changes under the new law? Instead of incorporating parts of the general partnership statutes like in the past, ULPA 2008 incorporates many provisions into a single act in an attempt to simplify the partnership rules. A new provision provides for recognition of foreign "limited liability limited partnerships" ("LLLPs") which are permitted in several other states, but not California. LLLPs will be treated as foreign LPs in California (not as LLCs or LLPs). ULPA 2008 also provides new treatment of

partners upon disassociation or withdrawal from the partnership, whereby withdrawing partners have no right to be bought out and will be treated as economic interest owners.

As a result of these and other changes, all California limited partnerships should reconsider their current partnership agreements before the end of the year to determine if they should be revised for ULPA 2008.

Source: Spidell's California Taxletter, April 1, 2007, Volume 29, Number 4.



## Real Estate

### • 1031 Exchanges Being Audited By The FTB:

The California Franchise Tax Board has 1031 exchanges on its list of major audit issues. The FTB is finding increased noncompliance, in particular with: nonqualifying property, timing issues, improper identification, and improper boot calculations. Source: Spidell's California Taxletter, June 1, 2007, vol. 29, no. 6.

### • Realtor Commission Rebates

In a private ruling, the IRS recently stated that real estate agents representing buyers may agree to give back a portion of their commission on the home purchase, and that rebate will be tax free to the buyer. It is considered a non-taxable purchase price reduction, and no Form 1099 is required. Source: Kiplinger Tax Letter, Vol. 82, No. 11, June 1, 2007.



## Reminders And Other Items of Note

### • Dissolution of Entities As Of Year End

If you want to dissolve an entity to avoid paying California franchise taxes for 2008, now is the time to consider winding up before year end.

### • Formation of New Entities

If you are planning on forming a new entity before the end of the year, please note that if the entity is formed during the last two weeks of the year and does not do any business until January 1, 2008, it will not incur taxes for 2007.

Please contact our office at (408) 441-7500 if we can be of any assistance with the formation or dissolution of an entity.



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## Dates To Remember

October 31	Halloween
November 9	Veteran's Day - some courts and government offices closed
November 18	Mickey Mouse's Birthday
November 22-23	Thanksgiving - courts and government offices closed
December 25	Christmas Day - courts and government offices closed
January 1	New Year's Day - courts and government offices closed

## Did You Know?

- Candy sales in the US for Halloween average \$2 billion annually.
- The number one candy in the US for Halloween is Snickers.
- 99% of the pumpkins sold annually are sold for use as jack-o-lanterns.
- The mask of Michael Myers in the movie Halloween is a mask of William Shatner painted white.
- Halloween is the 3rd biggest day of the year for parties behind New Year's and Super Bowl Sunday.

*We appreciate your referrals!*



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