

# REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: April 10, 2020

TO: Honorable Members of the City Council

FROM: Sharon M. Tso   
Chief Legislative Analyst

Council File: 20-0147-S19  
Assignment No.: 20-03-0328

## **BUSINESS TAX DEFERRAL DURING THE COVID-19 HEALTH CRISIS**

### **SUMMARY**

On March 4, 2020, the Mayor and the Governor both declared a state of emergency due to the outbreak of the novel coronavirus, COVID-19. On March 13, 2020, the White House declared a national emergency. On March 17, 2020, the Motion (Martinez, Wesson, Bonin, Harris-Dawson – Koretz) was introduced, and on that same day, Council approved the Motion as amended. The Motion instructs various departments to report on financial relief for small businesses as well as rent relief for City residents. The Motion contains a specific instruction that directs the Chief Legislative Analyst (CLA) and City Administrative Officer (CAO), in consultation with the Office of Finance (Finance), to report with recommendations on reducing or waiving gross receipts tax liability, delaying business tax collection, waiving late penalties and assessments; and waiving permit and other business fees. The Motion further instructs the CLA, with assistance from the CAO and the Housing Community and Investment Department, to report with recommendations to create a citywide rental assistance fund. This portion of the Motion's recommendations will be addressed under separate cover.

### **Business Tax**

In 2019-20, Finance expects to collect approximately \$595.4 million in non-cannabis related business tax and \$83.2 million in cannabis related business tax, for a total of \$676.1 million. Finance reports that most business taxes are based on gross receipts for each tax classification. The majority of non-cannabis related businesses pay their business taxes annually, due on January 1 of each year and becoming delinquent on the first business day of March (payments must be received on the last day of February to be considered on time). Cannabis related businesses pay their business tax monthly on the last day of the month.

Non-cannabis related 2019 business taxes are based on gross receipts for calendar year 2019 (January 1, 2019 through December 31, 2019). The January 1 due date as well as the first business day of March delinquency date were prior to the state and local government state of emergency declarations and the federal government national emergency declaration, and the majority of City businesses have already remitted their 2019 business taxes. Finance reports that as of March 17, 2020, approximately 480,000 of the total approximately 600,000 non-cannabis related businesses have remitted payment. According to Finance, the number of delinquent businesses (approximately 120,000) is the average amount and/or percentage of businesses that are delinquent each year.

The City of Los Angeles is in a unique situation in that payment deadlines for non-cannabis related businesses occurred prior to the height of the health crisis. With the majority of payments being remitted, this office and Finance have discussed various options to assist businesses, as follows:

1. Suspension of Penalties and Interest - Amend Los Angeles Administrative Code Section 21.05 (Delinquent Dates – Interest – Penalties) to suspend the assessment of penalties and interest for any tax liabilities that have not yet been paid and/or are due during the months of March, April, May or June 2020 until July 15, 2020 for businesses that have been adversely impacted by the COVID-19 emergency. An adversely impacted business would be defined as businesses that have been ordered to cease operations by the State, County, or City related to the COVID-19 outbreak or businesses that have seen a decrease in receipts of over 50 percent during the period of time covered by those months. This suspension would primarily benefit delinquent businesses who remit payment annually but have not yet remitted for tax year 2019. This suspension would also apply to businesses who pay quarterly and monthly (such as cannabis related businesses) and have due dates in March, April, May, and/or June 2020.
2. Finance to Conduct Business As Usual - An alternative to suspended penalties and interest for any unpaid tax liabilities would be to allow Finance to handle adversely impacted businesses on a case-by-case basis as they currently do. Currently, Finance has a streamlined process for handling delinquent payments. In cases of financial hardship, Finance could provide business owners with various options for repayments as is the practice now, which may include waivers of penalties or interest.

### 2020 Business Taxes

The impact of the COVID-19 health crisis may become more apparent in calendar year 2021 when the 2020 business taxes are due. Although the 2020 taxes are based on gross receipts of a business and would decrease should business activity decrease, the health and financial crisis may cause an impact on businesses such that some may not have the ability to pay when they are due in January 2021. The CAO, in coordination with the Mayor's Office, is currently estimating the impact of business tax revenue in preparation of the 2020-21 Budget. In addition, any impacts to business tax revenue will be evaluated and reported by the CAO in the quarterly Financial Status Reports (FSR).

### Permits and Other Business Fees

In addition to business taxes, the City also administers Police and Fire and Tobacco Retailing permits. These permits are renewed annually by December 31. Any payments collected past this date are primarily due to new permit requests, with the majority related to business startups. According to Finance, the revenue collected for new business permits from March through June would not be a substantial amount, perhaps less than \$100,000 in total across these months. Finance believes that it is unlikely that there would be significant interest in starting new businesses at this time given the current health crisis.

### Survey of Other Cities' Business Tax Actions

The California Municipal Revenue and Tax Association (CMRTA) conducted a survey about the actions various California cities are taking in terms of providing tax relief for businesses that are negatively impacted by the COVID-19 emergency (Attachment). The survey inquired whether cities are allowing deferment of taxes and/or waiving late fee penalties, and is based on correspondence as of March 30, 2020. The attached chart shows the response from 21 cities (not including Los Angeles). As of March 30, 2020, six cities are allowing deferment of and waiving penalties, and 13 cities are waiving penalties for either business and/or other taxes, including Transient Occupancy Tax. This information does not take into account the different business tax structures and due dates, which may influence a city's decision to provide business tax relief.

