

2.04 Business License Tax

Description: Tax on businesses for the privilege of conducting business within the city. Counties may impose in unincorporated areas.

Authority: Charter cities: Cal. Const. art. XI §5.
General law cities: Gov. Code, §37101 (revenue purpose), Busn. and Prof. Code §16000 et seq. (regulatory purpose).
Counties: Rev. and Tax Code, §7284 et seq. (revenue and regulation).

Administering Agency: City or county.

General/Special Tax and Use of Revenues: Business license taxes may be imposed as general taxes or special taxes. When imposed for regulatory purposes they may be imposed as regulatory fees with the revenues limited to covering the cost of the regulatory program.

For more information on *Business Licenses/Permits* for regulatory purposes, see Chapter Five, Section 5.04.

■ Overview

The business license tax is an excise tax imposed on persons or entities for the privilege of conducting business within the city. California state law prohibits cities from levying an income tax, but does not "prohibit the levy or collection of any otherwise authorized license tax upon a business measured by or according to gross receipts."³⁹ The tax is most commonly based on gross receipts or levied at a flat rate, but is sometimes based on the quantity of goods produced, number of employees, number of vehicles, square footage of the business or some combination of factors. Rates are set at each city's discretion but may not be discriminatory or confiscatory.

Cities may impose this levy as a tax for revenue-raising purposes or as a fee for regulatory purposes. However, when imposed as a regulatory fee, the revenues are limited to covering the cost of the regulatory program.

■ Apportionment for Businesses in Multiple Jurisdictions

A city may tax a business which does business both inside and outside the city's jurisdictional boundaries only if the business license tax fairly reflects that proportion of activity carried on within the city and only if the business has a substantial presence within the city's borders. Apportionment is required by the California Constitution's provisions forbidding extraterritorial application of laws and guaranteeing equal protection and by comparable provisions of the federal Constitution. The apportionment must be based on a measure that fairly reflects that proportion of the taxed activity which is actually carried on within the taxing jurisdiction. A taxpayer who contends a city's business license tax improperly taxes significant extraterritorial values bears the burden of proof.

■ Exemptions

State law prohibits the imposition of a business license tax or regulatory fee, whether a flat rate or based on income or gross receipts, on any clergy or religious organization that has been granted a 501(c)(3) federal income tax exemption.⁴⁰ No business license tax or fee may be imposed on any insurance company nor any bank or financial corporation which is subject to the state bank and finance corporation tax.⁴¹

State law prohibits the imposition of regulatory business licenses and fees on certain organizations including nonprofit organizations,⁴² café musicians⁴³ and solicitation of donations by federally chartered veterans' organizations specified in Title 36 of the United States Code.⁴⁴ A city or county may impose a business license tax upon a nonprofit organization (i.e. for the purpose of revenue raising) if the tax is not measured by the organization's income or gross receipts.⁴⁵

Additional exemptions vary but typically include: agriculture, youth and senior part-time occupations, veterans, public utilities and highway carriers regulated by California Public Utilities Code.

Although Government Code §37101 authorizes business licensing for “revenue-raising” as well as “regulatory” purposes, the distinction between the two is important. Local governments may not use the guise of revenue-raising to regulate in an area pre-empted by state law. For more information on Business Licenses/Permits for regulatory purposes, see Chapter Five, Section 5.04.

■ Payroll Tax

An alternative to a gross-receipts or flat-rate business license tax implemented in some cities is a payroll tax. That is, cities may levy a license tax on employees based on their gross earnings within the jurisdiction. California state law prohibits cities from levying an income tax, but does not prohibit such a payroll tax. However, the tax should not be graduated and should have none of the deductions typical of an income tax and cities may not tax earnings in a way which discriminates against non-residents.⁴⁶

■ Application and Importance

Most (over 95%) cities and counties in California impose a business license tax. On average, the business license tax provides around 3.1% of city revenues (standard deviation 3.2%). But in some cities, the business license tax provides as much as 30% of General Fund revenues. According to reports filed with the California State Controller the following cities reported business license taxes as providing 9% or more of their general-purpose revenues:

