



CONSENT CALENDAR

April 11, 2000

Office of the City Auditor
Ann-Marie Hogan, City Auditor

To: Honorable Mayor and
Members of the City Council

From: Ann-Marie Hogan, City Auditor

Subject: BUSINESS LICENSE TAX AUDIT REPORT

RECOMMENDATION:

That Council accept the Business License Tax Audit Report for FY 1999 and request that the City Manager implement the recommendations made to increase business license tax revenues, and rationalize certain tax rate schedules. We recommend that the City Manager report back to Council on the implementation status of the balance of the report recommendations by February 28, 2001. We further recommend that the City Manager present to Council in May a proposed Business License Ordinance correction (recommendation A) for consideration for placement on the November ballot.

BACKGROUND:

The City Auditor initiated a Business License Tax Audit Program in 1982. Its objectives are to:

- 1) Identify and assess unlicensed businesses,
- 2) Evaluate the accuracy of reported gross receipts of licensed businesses, and
- 3) Ensure the effective and equitable implementation of the Business License ordinance.

Since its inception through June 30, 1999 the program has identified \$3,486,108 in revenues.

Current Year:

Attached is a summary report for the fiscal year ended June 30, 1999. We analyzed and reviewed 1,281 businesses during the fiscal year, and sent 293 audit notifications. Identified revenue totaled \$339,197 from 194 of 324 auditees (including 62 notifications from the prior fiscal year). The program identified:

- 186 unlicensed businesses
- 5 businesses with under reported gross receipts
- 3 with delinquent licenses

Based on these results, it appears that ten percent or more of Berkeley businesses sampled were operating without a license.

Once a business takes out a license, it generally continues to pay in succeeding years. Therefore, the current year's payments should be seen as part of an increased future revenue stream.

In addition to reporting on results of audits of businesses, we have reported on operational issues of the administration of the business license tax ordinance, which is the responsibility of the Finance Department. The auditors noted seven recommendations which were carried over from the previous year, including one which will require Council consideration of a possible November ballot item. This recommendation is summarized below.

FINANCIAL IMPLICATIONS:

New revenue identified for FY 1999 was \$339,197. Over the past three years, \$596,844 in unpaid business license taxes, penalties, and interest was identified. Based on this, we anticipate collecting an additional \$590,000 in future taxes from the previously unlicensed businesses, using a diminishing five-year average business life.

If recommendation A1, to consider a November ballot measure to rationalize the Business License Ordinance, had been previously implemented, as suggested, the revenue identified for FY 1999 would have been increased by over \$140,000. (See pp. 9-12 of report, attachment 1, and summary below).

An estimate of the increased revenue effect of such a ballot measure will be contained in the City Attorney's analysis, to be presented to Council in May.

SUMMARY OF FINDING A, RECOMMENDATION 1: PROPOSED REPEAL OF PREVIOUS AMENDMENT TO BUSINESS LICENSE ORDINANCE, FOR VOTER APPROVAL

In June of 1990, Council took an action which had unintended consequences. An amendment to the Business License Ordinance was proposed, accompanied by a staff report stating that the amendment would increase revenue by \$172,000, by including savings and loans among the taxable businesses. Due to an apparent revision error, the actual ordinance revision voted upon had the effect of reducing revenue.

Prior to the adoption of Ordinance 5984 in 1990, businesses classified as Professional and Semi-professional were named in the ordinance, and were charged a tax on gross receipts at a rate of \$3.60 per thousand of gross receipts. Other, (nonprofessional) services were charged \$1.80 per thousand. These are the same rates that are currently charged by the City of Oakland, whose rate structure is similar to Berkeley's.

The Finance Department attempted to add the category of "Savings and Loans" to the professional category so that these businesses could be taxed. When "Savings and Loans" was added, the rest of the list of professional categories was deleted from the section, and placed in the nonprofessional section in error.

This mistake and its consequences were detailed in previous audits, and is more fully explained starting on page nine of the attached report. Until a finding of incorrect charges was made in a previous audit, City staff had not incorporated this change to the ordinance in Finance's rate schedules.

Because Council voted to amend the Ordinance based on incorrect information, we have asked the City Manager to bring a proposed reversal of this action to Council in May. Because of the passage of Proposition 218, this correction would require approval of the voters, since the result would be to increase the tax rate for professionals to the pre-1990 rate.

The auditors have no opinion as to what tax rates should or should not be. However, it appears that Council acted on incorrect or incomplete information in 1990. The 1990 Council action item is attached to the end of this report for your information.

