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CITY ATTORNEY

REPORT NO. R 1 4 - 0 3 2 4

AUG 22 2014

REPORT RE:

**DRAFT ORDINANCE AMENDING SECTION 21.41 OF
THE LOS ANGELES MUNICIPAL CODE TO EXTEND THE TAX CLASSIFICATION
OF INTERNET BUSINESSES FOR ONE YEAR**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 09-1914

Honorable Members:

This Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality. This draft ordinance amends the Los Angeles Municipal Code (LAMC) in order to extend, for one year, the imposition of Tax Rate A to internet-based businesses.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Office of Finance with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

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OFFICE OF THE CITY ATTORNEY

If you have any questions regarding this matter, please contact Deputy City Attorney Daniel M. Whitley at (213) 978-7786. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 
DAVID MICHAELSON
Chief Assistant City Attorney

DM:DMW:cm

ORDINANCE NO. _____

An ordinance amending Section 21.41 of the Los Angeles Municipal Code to extend the tax classification of internet businesses for one year.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. Section 21.41 of the Los Angeles Municipal Code is hereby amended in its entirety to read as follows:

SEC. 21.41. GROSS RECEIPTS FUND CLASS 1.

For every person engaged in business as a Child Care Provider, Multimedia Business, Internet-based Application Service Provider, Internet-based Data Manipulation Businesses, Telephone Company, Tugboat and/or Barge Operator, Tax Rate A, set forth in Section 21.33(a), shall be applicable.

(a) CHILD CARE PROVIDERS.

1. A child care provider means providing non-medical care for children under 18 years of age in need of personal services, supervision or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis.

2. As used in this section, the term "gross receipts" does not include receipts of:

(i) Community chests, funds, foundations or corporations organized and operated for religious, hospital or charitable purposes, not conducted for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(ii) Non-profit secondary schools, which are duly accredited by the University of California, and receipts of non-profit elementary schools in which instruction is given to students in the pre-primary and primary grades in the several branches of studies required to be taught in the public schools of the State of California;

(iii) Rotary, Kiwanis and Lions Clubs, non-profit automobile clubs, chambers of commerce, and other community service organizations; also receipts of trade associations such as Merchants Plumbers Association, Merchants and Manufacturers Association, and labor organizations.

(b) MULTIMEDIA BUSINESSES.

1. A multimedia business means a business that produces films, disks, tapes, software or other recording devices, whether visual or audio, through the integration of two or more media, which media include, without limitation, computer generated graphics and video, film, slides, video tapes, audio tapes and photographs, or provides computer programming services on a contract or fee basis to the producer of these media. These services shall include computer software design and analysis, modification of custom software, digital imaging and other related programming services, the development of online and internet services, and the design of web sites for clients.

2. A multimedia business shall not include a business that utilizes multimedia to sell goods or further its business, motion picture, television or radio producers, or radio or television broadcasters, or an adult entertainment business, as defined in Section 12.70 B. of this Code.

(c) INTERNET-BASED APPLICATION SERVICE PROVIDERS.

1. An internet-based application service provider (ASP) means a business that provides its customers access, exclusively through the internet, to electronic applications that are available exclusively on computer devices operated by or on behalf of the ASP. An "electronic application" is a computer program that provides the user with the ability to accomplish a specific task. An ASP shall not include a business that provides electronic applications, including, but not limited to, computer software, for customers to download through the internet. A business does not qualify as an ASP unless its internet-based electronic application provides information to the user directly without any substantial intermediation by any person except for technical support related to the use of the electronic application. An ASP shall not include a business that sells electronic applications through the internet, or any business that obtains its income from the use of its electronic applications by itself, on its behalf, or by any related entity as defined in Section 21.00(a).

2. An ASP business shall not include a business that utilizes an application to sell goods or further its business, motion picture, television or radio producers, telephone companies, or radio or television broadcasters, or an adult entertainment business, as defined in Section 12.70 B of this Code.

3. The ASP business tax classification shall apply only for the 2010, 2011, 2012, 2013, 2014 and 2015 tax years unless the Council acts by ordinance to amend this section and extend the length of time for which this classification shall apply.

(d) INTERNET-BASED DATA MANIPULATION.

1. An internet-based data manipulation business means a business that exclusively provides access to internet-based applications that allow a user to search, compile, and otherwise manipulate data, including, but not limited to, a business that operates or provides access to one or several "search engines." A "search engine" is an internet-based application that retrieves documents or files or data from the internet, a computer network, a database, or other data sources. "Data" includes visual, numerical, and written information. A business does not qualify as an Internet-based Data Manipulation Business unless its internet-based application provides information to the user directly without any substantial intermediation by any person except for technical support related solely to the use of the internet-based application.

2. An internet-based data manipulation business shall not include a business that utilizes internet-based data manipulation to sell goods or further its business, motion picture, television or radio producers, telephone companies, or radio or television broadcasters, or an adult entertainment business, as defined in Section 12.70 B. of this Code

3. The internet-based data manipulation business tax classification shall apply only for the 2010, 2011, 2012, 2013, 2014 and 2015 tax years unless the Council acts by ordinance to amend this Section and extend the length of time for which this classification shall apply.

(e) TELEPHONE COMPANIES.

1. A person engaged in the business of providing telephone services means a telephone company as the term is used in Article XIII, Section 14 of the Constitution of California.

2. For the purpose of this section, "gross receipts" shall have the same meaning as in Subsection (a) of Section 21.00, except that only those receipts derived from providing telephone services within the City of Los Angeles shall be included, and further excepting, that only receipts resulting from intrastate telephone services shall be included. "Gross receipts" shall also include receipts from the selling of advertising or advertising space in any directory, other printed matter or any other media only for business tax purposes commencing on or after January 1, 1984.

(f) TUGBOAT AND BARGE OPERATORS.

1. Tugboat and barge operator means any person engaged in the business of operating a tugboat or barge.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

HOLLY L. WOLCOTT, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

MICHAEL N. FEUER, City Attorney

By  _____
DANIEL M. WHITLEY
Deputy City Attorney

Date 8/21/14 _____

File No. _____