

Municipal Business License Reform Act

Overview of Major Changes

Citation: HB754, Act 2006-586

Effective Date

January 1, 2008

- Municipalities can elect to come under Act after December 31, 2006, by adoption of an ordinance

License year

All municipalities must follow calendar year

Issuance fee

Can increase issuance fee up to ten dollars (\$10) for each license.

- Department of Revenue shall increase the issuance fee every five license years by an amount equal to the percentage increase, if any, in the U.S. Department of Labor's Producer Price Index during that five-year period, rounded to the nearest dollar, with the base year being 2006.
- The Department of Revenue shall notify all municipalities and the Alabama League of Municipalities of any such fee increase no later than the November 30 preceding the license year for which the increase shall take effect.
- The failure of the Department of Revenue to so notify all municipalities and the Alabama League of Municipalities shall not, however, prohibit a municipality from increasing the issuance fee, if any increase is otherwise due pursuant to this subsection. A reasonable projection of the Producer Price Index for the months of November and December of the fifth year of the test period may be employed in this calculation.

Small Vendor License

Municipalities may, **but are not required**, to establish a small vendor business license.

Small Vendor means:

"a. The taxpayer purchased a business license from the municipality with respect to the preceding license year and made a sale or provided services within the municipality thereof during each calendar quarter of the preceding license year.

"b. The taxpayer's gross receipts derived from within the municipality for the preceding license year did not exceed fifteen thousand dollars (\$15,000).

"c. The taxpayer did not qualify for the special delivery license provided for by Section 11-51-194."

Delivery License

Municipal delivery license up to \$100.00 for businesses who only deliver into municipality.

- The Municipal Business License Reform Act of 2006 requires municipalities to establish a special delivery license that allows certain out-of-town taxpayers to make deliveries into the municipality and police jurisdiction. The purchase of the special delivery license permits businesses with no physical presence in the municipality or its police jurisdiction to deliver merchandise into the police jurisdiction or municipality without having to purchase any other license for delivery. The amount of the license cannot exceed \$100.00, although this amount may be adjusted every five years based on the standard set out in the Act.
- In order to qualify for the special delivery license fee, the gross receipts from all deliveries into the municipality and its police jurisdiction cannot exceed seventy-five thousand dollars (\$75,000) during the license year. If deliveries exceed \$75,000, the taxpayer does not qualify for this special license. At its discretion, a municipality may, by ordinance, increase the amount of permitted deliveries up to \$150,000. Again, this figure may be revisited every five years based on the standards contained in the Act. Common carriers, contract carriers, or similar delivery services making deliveries on behalf of others do not qualify for the delivery license.
- As defined in the Act, delivery includes any requisite set-up and installation. To be included, set-up or installation must be required by the contract between the taxpayer and the customer or be required by state or local law. In addition, any set-up or installation must relate solely to the merchandise that is delivered. If the taxpayer or the taxpayer's agents perform set-up or installation that does not qualify under this definition, the taxpayer must pay any required license fee rather than the delivery license.
- Municipalities may, by ordinance, require the taxpayer to purchase a decal for each delivery vehicle that will make deliveries within the municipality or its police jurisdiction. The charge for such decal cannot exceed the municipality's actual cost.
- If the taxpayer fails to meet the criteria that qualify him or her for the special delivery license at any time during the license year, the taxpayer must within

10 days of the failure purchase all appropriate licenses for the entire license year.

NAICS Sectors

Apply the 2002 North American Industrial Classification System ("NAICS") sectors to define businesses in your municipality – **Each municipality still sets its own rates.** (NOTE: Rates that are restricted under the Code of Alabama for certain businesses are still restricted.)

- If a Taxpayer is doing more than one type business at a single location, the TP pays license for each category it derived more than 10 percent of its gross receipts during the preceding license year. TPs are taxed only on gross receipts which arise within the line of business which is the subject of the license. No portion is untaxed, though. All receipts not accounted for otherwise are taxed at rate charged for the primary business.
- Municipalities can use subcategories under the NAICS system except for bank holding companies and utilities, which are taxed separately.