Highest Business License \$ Dependency

| City | BLT as % of General Revenues | City | BLT as % of General Revenues |
|---------------|------------------------------|--------------|------------------------------|
| San Pablo | 53.2% | Modesto | 11.0% |
| Beverly Hills | 25.8% | San Fernando | 10.9% |
| Emeryville | 21.1% | Del Rey Oaks | 10.8% |
| El Segundo | 18.7% | Berkeley | 10.8% |
| San Francisco | 16.5% | Santa Monica | 10.6% |
| Culver City | 14.7% | Hawthorne | 9.5% |
| Los Angeles | 14.2% | San Bruno | 9.5% |
| Oakland | 12.3% | Sand City | 9.0% |
| Pleasant Hill | 11.0% | Livermore | 8.9% |

*includes payroll tax
 Source: CaliforniaCityFinance.com computations from FY05-06 data reported to the California State Controller.

Computations from reports filed with the State Controller’s Office show that, in FY05-06, the median city per capita business license tax revenue was \$10.53.47 But cities vary widely in business license tax collections largely because cities vary as to the relative size of their commercial and residential sectors. The range of revenue collections per resident in FY05-06 ran from \$0 in a few cities to over \$100 in 14 cities. The City of Vernon with a population of fewer than 100 persons reported \$1.16 million in revenue, or about \$11,400 per resident.

Highest Business License \$ Collections

| City | BLT per capita | City | BLT per capita |
|----------------|----------------|-----------------------|----------------|
| Vernon | \$11,394.98 | Monterey | \$85.59 |
| Sand City | \$1,433.00 | Atherton | \$63.54 |
| Beverly Hills | \$788.39 | Manhattan Beach | \$62.41 |
| Emeryville | \$603.49 | Del Rey Oaks | \$62.39 |
| El Segundo | \$530.82 | Commerce | \$61.53 |
| Irwindale | \$481.68 | Livermore | \$60.33 |
| San Francisco* | \$369.21 | Hillsborough | \$58.44 |
| Santa Monica | \$208.85 | Seal Beach | \$57.84 |
| Culver City | \$201.59 | Rolling Hills Estates | \$57.71 |
| Carmel | \$118.53 | Sausalito | \$57.28 |
| San Pablo | \$105.14 | San Bruno | \$54.38 |
| Oakland | \$103.85 | Pleasant Hill | \$52.30 |
| Berkeley | \$102.16 | West Hollywood | \$51.37 |
| Los Angeles | \$100.84 | Torrance | \$50.09 |
| Brisbane | \$97.06 | Corte Madera | \$49.14 |

*includes payroll tax

Source: CaliforniaCityFinance.com computations from FY05-06 data reported to the California State Controller

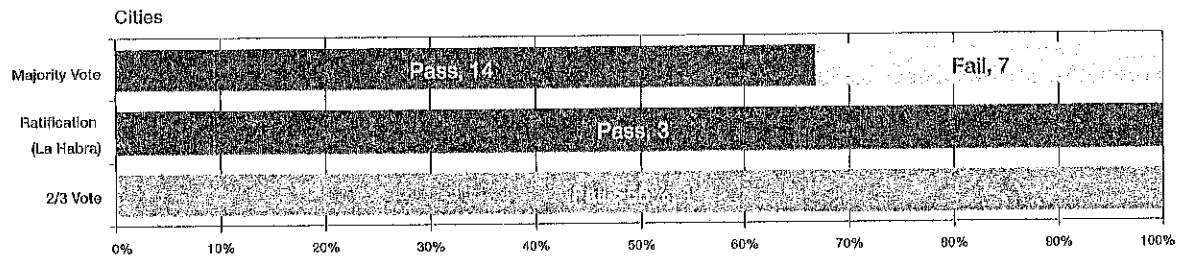
Recent Voter Approval Record

From June 2002 through June 2008 there were 25 measures concerning local business license taxes placed before local voters. All but one concerned majority-vote general-purpose taxes.

