

CITY COUNCIL AGENDA ITEM

TO: Mayor & City Council

DATE: July 28, 2010

FROM: John McDonough, City Manager

AGENDA ITEM: Proposed Amendment to the Business and Occupation Tax Ordinance Section 54-127(d) on Hearings

MEETING DATE: For Submission onto the August 3, 2010, City Council Work Session Meeting Agenda

BACKGROUND INFORMATION: (Attach additional pages if necessary)

See attached:

Memorandum

APPROVAL BY CITY MANAGER:

JMM

APPROVED

NOT APPROVED

PLACED ON AGENDA FOR:

8/3/10

CITY ATTORNEY APPROVAL REQUIRED:

() YES

() NO

CITY ATTORNEY APPROVAL:

[Signature]

REMARKS:



**To: Honorable Mayor and City Council Members**

**From: Wendell K. Willard**

**Date: For Submission onto the August 3, 2010 City Council Work Session**

**Agenda Item:**

**Proposed amendment to the Business and Occupation Tax Ordinance Section 54-127(d) on Hearings**

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***City Attorney's Recommendation:***

That the proposed amendment set forth hereafter be approved and adopted.

***Background:***

Section 54-127 on Hearings was adopted on September 1, 2009. At the time of its adoption there were not any provisions for hearings on disputes regarding occupational tax amounts and assessments. The appeal procedure which had been followed was established by the City Manager, but was not set forth in the Code of Ordinances.

Section 54-127(d) has been in effect now for approximately one year. In view of its actual operation, certain aspects should be clarified.

As this subsection reads, it is not clear whether the payment of a disputed occupational tax amount prior to a conference is required. In any event, payment has not been required prior to any conference review. Since the conference is intended to afford a more informal environment to resolve the dispute, it would be best to allow a conference to be scheduled upon request with no prepayment requirement. If, however, the business is not satisfied with the decision rendered after the conference and wishes to file a formal appeal to be heard by Council, then, in such event, payment of the disputed amount of tax, interest, and penalty would be appropriate.

Further, since the City's purpose is to impose the occupational tax fairly and equitably and in this regard apply the ordinance in the same manner to the same factual circumstances, the Assistant City Attorney has been presiding over the conferences and issuing the decision letters. For that reason, although the City Tax Collector (Finance Director) has the inherent authority to appoint someone to act in her place, it would be best to specify that her designee may be the one to conduct a requested review.

*City Attorney*

Finally, since the unique factual circumstances of each business must be taken into account in applying the occupational tax ordinance, additional information is almost always requested and provided subsequent to the conference. Moreover, due to the complexity of the factual circumstances, which have frequently been encountered, ten days is almost never a sufficient amount of time for preparation of the decision letter.

***Discussion:***

The following strikeouts and highlighted additions to Section 54-127(d) are proposed:

- (d) If any individual, firm, or corporation subject to the payment of an occupation tax deems the tax amount to be unlawful, discriminatory, or improper, it may ~~pay the occupation tax imposed under protest, in writing,~~ and file a written request for review by the city's tax collector **or his designee**. The request for review must be filed within 15 days from the date ~~the tax is paid~~ **of the disputed tax notice**. The tax collector **or his designee** shall, within 30 days from the date of receipt of the request for review, schedule a conference with the occupation tax certificate holder to review those matters set forth in the request for review. Within ~~ten~~ **thirty (30)** days from the date of the conference **or date of production or provision of additional information, whichever is later**, a determination shall be made by the city's tax collector **or his designee** in writing and a copy of the determination shall be sent to the certificate holder ~~by certified mail~~. In the event the certificate holder is dissatisfied with the determination made by the city's tax collector **or his designee**, it may, within 15 days from the date ~~of receipt~~ of the tax collector's **or his designee's** determination and **conditioned upon payment of the full disputed amount of tax, interest, and penalty by the certificate holder to the tax collector**, file its appeal with the city clerk for review of the decision by the city council or its designee in the manner outlined above in subsection (b).

City  
Attorney

***Alternatives:***

To do nothing and leave as is, which would be contrary to the manner in which this subsection is actually operating.

***Concurrent Review:***

City Manager, John McDonough

*City  
Attorney*