Reversing that action would bring Berkeley's tax rate groupings into closer conformance with the rate structure of the original ordinance, which is similar to that of the City of Oakland.

CONTACT PERSON:

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Approved by:

Ann-Marie Hogan, City Auditor

BUSINESS LICENSE TAX AUDIT PROGRAM REPORT
For the Fiscal Year Ended June 30, 1999
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BUSINESS LICENSE TAX AUDIT PROGRAM REPORT

For the Fiscal Year Ended June 30, 1999

INTRODUCTION

A. PURPOSE AND OBJECTIVES

The purpose of this report is to present the results of the Business License Tax Audit program for FY 1998-1999.

The objectives of the Business License Audit Program were to:

- Determine if all persons/entities doing business in Berkeley have obtained licenses required under the Berkeley Municipal Code.
- Ascertain if licensed businesses have accurately reported their gross receipts and paid the appropriate license fees.
- Ensure effective and equitable implementation of the Business License ordinance.

B. SCOPE AND METHODOLOGY

We selected our audit subjects from the following sources:

- Pacific Bell Street Address Telephone Directory - this includes the business listings sorted alphabetically by street name, and by address number.
- Alta Bates Directory - this contains names, addresses and telephone numbers of Alta Bates' healthcare practitioners and includes those that were hired on a contractual basis.

To identify unlicensed businesses, we judgmentally selected those that were apparently subject to the business license tax and matched them against the city's business license database. Though there may be some exceptions, noncompliance has occurred or is likely to have occurred, when a business is not found in the database.

For licensed businesses included in our geographic sampling, we reviewed and evaluated the taxpayer's three-year reported gross receipts for any indication of underreporting. We also included some tests to verify that landlords of businesses in our audit sample are licensed and pay the appropriate license fees.

We requested that auditees provide documentation of their gross receipts for the last three years, or, since the year business started in Berkeley if less than three years. Usually, this documentation comes in the form of income tax returns or financial statements.

Except for some amounts that were questioned for reasonableness, the gross receipts appearing on the requested documentation were taken at face value, and no detail testing was conducted. We billed for underpaid taxes, penalties and interest as provided for in Section 9.04.110 and 9.04.120 of the Berkeley Municipal Code.

Our work was performed in accordance with the *Government Auditing Standards* prescribed by the Comptroller General of the United States.

C. BACKGROUND

The Business License tax is codified in Berkeley Municipal Code (BMC) Chapter 9.04 and was enacted solely for revenue purposes and is not a regulatory permit fee. Administration of the business license tax ordinance has been assigned to the Customer Services Division of the Finance Department.

Under the provisions of the Business License Tax ordinance, all persons/entities engaged in business within Berkeley are required to obtain a license and pay an annual license fee. All licenses are considered issued on January 1 and expire on December 31 that year.

BMC section 9.04.110 provides that:

“Every annual license renewal for which full payment is not received on or before February 28 of each year, or, for newly established businesses within thirty days after commencing business, is declared delinquent. The Finance Department shall thereupon assess and collect a penalty of ten percent of the license so delinquent. If such license renewal is not paid in full on or before April 1st of each year, or, or a newly established business, within sixty days following the commencement of the business, a sum of fifty percent of the license shall be added and collected as a

penalty”.

BMC section 9.04.120 provides that:

“In addition to the penalties imposed, any person who fails to remit any license fee shall pay interest at the rate of one percent per month, or fraction thereof, on the amount of the fee and penalties from the date on which the license fee first became delinquent until paid”.

In December of each year, the Finance Department sends a Business License renewal form (Tax Declaration) to all business license holders in the City’s database. This form contains relevant taxpayer’s information from the Occupational License (OL) Module of the City’s integrated financial system. Taxpayers are instructed to fill-in their gross receipts data, calculate the tax and return the form with the check for the fees due.

As the above renewal procedure indicates, the City depends largely on the accurate disclosure of information by the reporting entity. Because of this, business license revenues collected may or may not reflect the true facts of the taxpayer’s business. Although tax declarations received are reviewed, this is limited to checking for arithmetical errors. Because of concern about reporting accuracy and the limited checking done, the City Auditor’s office, in collaboration with the Finance Department, began a systematic audit of business licenses in 1982.

Since its inception, the Business License Tax Audit program has identified \$3,486,108 of additional revenues.