Branch Office Rule

A taxpayer engaged in business in more than one municipality, shall be permitted to account for its gross receipts so that the part of its gross receipts attributable to one or more branch offices will not be subject to the business license tax imposed on the principal business office required to obtain a business license. Branch office gross receipts are those receipts that are the result of business conducted at or from a qualifying branch office.

To establish the existence of a qualifying branch office, the taxpayer shall meet all the following criteria:

"(1) Demonstrate the continuing existence of an actual physical facility located outside the police jurisdiction of the municipality in which its principal business office is located, such as a retail store, outlet, business office, showroom, or warehouse, to which employees or independent contractors, or both, are assigned or located during regular normal working hours.

"(2) Maintain books and records which reasonably indicate a segregation or allocation of the taxpayer's gross receipts to the particular facility or facilities.

"(3) Provide reasonable proof that separate telephone listings, signs, or other indications of its separate activity are in existence.

"(4) Billing or collection activities, or both, relating to the business conducted at the branch office or offices are performed by an employee or other representative

of the taxpayer who has such responsibility for the branch office, whether or not the representative is physically located at the branch office.

“(5) All business claimed by a branch office or offices must be conducted by and through the office or offices.

“(6) Supply proof that all applicable business licenses with respect to the branch office or offices have been issued.

Standard License Form

Municipalities must allow TPs to use the standard license form set out in the Act to apply for a license.

- “The application form may, however, be altered to incorporate the different business license rates that municipalities are permitted to charge from time to time, and to reflect additional or different instructions to taxpayers that are not inconsistent with this chapter.”

Notification of Renewals for Existing Licensees

Municipalities must notify TPs when it is time to renew their license.

- Each municipality shall mail or otherwise transmit a renewal reminder notice to each taxpayer that purchased a business license during the preceding license year, via regular U.S. mail addressed to the taxpayer's last known address, on or before December 31 of the current license year. The failure of the municipality to comply with the preceding sentence shall not, however, preclude it from enforcing its business license tax laws against a taxpayer but shall preclude the municipality from assessing any fines or penalties otherwise due for late payment until 10 days after a renewal reminder notice has been mailed to the taxpayer at its last known address as indicated in the municipality's records, or personally delivered to the taxpayer, and the taxpayer then fails or refuses to remit the business license tax due for such license year within the 10-day period. If the municipality mails a renewal reminder notice to the last known address of the taxpayer, as indicated in the municipality's records, there shall exist a presumption that the municipality has complied with the above provisions. A municipality shall not be precluded from assessing fines and penalties otherwise due for late payment if the taxpayer does not notify the municipality of a change in address within 90 days after changing such address. Taxpayers shall notify the taxing jurisdictions in which they do business of a change of mailing address within 90 days after changing such address. In like manner, taxpayers shall notify the taxing jurisdictions in which they do business of a change in their federal employer identification number or Department of Revenue taxpayer identification number within a reasonable time after such number is changed.

Transfer of Licenses

No license shall be transferred except with the consent of the council or other governing body of the municipality or of the director of finance or other chief revenue officer or his or her designee, and no license shall be transferred to reflect a physical change of address of the taxpayer within the municipality more than once during a license year and never from one business one taxpayer to another.

A mere change in the name or ownership of a taxpayer that is a corporation, partnership, limited liability company or other form of legal entity now or hereafter recognized by the laws of Alabama shall not constitute a transfer for purposes of this chapter, unless:

- the change requires the taxpayer to obtain a new federal employer identification number or Department of Revenue taxpayer identification number or
- (2), in the discretion of the municipality, the subject license is one for the sale of alcoholic beverages. Nothing in this section shall prohibit a municipality from requiring a new business license application and approvals for an alcoholic beverage license.

Late Fee Penalties

- 15 percent if not paid by due date
- 30 percent if not paid within 30 days of due date.

These penalties are not cumulative.

There is no penalty charged if the TP can demonstrate reasonable cause.

Reasonable cause means:

The death or major illness of or an accident involving a sole proprietor causing serious bodily injury that in either case resulted in the sole proprietor being unable to purchase the license or operate his or her business during the 10 days preceding the due date; natural disaster, fire, explosion, or accident that caused the closing or temporary cessation of the business of the taxpayer during the 10 days preceding the due date; or reliance on the erroneous advice of an employee or agent of the revenue department of the taxing jurisdiction or its designee given in writing or by electronic mail.

