

## CITY OF PORTLAND BUSINESS LICENSE AND MULTNOMAH COUNTY BUSINESS INCOME TAX

### FAQS FOR REAL ESTATE AGENTS

#### **1) What change has recently taken place?**

With the passage of Ordinance #182137 by Portland City Council on August 20, 2008, the City of Portland Business License became a tax based on the prior tax year's income. This change brought the City's license into substantial conformity with the Multnomah County Business Income Tax, which has been an "after-the-fact" income tax since its inception in the mid-1970s. As a result of this change, real estate brokers will now be treated the same for City of Portland Business License and Multnomah County Business Income Tax purposes. **Beginning with the 2008 tax year (for which returns are generally due on April 15, 2009), there will no longer be a City of Portland Business License exemption available to Real Estate Brokers** as the exemption that was available under Oregon law no longer applies. Real Estate Brokers will be subject to both the City of Portland Business License Tax and the Multnomah County Business Income Tax for 2008 and subsequent tax years.

#### **2) What about tax years prior to 2008?**

For the 2007 tax year and prior, Oregon law generally exempted Real Estate Brokers (who are working only as an agent of a Principal Real Estate Broker) from paying the City of Portland Business License Fee. However this exemption has never applied to the Multnomah County Business Income Tax. Prior to the August 20, 2008 change in the Portland City Code, Real Estate Brokers were potentially not required to obtain a City of Portland Business License based upon Oregon Revised Statute (ORS) 696.365. This statute prohibits a city or county from imposing a business license tax on persons licensed as a real estate broker who engage in professional real estate activity only as an agent of a principal real estate broker. ORS 701.015 (6)(a) defines "business license tax" as any fee paid by a person to a city for any form of license that is required by the city or county in order to conduct business in that city or county. The Multnomah County Business Income Tax does not meet and has never met the definition of a "business license tax" under Oregon law. Therefore, all real estate brokers working as an agent of a principal real estate broker must file and pay the Multnomah County Business Income Tax for all tax years. With the passage of Ordinance #182137 on August 20, 2008, the City of Portland Business License is no longer a "business license tax" as defined by Oregon law.

#### **3) What about Principal Brokers?**

The City of Portland Business License Fee exemption under Oregon law has never applied to Principal Real Estate Brokers (as defined under Oregon law). Therefore, Principal Real Estate Brokers have been subject to both the City of Portland Business License and the Multnomah County Business Income Tax both prior to and subsequent to the passage of Ordinance #182137. In other words, they were subject to both the City License and County Tax and will continue to be subject to both taxes.

#### **4) Is every real estate agent doing business in Multnomah County or Portland required to file and pay any appropriate taxes under the provisions of the Multnomah County Business Income Tax and City of Portland Business License Tax?**

Yes. However, there is an exemption under both business taxes for real estate agents, in fact all businesses that gross less than \$50,000 each year. Gross receipts are determined before the deduction of any expenses, and include gross receipts from all business activities, including rental income, if any.

**5) Does it make a difference whether the real estate agent receives a federal Form 1099 versus a W-2 for the real estate agent income?**

Yes. W-2 income is generally not considered “business income” by the City of Portland or Multnomah County. The real estate agent receiving income reported on a 1099 ( and the business that issues the W-2 to a real estate agent) would potentially be subject to the taxes.

**6) Do real estate agents who work out of offices in Clackamas and Washington County need to register with the Revenue Bureau as being potentially liable for the taxes?**

Yes, if they list property located in the City of Portland or Multnomah County. For the real estate agent, the income producing activity is generally attached to where the agent is physically performing their services. It is assumed that some services (showing the property, etc.) are provided at each home that is listed with the agent.

**7) What if a real estate agent operating under a Clackamas County business license sells only one house a year in Portland or Multnomah County; do they need to pay the City of Portland Business License Tax or the Multnomah County Business Income Tax?**

Yes, if the gross receipts from all of their business activities, including the Multnomah County property commission, are \$50,000 or more. However, if the real estate agent’s activity within Portland (or Multnomah County) resulted in commissions of less than \$2,500, this would be regarded as “de minimus” and would not be subject to either tax. This means that there is no payment due. However, you may be required to file specific information with the Revenue Bureau to prove the exemption level. If a real estate agent is exempt (either through the gross receipts exemption or the “de minimus” exemption) for a tax year, they would not need to file a City/County income tax return and they would not be subject to the \$100 minimum fee for that tax year.