<p>SUMMARY OF PROGRAM RESULTS</p> <p>Fiscal Year Ending June 30, 1999</p>

A. AUDITS INITIATED

We focused our fiscal year 1999 audit activity on identifying businesses that did not have business licenses. We analyzed and reviewed 1,281 businesses during the fiscal year and sent 293 audit notifications (23 percent of our sample) to businesses which appeared to be unlicensed.

B. AUDITS COMPLETED

We completed the audit of 324 persons/entities that provided the documentation of their gross receipts. These were comprised of the following:

TABLE I

PARTICULARS	INITIATED DURING THE CURRENT YEAR	CARRIED OVER FROM THE PRIOR YEARS	TOTAL
1. Number of audits performed that resulted in assessment	132	62	194
2. Number of cases dropped	113	17	130
TOTAL	245	79	324

Note: 48 cases were in process at the close of the fiscal year; of this, 34 had been referred to the Finance Department for follow-up action.

1. Audits performed that resulted in assessment. A total of 194 cases processed during the fiscal year resulted in total assessments of \$339,197. These assessments were for:

Unpaid Business License Taxes	\$209,726
Penalty Assessments	88,720
Interest Charges	40,751

**TABLE II
SUMMARY OF AUDIT ASSESSMENTS ISSUED**

Business Category	AUDIT FINDINGS						TOTAL BILLINGS	
	No Business License		Under Reported GR		Delinquent License			
	#	Amount	#	Amount	#	Amount	#	Amount
Prof./Semi-Professional	4	3,550					4	3,550
Business Services	129	186,498			1	1,964	130	188,462
Real Property Rentals	8	32,824	4	4,788	1	34,370	13	71,982
Construction Contractor	5	3,931			1	257	6	4,188
Retail Trade	9	6,653	1	2,495			10	9,148
Entertainment	9	5,483					9	5,483
Manufacturing	13	49,495					13	47,685
Adm. Headquarters	4	1,852					4	1,852
Grocer, Wholesale, Motor Vehicle Sale	5	6,848					5	6,848
T O T A L	186	\$295,323	5	\$7,283	3	\$36,591	194	\$339,197

GRAPH I
BUSINESSES ASSESSED BY CATEGORY
 (As a Percentage of Total Billings)

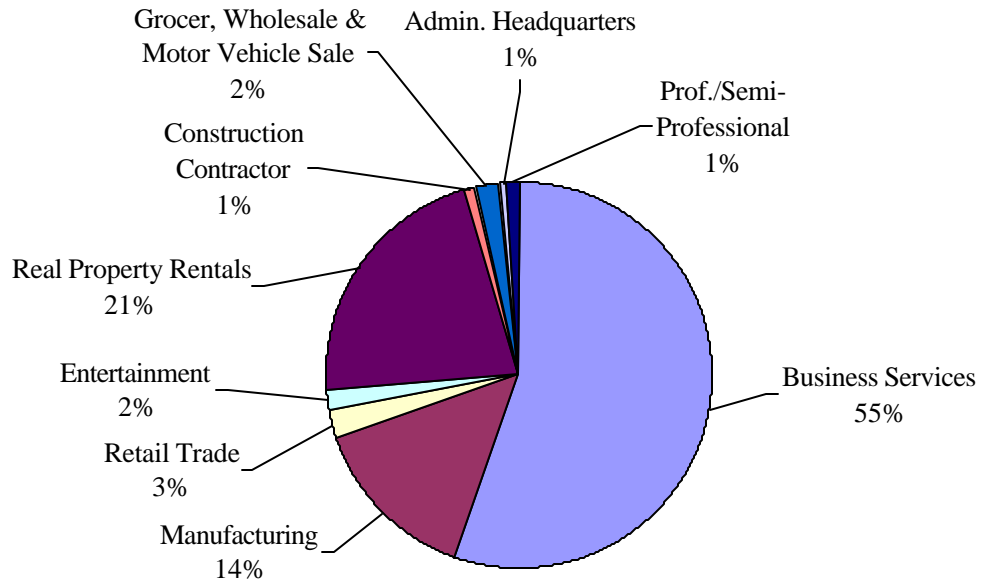


TABLE III
SUMMARY OF ASSESSMENTS ISSUED
 (By Industry Group)