Municipality may waive the penalty for other reasons, including, but not limited to, the taxpayer's reliance on erroneous but good faith advice from its tax adviser or on

erroneous, oral advice from an employee or agent of the revenue department of the taxing jurisdiction or its designee.

Burden of Proving reasonable cause is on business owner, and a determination by the taxing jurisdiction that reasonable cause does not exist shall be reversed only if that determination was made arbitrarily and capriciously.

Other Penalties

A violation of Code or of an ordinance passed hereunder fixing a license shall be punishable by a fine fixed by ordinance, not to exceed the sum of five hundred dollars (\$500) for each offense, and **if a willful violation**, by imprisonment, not to exceed six months, or both, at the discretion of the court trying the same and each. Each day shall constitute a separate offense.

- Can charge interest on any business license tax delinquency from the due date of the tax. If assessed by the municipality, interest shall be computed at the same rate prescribed by Section 10 11-51-208(f) relating to interest on delinquent or overpaid sales and use taxes levied by self-administered municipalities.
- If interest is assess on delinquencies, interest at the same rate shall be paid on any refund of a license tax erroneously paid to the jurisdiction.

All penalties and interest administered by the taxing jurisdiction pursuant to this section and Section 11-51-192 shall be assessed and collected in the same manner as business license taxes.

Gross Receipts

GROSS RECEIPTS. A measure of any and all receipts of a business from whatever source derived, to the maximum extent permitted by applicable laws and constitutional provisions, to be used in calculating the amount due for a business license. Provided, however, that:

- a. Gross receipts shall not include any of the following taxes collected by the business on behalf of any taxing jurisdiction or the federal government:

All taxes which are imposed on the ultimate consumer, collected by the taxpayer and remitted by or on behalf of the taxpayer to the taxing authority, whether state, local or federal, including utility gross receipts taxes levied pursuant to Article 3, Chapter 21, Title 40; license taxes levied pursuant to Article 2, Chapter 21, Title 40; or reimbursements to professional employer organizations of federal, state or local payroll taxes or unemployment insurance contributions; but no other deductions or

exclusions from gross receipts shall be allowed except as provided in this article.

b. A different basis for calculating the business license may be used by a municipality with respect to certain categories of taxpayers as prescribed in Section 11-51-90B.

c. For a utility or other entity described in Section 11-51-129, gross receipts shall be limited to the gross receipts derived from the retail furnishing of utility services within a municipality during the preceding year that are taxed under Article 3 of Chapter 21 of Title 40, except that nothing herein shall affect any existing contract or agreement between a municipality and a utility or other entity. The gross receipts derived from the furnishing of utility services shall not be subject to further business license taxation by a municipality.

d. Gross receipts shall not include dividends or other distributions received by a corporation, or proceeds from borrowings, the sale of a capital asset, the repayment of the principal portion of a loan, the issuance of stock or other equity investments, or capital contributions, or the undistributed earnings of subsidiary entities.

Determining Gross Receipts

The measure of a municipal business license based on gross receipts shall be based on the taxpayer's gross receipts for the license year next preceding the current license year unless the taxpayer first began doing business in the municipality during the current license year, in which event the gross receipts shall be projected by the taxpayer for the remaining portion of the current license year. If the taxpayer's actual gross receipts for the short license year are either more or less than projected, the taxpayer's annualized gross receipts used in calculating its business license tax liability for the following license year shall be increased or decreased, respectively, by the amount of the difference. When annualizing the gross receipts for the short license year, the amount of the gross receipts projected by the taxpayer shall be divided by the number of full months the taxpayer was in business in the municipality and multiplied by 12; provided that each taxpayer shall be deemed to have been in business in the municipality for a minimum of one month for purposes of this calculation. If the taxpayer employs a fiscal year for federal and state income tax purposes, the taxpayer's gross receipts may be determined, at the option of the taxpayer, from the federal income tax return of the taxpayer for the fiscal year next preceding the current license year, provided that the gross receipts reported thereon reasonably reflect the financial condition of the taxpayer as of the December 31 next preceding the current license year, and the taxpayer so notifies the municipality either prior to or simultaneously with filing the first business license remittance form using fiscal year data. The taxpayer's use of fiscal year data, as provided above, shall constitute an irrevocable election to use fiscal year data with respect to the current and subsequent business license years

unless the governing body of the municipality or its director of finance or other chief revenue officer or his or her designee consents otherwise.