**8) How is the City of Portland Business License Tax and Multnomah County Business Income Tax computed?**

To calculate the tax due, start with your business net income from your federal Schedule C (if you are a sole proprietor), your Oregon Form 20 (if you are a corporation), your federal Form 1065 (if you are a partnership), or your federal Form 1120S (if you are an S corporation). If a corporation or LLC pays the agent a W-2 salary, the corporation or LLC is liable for the taxes and not the agent.

Your city/county form (Combined Tax Return) will instruct you as to which additional deductions or additions you need to include, such as an owner’s compensation deduction if applicable. This resulting adjusted net income is then multiplied by an apportionment percentage (if you do business in other cities or counties in addition to Portland and Multnomah County). This result is the subject net income, which is multiplied by the tax rate of 1.45% for the County and 2.2% for the City.

**9) If the commission earned from the sale of properties in Portland or Multnomah County is less than \$50,000 a year, is the real estate agent exempt from paying taxes? Must they file a notice of exemption with the Revenue Bureau?**

The \$50,000 gross receipts exemption is based upon the gross receipts from all business activity, not just the business activity in Portland or Multnomah County. In other words, in order to be exempt from the Portland and Multnomah County tax, a real estate agent's commissions from all sales (Multnomah, Washington, Clackamas, etc.) must be less than \$50,000.

If a real estate agent has been filing a tax return (Combined Tax Return) in past years, and is exempt in the current year, they should file an exemption notice (Annual Exemption Request Form). Attached to this form should be the federal return that shows the gross receipts amount for the business. This will help avoid receiving a "presumptive tax" notice after our filing due date if a filing is not received. For businesses that are exempt, no City or County tax payment would be due.

**10) If a real estate agent's only office is in Beaverton (or anywhere else outside of Portland or Multnomah County), how is the Revenue Bureau ever going to know that they earned commissions from sales of property in Portland or Multnomah County?**

As administrator for the City of Portland Business License Tax and Multnomah County Business Income Tax, the Revenue Bureau uses a number of methods to locate persons doing business within the two jurisdictions. We have staff that periodically go "into the field" looking for business activity in the City and County. In the case of property sales, they will look for "For Sale" signs to determine if the agency and/or agent are filing with the two programs, if appropriate. Additionally, real estate transaction records are reviewed periodically. Finally, we match our business income tax data with a number of public business data sources and have dedicated staff that follow up and research those unmatched businesses to determine if a tax return is due.

**11) If the Multnomah County Business Income Tax (or the City of Portland Business License) is "news" to a real estate agent, are they liable for past taxes on income generated from transactions conducted in Multnomah County (or Portland) two, three, four...ten years ago?**

For Multnomah County, yes they are technically liable for all unfiled years. For the City of Portland, if the real estate agent previously qualified for the exemption and had no other business activity, then the first year they are liable for is 2008. However, if the agent had other income that should have been reported, then they are technically liable for those unfiled years as well. The real estate agent is liable for all years they have been in business and haven't filed the appropriate return.

If the Revenue Bureau has never contacted the agent, they may voluntarily come forward under our Voluntary Compliance Policy. They have their choice of two options. One option requires the filing of all years with interest, but all penalties are waived. The second option requires the filing of the current year and the three immediately prior years, subject to interest and 25% penalties.

**12) What if a real estate agent has a Portland office but they are only listing properties that are located outside of Portland?**

A real estate agent (unless they are exempt under the \$50,000 gross receipts exemption) is subject to the City/County tax return filing requirement and at least the \$100 minimum fee if they have a Portland office. They can apportion a percentage of their income based on the time they physically spend outside the City (showing houses, etc.), but the time spent in the Portland office would be used to increase the percentage of income that would be apportioned to Portland.

**13) Where can a real estate agent receive more information on the Multnomah County Business Income Tax and the City of Portland Business License?**

If you have additional questions about the Multnomah County Business Income Tax or the City of Portland Business License, please contact the Revenue Bureau, License & Tax Division, 111 SW Columbia St., Suite 600, Portland, OR 97201, (503) 823-5157.

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