Industry Group	Tax Code	No. of Audit Assessments	Amount
Agricultural Services	B	2	\$ 1,420
Business Services	B	29	39,577
Educational Services	B	1	76
Eng'g, Accounting, Research, Mgnt. and Related Svs.	B	15	16,323
Health Services	B	65	118,034
Legal Services	B	5	5,747
Motor Freight Transportation and Warehousing	B	1	128
Personal Services	B	1	361
Services, not classified elsewhere	B	6	3,196
Social Services	B	5	4,209
Transportation Services	B	1	592

Construction - Special Trade Contractors	C	6	4,188
Amusement and Recreation Services	E	2	1,030
Motion Pictures	E	7	4,453
Groceries and Related Products	G	1	180
Real Estate Rentals	L	13	71,983
Apparel /Other Finished Products Made from Fabrics	M	1	314
Fabricated Metal Products, except Machinery Eqmt.	M	1	627
Lumber and Wood Products, except Furniture	M	3	982
Miscellaneous Manufacturing Industries	M	2	27,665
Printing, Publishing and Allied Industries	M	5	16,894
Real Estate Agents and Managers	P	4	3,550
Food and Kindred Products	Q	1	278
Food Stores	Q	1	606
Ind'l. and Commercial machinery and Computer Eqmt.	Q	1	669
Apparel and Accessory Stores	R	2	3,305
Eating and Drinking Places	R	2	1,607
Home Furniture, Furnishings, and Equipment Stores	R	2	673
Miscellaneous Retail	R	4	1,367
Retail Stores, not classified elsewhere	R	1	2,495
Automotive Dealers	V	1	277
Wholesale Trade - Durable Goods	W	3	6,391
Grand Total		194	\$ 339,197

2. Audit Cases Dropped. Based on our review of the auditees' documentation and information available in City records, we dropped 130 cases for the following reasons:

- 14 returns were accepted as filed.
- 26 business licenses were held under a different name. In most of these cases, our sample was taken from a list showing the individual's name, whereas, the business license is held under a Fictitious Business name or vice versa.
- 40 businesses ceased operation or moved out of Berkeley.
- 50 businesses were not subject to business license taxation. Most of these are physicians in the audit sample who are either employees, partner or incorporator of a licensed medical office.

C. COLLECTIONS

Total collections for the fiscal year amounted to \$216,499, of which \$180,227 (or 83%) was collected from the current fiscal year billings and \$36,272 (or 17%) was collected from prior year billings.

**TABLE IV
COLLECTIONS APPLIED TO BILLINGS BY FISCAL YEAR**

	Accounts Receivable As of 6/30/98	Billings and Adjustments	Sub-Totals: Open Account Balances	Collections	Accounts Receivable as of 6/30/99
Property Liens	19,265	24,264	43,529	-	43,529
Accounts over 3 years	44,541	730	45,271	-	45,271
FY 94/95	552	-	552	(552)	-
FY 95/96	4,353	-	4,353	(4,353)	-
FY 96/97	5,031	(1,201)	3,830	-	3,830
FY 97/98	39,792	(2,845)	36,947	(31,367)	5,580
FY 98/99 billings		(23,462) 339,197	315,735	(180,227)	135,508
GRAND TOTAL	113,534	336,683	450,217	(216,499)	233,718

As of June 30, 1999, the total Business License Tax Audit Program Accounts Receivable outstanding was \$233,718.

D. BUSINESS LICENSE APPEALS GRANTED

Pursuant to Section 9.04.270 of the Berkeley Municipal Code;

“Any person aggrieved by a decision of an administrative officer or agency with respect to the issuance or refusal to issue a license, or the amount of a license tax, may appeal to the City Manager by filing a notice of appeal with the City Manager, setting forth in full the grounds of the appeal”.

On December 18, 1997, an amendment to the Business License ordinance was adopted to establish a procedure that would allow the taxpayer to appear in a hearing conducted by the City and present all relevant data pertinent to his or her appeal. This ensures that the City’s ultimate decisions are sound and informed, and makes collection actions more efficient.

Out of the 194 audit assessments issued during the fiscal year, 30 (or 15%) appealed a total assessment of \$22,727 in taxes, penalty and interest. While the appellants did not contest the assessment of the business license tax, they stated that they felt the 50%

penalty assessment and interest charges are excessive. The following are examples of Appellant's contentions raised during the appeal process:

1. They were unaware of the city's business license requirements.
2. Those in professional practices –
 - did not consider themselves to be engaged in business. Most of them expressed the thought that "Business" means selling something tangible;
 - assumed that having a state license for their profession is all they need to legitimately operate in Berkeley.
3. They claimed that they telephoned the city to inquire whether they needed to obtain a license, but were answered in the negative.
4. Despite contacts they had with other city departments regarding codes, zoning and other permits, they were never informed of the city's business license requirement.
5. Gross receipts from where the license was calculated included receipts attributable to services performed outside Berkeley.
6. They did not intend to avoid their obligation but merely overlooked obtaining a license.