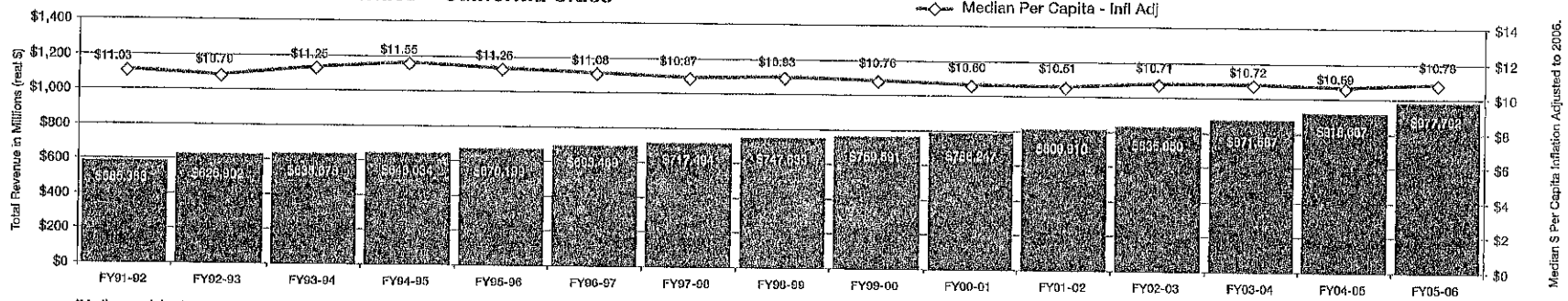
For More Information:

Business License Taxes: Historic revenues and summary statistics
<http://www.californiacityfinance.com>

Business License Tax Measures: June 2002 - June 2008



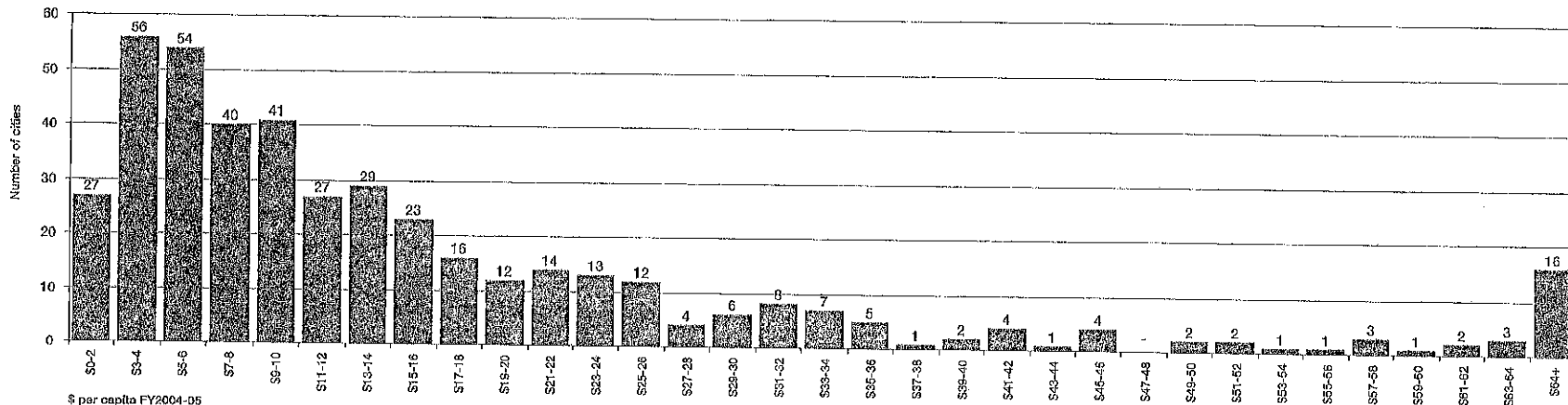
Business License Tax Revenues – California Cities



*Median used due to some extreme high-end outliers

Source: CaliforniaCityFinance.com computations from data from California State Board of Equalization (revenues), California State Dept of Finance (population, CPI)

Business License Tax Revenues – California Cities: \$ Per Resident



\$ per capita FY2004-05

Source: CaliforniaCityFinance.com computations from California State Controller Annual Report data