Municipality may allow or require a taxpayer to purchase a minimum business license with respect to the short license year following 90 days of operations in the municipality, based on the amount which bears the same relationship to the actual amount of gross receipts during such preceding license year as the entire license year bears to the number of days during which the taxpayer was operating during such preceding license year. If the taxpayer did not commence operations until after the first day of the calendar year, the municipality may by ordinance require the taxpayer to remit the business license tax at the end of such 90 day period, or on December 31 of the current license year, whichever occurs first.

Notwithstanding anything in this chapter to the contrary, the licenses authorized by Sections 11-51-130 and 11-51-131 are in lieu of any other business licenses authorized by this chapter, and banks and savings and loan associations subject to either of those sections are not subject to the business license taxes otherwise authorized by this chapter, regardless of whether one or more NAICS sectors or sub-sectors describe or include any business or activity of such bank or savings and loan association. Any municipal business license tax applicable to a bank holding company, as defined in Section 5-13B-2(f), shall not exceed the amount set forth in the schedule provided for banks under Section 11-51-130(a)(12). Provided, however, if a bank holding company is engaged in additional lines of business that do not fall within NAICS Sectors 551 or 522 and which are not considered financial in nature, as defined under federal banking law, the bank holding company shall take out and pay for a business license for each additional line of business so assessed by the municipality; provided further that for each separate additional business license, the gross receipts taxable under such license shall be only those gross receipts of the bank holding company which arise under the license for the respective additional line of business and not from a financial activity, as defined under federal banking law, or from an activity within NAICS Sector 551 or 522. This subsection (e) shall not apply to any subsidiary of a bank or savings and loan association.

Notwithstanding any provision of this chapter to the contrary, each of the several municipalities in this state may annually assess and collect from each utility or other entity described in Section 11-51-129 only one municipal business license tax for all lines of business classified in NAICS Sector 221, and the levy, collection and assessment of the single business license tax shall be subject to the provisions and limitations of Section 11-51-129 and Section 11-51-90A. If any such utility or entity described in Section 11-51-129 is engaged in one or more additional lines of business that do not fall within NAICS Sector 221, and if the additional line of business of such utility or other entity is so assessed by the municipality, then the utility or other entity shall take out and pay for a business license for that additional line of business, even if the utility or other entity does not meet the requirement in Section 11-51-95 that it must derive more than 10 percent of its gross receipts from

the business falling within the NAICS sector during the preceding license year; provided however, that for each separate, additional business license, the gross receipts taxable under such license shall be only those gross receipts of the utility or other entity from business done within the municipality and which arise within the line of business which is the subject of the respective license.

Taxpayer Bill of Rights (TBOR)

The Act establishes TBOR for licenses. These are assessed and collected in the same manner as sales and use taxes.

TBOR includes confidentiality of information on tax returns.

- "Nothing herein shall prohibit the disclosure, upon request, of the fact that a taxpayer has or has not purchased a business license or of the name and address of a taxpayer purchasing or renewing a business license from the municipality. Statistical information pertaining to taxes may be disclosed to the municipal governing body upon their request. Any person willfully violating the provisions of this section shall, for each act of disclosure, have committed a Class A misdemeanor."
- "The governing body of a municipality may adopt from time to time an ordinance consistent with Section 40-2A-10(d) to permit the exchange of business license information between and among the municipality and other municipalities adopting similar ordinances or between county and state governments, subject to the confidentiality restrictions imposed by this section."

Abatement of Licenses

After a public hearing, a municipal governing body can grant an abatement of license taxes for up to 3 years for purposes allowable under Section 40-9B-1 et seq.,

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