The appeals resulted in the waiver of \$477 in first year licenses, penalty and interest. In general, the Hearing Officer maintained the position that Appellants have the responsibility to inform themselves of the local business licensing requirements. Further, she ruled that the old legal tenet applies that ignorance of the law is no excuse.

OPERATIONAL ISSUES

OUTSTANDING AUDIT RECOMMENDATIONS CARRIED OVER FROM THE PRIOR YEAR

The City Auditor's Business License Audit Program Report for the Fiscal Year ending June 30, 1998 made seven (7) audit recommendations to the Director of Finance. In responding to these recommendations, in a report to Council on June 8, 1999, the Finance Department set specific target dates for resolution. It appears that no action has been taken on our recommendations as of this writing. We are therefore including them again in this year's report.

A. Conflict Between the Berkeley Municipal Code and the Finance Department's Tax Code Groupings by SIC Code Order

Conditions Observed: - In fiscal year 1991, certain businesses were reclassified by amendment of the Ordinance, from the Professional - semiprofessional class described in BMC Section 9.04.165 to Business, personal and repair services described in BMC Section 9.04.160. The impact of this amendment was that it reduced the business license tax rates of Health, Veterinary, Legal, Educational, Engineering-Architectural-Surveying, Accounting-Auditing-Bookkeeping and miscellaneous services not classified elsewhere from \$3.60 to \$1.80 per thousand of gross receipts. It accomplished this by reclassifying these professionals out of the professional category to a non-professional business category.

In 1997, the Auditor reported that the tax rate in the city's database and Business License Tax Rate Schedule for health, veterinary, legal and educational services were not changed to conform to the ordinance. Because of this, these service providers paid business license taxes twice the rate authorized under the ordinance. The estimated tax overpayment for 1999 was \$279,693.

In summary, since 1991, some businesses have been charged in accordance with the amended ordinance, and some have not. However, it appears that the language of the 1991 ordinance was flawed, since the result was at variance with the stated intent of the Council. Our review of the Council action dated June 19, 1990 indicated that the stated intent of the drafters was:

"...extending the Business License Tax to Savings and Loans, and to delete Berkeley Municipal Code 9.04.165 Section 1 Subsection B and amend Berkeley Municipal Code 9.04.160 Section 2 Subsection A to reflect changes in the Standard Industrial Classification Manual."

The Council item's background section indicated that, as a result of the proposed Council action, the annual Business License Tax receipts would be increased by approximately \$172,000 from Savings and Loans in Berkeley.

The reasons the Auditor believes that the language of the ordinance was flawed are as follows:

- The council item stated that the results would increase revenue due to an increase in receipts from Savings and Loans. However, the application of the actual ordinance would have the opposite effect, decreasing

revenue from the reclassification of these Professionals to a non-professional business category.

- The changes in the Standard Industrial Classification (SIC) Manual indicated that the codes for engineering-architectural-surveying and accounting services should not have necessitated amending the ordinance. This is because the city makes the determination of these professionals falling under the Professional business category, and the Auditor finds no evidence that this determination has changed. On the other hand, the SIC code for health, veterinary, legal and educational services did not change and yet were included in the amendment.
- Because of the above, it appears that Council's 1990 decision to delete BMC Section 9.04.165 subsection B and amending BMC Section 165 subsection A to reflect changes in the SIC Manual was incorrect in that it did not reflect the actual changes in the SIC Manual.

Since the ordinance was at odds with the intent of the resolution, the Auditor requested an opinion from the City Attorney as to whether the Ordinance could be amended to reclassify certain businesses back to the Professional/Semiprofessional class that carries a higher tax rate. The City Attorney opined that, due to Proposition 218, any amendment that will increase taxes couldn't be addressed without voter approval.

In the FY 1997 audit program report, we raised the issue regarding the need to re-amend the Business License Ordinance. We recommended that as an interim measure, the Finance Department should revise its tax rates and billing practices in conformance with the ordinance. We further recommended that an amendment to the Ordinance be placed on the November 1998 ballot. In last year's report we stated that the City Manager decided not to request voter approval in the November 1998 election and so we recommended again that business license tax rates should be revised.