Fiscal Impact

In 2018-19, Finance received approximately \$4.8 million in penalties and interest. The fiscal impact of suspending penalties and interest, either overall for delinquent businesses or on a case by case basis, would depend on the type of relief provided, not to exceed \$4.8 million. In addition, if waivers are provided, delinquent and quarterly paying businesses may wait until July 2020 to remit their 2019 business tax payments. Payments received July 1, 2020 or later would be counted as 2020-21 revenue, impacting 2019-20 anticipated receipts. The impact to the 2020-21 Budget will be assessed and reported on an ongoing basis through the FSR.

**RECOMMENDATIONS**

1. Should the Council wish to suspend penalties and interest for all delinquent businesses adversely affected by the COVID-19 health crisis:

Request the City Attorney to prepare and present a draft ordinance amending Los Angeles Administrative Code Section 21.05 to suspend assessment of penalties and interest for any tax liabilities related to taxes due during the months of March, April, May or June 2020 until July 15, 2020 for businesses that have been adversely impacted by the COVID-19 emergency, to be defined as businesses that have been ordered to cease operations by the State, County, or City related to the COVID-19 outbreak or businesses that have seen a decrease in receipts of over 50 percent during the period of time covered by those months;

OR,

2. Should the Council wish to have the Office of Finance conduct business as it normally does and evaluate business tax payment delinquency on a case by case:

Note and File.

*Valentina Diba*  
Valentina Diba  
Analyst

*Andrea M. Galvin*  
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Analyst

Survey provided by the California Municipal Revenue and Tax Association

<b>Tax Deferment / Penalty Waiver Survey Results - March 30th, 2020</b>			
<b>City</b>	<b>Allowing Deferment of Tax?</b>	<b>Waiving Penalties?</b>	<b>Conditions</b>
<b>Alameda</b>	No	No	Discussing options to extend business license fees without penalties, which are due July 1 and late beginning August 1.
<b>American Canyon</b>	No	No	None.
<b>Anaheim</b>	Yes	Yes	Staff are directed to waive penalties on any late payments and allow time extensions to pay business license and TOT payments up to 60 days.
<b>Beverly Hills</b>	Yes (TOT taxes)	Yes (TOT Taxes)	Deferring remittance of TOT payments for the months of February, March, and April, until April 30, 2020. There have been informal discussions regarding Real Estate taxes but no decision has been made.
<b>Brentwood</b>	No	Yes (Deferring)	Not deferring payments but not penalizing until May 1st. Payments are still due.
<b>Escondido</b>	No	No	Still taking payments and encouraging business owners and rate payers to pay their fees online. At this point no deferred payments or penalties.
<b>Garden Grove</b>	No	No	As of 3/27, not deferring any payments, or waiving any penalties for business license taxes, or hotel TOT.
<b>Hesperia</b>	No	Yes	Waiving late fees on a case by case basis.
<b>Inglewood</b>	No	Yes (Conditional)	Voiding over 1000 street sweeping citations issued between 3/16 - 3/20/2020. Not charging residents or businesses for trash collection for this business cycle at a cost of over \$1 million to the City.

## Tax Deferment / Penalty Waiver Survey Results - March 30th, 2020

City	Allowing Deferment of Tax?	Waiving Penalties?	Conditions
<b>Menifee</b>	Yes	Yes	Waiving business license penalties until June 30th, 2020.
<b>Murrieta</b>	No	No	Currently monitoring the situation.
<b>Orange</b>	Yes	Yes	Waiving 25% penalty for late business licenses. Deferring February TOT for 30 days. No mention of March yet.
<b>Oxnard</b>	No	Yes	Not advertising deferment but they are waiving all penalties for late payments.
<b>Rancho Cucamonga</b>	Yes (Penalties)	Yes (Deferring)	Deferring penalties for business licenses from 30 days to 120 days. This is beginning with business licenses that expire March 1st.
<b>Riverside</b>	Yes	Yes	Suspended payments for 90 days and not charging penalties or interest. City fees are suspended except for TOT payments since that money is already collected.
<b>Rosemead</b>	No	Yes	Waived penalties on the business license renewal.
<b>San Francisco</b>	Yes	Yes	Quarterly tax payments of Gross Receipts Tax, Payroll Expense Tax, Commercial Rents Tax, and Homelessness Gross Receipts Tax due on April 30, 2020, are waived for taxpayers or combined groups that has gross receipts in calendar year 2019 of \$10,000,000 or less. These tax liabilities are instead paid along with annual tax payments for tax year 2020, due by March 1, 2021. The due date for license fees due on March 31, 2020, are extended to June 30, 2020.
<b>San Jacinto</b>	No	No	Not deferring payments or penalties. Business owner have had sufficient amount of time to renew their business license by 12/31/2019. The City has allowed a grace period until 1/31/2020 without penalties.

## Tax Deferment / Penalty Waiver Survey Results - March 30th, 2020

City	Allowing Deferment of Tax?	Waiving Penalties?	Conditions
<b>Santa Barbara</b>	Yes (case by case basis)	Yes	60 day payment deferment for TOT upon the operator signing agreement. Waiving the 1st Qtr. 2020 Parking Business Improvement Area assessment payment, and not sending business license delinquent notices to past due businesses at this time. Both of these will be finalized with Council on 4/7/2020. If the business owner is delinquent and remits the renewal without penalties, they are issuing the business license without the business incurring penalties. The City will work with business owners, case-by-case to offer a payment deferment (pay by 6/30/2020) or payment plan.
<b>Vacaville</b>	No	Yes	Waiving late fees on Business License, Water, and TOT but have not yet issued a public announcement. The City is reviewing renewals due April 30th and is considering extending the due date to May 31 <sup>st</sup> .
<b>Walnut Creek</b>	No	No	No discussion on deferment yet. Includes TOT and TBID taxes. No UUT tax.