In the Finance Department's response to our audit recommendation submitted to Council on June 8, 1999, they stated: "*The Finance Department with the support of the City Attorney's Office, will make whatever amendments may be necessary to the Business License Tax Rate Schedule and to other documents, to bring them in conformance with the ordinance...*". This continues to be an open item as of June 30, 1999.

Recommendations: We recommend that the Director of Finance:

1. Recommend to Council that a measure to rationalize the Business License Ordinance be placed on the November, 2000 ballot.

Finance Department Response

Concur. A revised ordinance will be presented to Council in April or May for the November ballot.

2. In the interim, we recommend that the Finance Department make the following revisions to the Business License Tax Schedule:

Classify:

- Health, legal and educational services (SIC 8010 - 8299)
- Other Services (SIC 8999) not classified elsewhere such as authors, lecturers, radio commentators, song writers, weather forecasters, writers, and artists working on their own account

under business services, rather than professional services in conformity with the ordinance. These revisions should be accomplished by May 31, 2000. The Business License Tax Schedule is an internal Finance Department document that differentiates tax rates for various types of businesses.

Finance Department Response

The tax rate schedule has been revised to conform with the BMC.

B. Uncollectible Accounts Not Written-off

Conditions Observed: As of June 30, 1999, there were 20 outstanding accounts barred from collection by the 3-year statute of limitations. Inclusion of these uncollectible accounts overstates the Accounts Receivable balance by \$45,271.

We reported this issue to Council in FY 95/96, FY 96/97 and FY97/98 and recommended that the Finance Department submit an amendment to the Business License Tax ordinance to include a provision for write-off. In their response to our audit recommendation, they stated in a report to Council on

June 8, 1999 that: “*The Finance Department does not agree that the Business License ordinance should be independently amended to allow for write-offs. Rather, there are several other ordinances that do not provide for write-off process. Therefore, the Finance Department will work with the City Attorney’s Office to develop an addition to the BMC that allows a generally accepted government accounting process for completing write-offs across all applicable accounts. A definite completion date will be communicated to the City Auditor as soon as the two departments can incorporate the new task into their work plans and agree upon a completion date*”.

Recommendation: We recommend implementation of a procedure to write-off outstanding accounts determined to be uncollectible. This should be set up in the City Manager’s project management system with a due date of December 31, 2000.

Finance Department Response

We concur, and will implement the recommendation.

C. Property Liens Placed through the County Tax Collector’s Office are not Being Tracked

Conditions Observed: As of June 30, 1999, the Finance Department has caused the attachment of liens on twenty (20) real property rentals due to unpaid business license tax in the amount of \$43,530. These are included for collection by the County Tax Collector’s Office with the property taxes and other special assessments. The County makes its remittances to the city every July and December of each year. Since these accounts are maintained as receivables in the Auditor’s Office, a Memorandum of Understanding between the Auditor’s Office and the Finance Department provides for Finance to report the status of these liens to the Auditor.

The Finance Department receives payments on these liens. However, Finance does not have a procedure in place to monitor and track these liens against the County’s remittances. Because of this, it is possible that some liens listed in the Auditor’s Accounts Receivable report may have been satisfied and payment received by the city. Thus, the Auditor’s Accounts Receivable balance may be overstated by the amount of any unreported collections.

In the Finance Department’s response last year, Finance concurred with our

recommendation and stated that, “*Once the information has been received from the County, The Finance Department will notify the Auditor’s Office on or about July 25th of each year*”.

Recommendation: We recommend that the Finance Department submit a written report to the Auditor’s Office regarding the status of outstanding property liens by June 30, 2000. We also recommend that Finance develop a written procedure for handling property liens placed through the County of Alameda.

Finance Department Response

Finance will submit a report for the three years ending June 30, 1999 to the Auditor’s Office by June 30, 2000. For the future, a report on lien payments received will be provided by July 31, each year

D. Business License Tax Brochure Needs to be Updated

Conditions Observed – The Business License Tax Brochure, which is designed to assist taxpayers in computing their annual Business License tax, needs to be updated. The Finance Department, in their response to our last year’s audit recommendation agreed to publish an updated version by June 30, 1999. However, the updated brochure has not been released to date.

Recommendation – We recommend that the Finance Department update the Business License Tax brochure and make it available to the business public by September 30, 2000.

Finance Department Response

Agree; a draft brochure has been prepared and submitted to the Finance Director.

E. Promote Citizen’s Awareness of the Business License Tax Ordinance

Conditions Observed – Our audits continue to find that a large number of businesses within the city are operating without business licenses, and are not paying the annual license fees. Based on our audit, it appears that most of these businesses are engaged in professional practice and real property rentals. In most cases, the auditees asserted that they were not aware of the City’s business licensing requirement.

Last year, we recommended that the Finance Department consider various activities to promote citizens awareness of the Business License tax ordinance. In their response, they stated that: *“The Finance Department has requested to hire two (2) Field Representatives and one (1) accounting staff person for a two year Business License project. If the project is approved in the budget process, one of the duties of the staff will be to develop activities to promote citizen awareness of the City’s Business License Ordinance”*.

Recommendation – The Finance Department’s request for additional positions to promote citizen awareness and compliance with the Business License Tax was approved by Council in the current year budget. We recommend that a report on these activities be made to Council by the mid-year budget review in February, 2001.

Finance Department Response

We concur. Hiring was delayed; recruitment was opened on March 10, 2000. We will report to Council by February 28, 2001.

F. Data Entry Conventions: Inconsistent Set-Up of Accounts in the FUNDS Occupational Licenses Module by the Finance Department Staff

Conditions Observed – During the course of our 1997-98 audit, we found that a number of accounts set up in the City’s database were not consistent with data entry conventions. That is, some were set up – first name, last name while others were set up last name, first name. Because of this, performing queries of the city’s database is time consuming because the queries have to be done by both last name and first name.

We recommended the adoption of a consistent naming convention. In their response last year the Finance Department’s staff stated, *“Finance is working within the HTE system to define restricted fields that will “force” correct and complete data entry. Finally, additional formal training to all responsible City staff, along with written procedures, will be completed by September 30, 1999”*.

Recommendation – The Finance Department should provide the Auditor’s Office a copy of these written procedures by May 31, 2000. Additionally, Finance should report on the status of the proposed HTE changes.

Finance Department Response

We concur. A copy of the procedures was provided at the audit exit conference. A series of training sessions began in November, 1998. Negotiations with HTE about system changes have not yet been successful.

G. Increasing Number of Non-Respondents to Audit Notices

Conditions Observed - As of June 30, 1999, we reported to the Finance Department that 34 businesses were either delinquent or operating without licenses, and that these businesses have not responded to our second request for audit information. According to the Memorandum of Understanding entered into by the Finance Department and the Auditor's Office, "*Finance will send follow-up letters to demand compliance or issue citations as necessary*". However, the Auditor has received no evidence that a citation had been issued by the Finance Department on businesses reported. For example, seven of those reported to be unlicensed have been on the list for 10 months to a year, while three of the delinquent licensees we reported have been on the list from two and a half to four years.

In addition to written notices, Section 9.04.250 of the BMC provides that; *the Director of Finance, in the exercise of the duties imposed upon him/her and acting through deputies or duly authorized assistants;*

- *shall have the power and authority to enter, free of charge and at any reasonable time, any place of business required to be licensed and demand an exhibition of its license certificate;*
- *any person who fails to exhibit the same on demand shall be deemed guilty of an infraction and shall be subject to penalty by fine under section 1.20.020 of the BMC ;*
- *shall cause a complaint to be filed against any and all persons found to be violating any of said provisions.*

It is our concern that this lack of follow-up creates a negative impact on the city's effort to implement the business license equitably. It also gives the taxpayer the impression that they can continue to be in violation of the business license ordinance by simply ignoring audit notices. The Finance Department's inability to enforce its authority under Section 9.04.250 of the ordinance will result in the city's loss of revenue from non-paying businesses. Last year we

recommended a more vigorous enforcement effort on the part of the Finance Department.

The Finance Department responded that: *“aggressive enforcement of the Business License ordinance will be a priority for the Business License project if the project is approved in the budget process”*.

The FY 2000 budget states that, among the significant changes from Finance’s prior year’s budget is the *“addition of 2.0 FTE Field Representatives and 1.0 FTE Office Assistant II to increase efforts to identify and collect business license taxes. Funding is anticipated to be offset by increased business license tax revenue.”*

Recommendation – The Finance Department should engage in more aggressive enforcement of the business license tax ordinance. In conjunction with the increase of available resources, the Finance Department should:

- 1) Copy the Business License Auditors on all demand letters sent to auditees who have not responded to information requests.
- 2) Perform on-site inspections to demand the exhibition of an active business licenses.
- 3) Issue a citation for businesses that are in violation of the business license tax ordinance because of non-response to demand letters or failure to exhibit business license during on-site inspection. This would result in penalty by fine for infractions for up to \$500 per day as provided under BMC section 1.20.010.
- 4) As a final step, file complaints against business operators with unpaid tax assessments. Most of these would be in Small Claims Court, and therefore are the responsibility of the Finance Department rather than the City Attorney’s Office.

Since the Finance Department was awarded funding for additional staffing, a report should be submitted to Council by February 28, 2001 stating dates these individuals were hired and how they have implemented these recommendations.

Finance Department Response

We concur. Hiring was delayed; recruitment was opened on March 10, 2000. We will report to Council by February 28, 2001

CONCLUSION

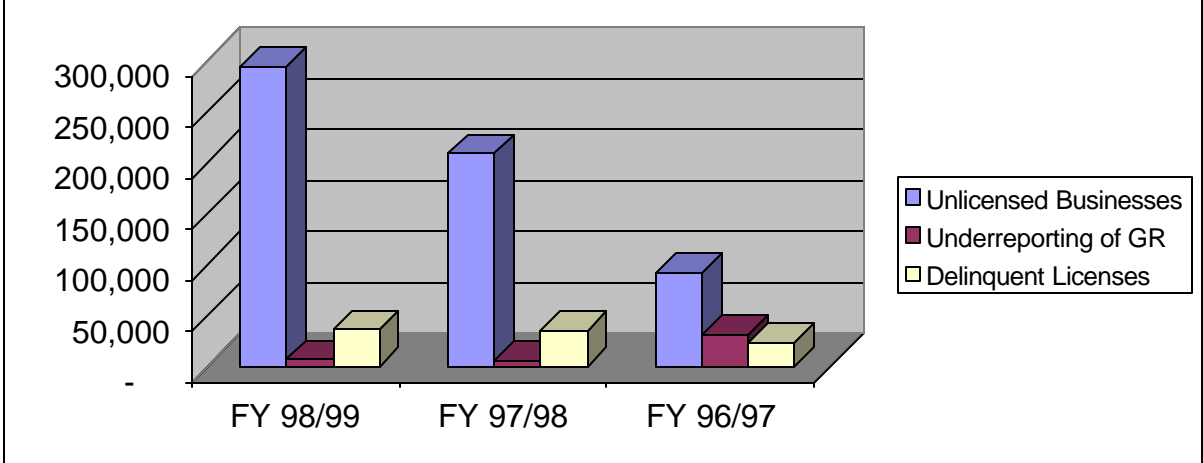
The Business License Audit function in the Auditor’s Office continues to show a high rate of return for the staff time invested. This year’s audit activity include the following:

- 293 audit notifications were issued, or 23% of 1,281 businesses reviewed and analyzed.
- 194 audit assessments were issued for the year. These assessments were comprised of:
 - 132 initiated during the year (or 10.2% of the 1,281 sampled), and
 - 62 case audits carried over from the prior year.
- \$339,197 in license taxes, penalty and interest were identified and billed.
- \$216,499 was collected. Of this, \$180,227 (or 53% of \$339,197) was collected from the current fiscal year billing.

TABLE V
Three-Year Business License Tax Revenues
(Identified through Audit)

Audit Finding	FY 98/99		FY 97/98		FY 96/97		TOTAL	
	#	Amount	#	Amount	#	Amount	#	Amount
Unlicensed Businesses	186	295,323	152	209,723	25	91,798	363	596,844
Underreporting of GR	5	7,283	9	6,466	16	32,468	30	46,217
Delinquent Licenses	3	36,591	14	36,175	15	23,769	32	96,535
TOTALS	194	339,197	175	252,364	56	148,035	425	739,596

GRAPH II
Business License Tax Revenues Identified through Audit
3-Year Comparison



The business license tax audit program has identified 363 unlicensed businesses and billed \$596,844 in unpaid business license tax, penalty and interest in fiscal years 1996/1997, 1997/1998 and 1998/1999. Based on this, we anticipate collecting \$590,000 in future business license taxes from the previously unlicensed businesses, using a diminishing five-year average business life.

The City Auditor's Office in collaboration with the Finance Department and the City Attorney's Office will continue to work to ensure the equitable compliance with the Business License Tax Ordinance.