



## BUSINESS LICENSE TAX REQUIREMENTS FOR REAL ESTATE AGENTS & BROKERS

### FREQUENTLY ASKED QUESTIONS

#### **I've never heard of this before. Is this a new requirement?**

The Azusa business license requirement is not new; in fact, it has existed since 1937.

#### **Why hasn't anyone told me about this before? How come other agents in my office do not have licenses or have not received these notices?**

The City's Municipal Code (A.M.C. §18-5) has always required local businesses to obtain a business license. This is not a new requirement nor a change in City policy. The City is diligent in sending courtesy notices. If someone does not receive a notification, that does not mean they are not required to obtain a business license. If a colleague has not yet been notified, it is an indication that the City is not yet aware of them. In fact, if a person/entity does not apply for a business license and they are identified in the future as having required one, with a credible source of discovery, they will be liable for all back taxes and penalties.

#### **I am already licensed by the State of California. Why is the City asking me to get a license?**

The license you hold, issued by the California Bureau of Real Estate (formerly the Department of Real Estate) is a *State regulatory* license. A City business license represents a *local tax* payment and regulatory function.

#### **My broker already has a City business license. Don't I operate under their "umbrella"?**

Your broker may have a City of Azusa business license, which has a provision for covering W2 employees. Only if your broker pays you and you report taxes as a W2 employee are you exempt from the requirement to obtain a business license. On the other hand, if you are a 1099 Independent Contractor, your broker's business license cannot and does not cover you, and you are therefore required to obtain your own business license.

#### **I have to work under a broker. Why is the City requiring a separate business license from me?**

While California real estate law, for regulatory purposes, defines a salesperson/agent to be an employee of a broker, it does not speak to employment for taxation purposes. Legally, they are two different things. Real estate law requires a written agreement between the salesperson/agent and the broker to define their relationship for tax purposes, as well as to define the way the salesperson/agent reports income to the Franchise Tax Board and IRS. Therefore while a salesperson/agent is an "employee" of the broker for regulatory purposes (supervision in how one engages in real estate practice), for taxation purposes *a salesperson/agent can be either an "employee" or an "independent contractor" of the broker*. If the written agreement with your broker defines the relationship as being that of "employer and employee" *and* you report income to the Franchise Tax Board and the IRS as a W2 employee, then you are an "employee" for tax purposes as well and need not obtain a separate business license. Otherwise, as an "independent contractor", you are considered a separate business and require a separate business license.

**Why does the City think I'm a "business?" I work for a broker and use a desk at his office.**

State law requires the City to use the way in which a taxpayer reports income to the Franchise Tax Board to determine whether the taxpayer acted as an "employee" of a broker, or rendered services as an "independent contractor"/separate business entity.

**What specific laws require the City to treat real estate professionals as a separate "business" that must obtain their own business license?**

State law (Calif. Business and Professions Code §16300) prohibits cities and counties from imposing local business license tax on employees of a business. In the case of a dispute between a taxpayer and the City as to whether the taxpayer is an "employee" or "independent contractor"/separate business, the City must defer to how the taxpayer reported income to the Franchise Tax Board (1099 or W2).

**Real estate law says I am an employee and not a separate business. Why are you calling me a separate "business" when I have to work under a broker?**

Under California real estate Law (Calif. Business and Professions Code §10032), brokers and salespersons/agents may define their relationship, for tax purposes, as either an "independent contractor" or as "employer and employee". It also states this relationship shall have no effect on either the brokers' or agents' regulatory obligations to the public. In other words, real estate law distinguishes the regulatory requirements of California real estate professionals from local tax structures. For tax purposes, real estate salespersons/agents who are "independent contractors" (1099 filers) and not "employees" (W2 filers) are required to maintain a separate business license.

**Does every real estate salesperson/agent in the City need a license?**

No. Any person employed as a 1099 independent contractor who works in the City must get a business license. Therefore, all agents retained as 1099 independent contractors by their brokers who are based in, sell property in, or otherwise work in the City must have their own City business license. Those agents who are "employees" of a real estate broker (and who report their income as such (W2)) are not required to have their own City business license.

**How is the tax of realty businesses calculated?**

The Azusa Municipal Code applies the general "professional" business license tax rate to realty businesses in the City. The amount is as follows:

1st year - Flat \$90 for 5 or less employees; \$150 for 6 or more employees; and

2nd year and thereafter - Based upon gross receipts earned in the prior year. Below is a list of the first five tax categories in the Municipal Code.

<u>Gross Receipts</u>	<u>Annual Business License Tax</u>
\$0 - \$4,999.00	\$50.00
\$5,000.00 - \$9,999.00	\$90.00
\$10,000.00 - \$99,999.00	\$150.00
\$100,000.00 - \$499,999.00	\$300.00
\$500,000.00 - \$999,999.00	\$750.00

The Azusa Municipal Code provides that the business license tax applies to the "... commission or other income to the agency or broker, including any portion thereof to be remitted to any sales person." This means that the full amount of any commission/income earned by the broker or salesperson/agent from the sale of real estate within the City of Azusa counts as "gross receipts" upon which the business license tax is calculated.

## **How should I report if the broker keeps and reports all or part of the sales commission under his/her license?**

Depending upon the situation, you will be required to report in one of the following ways:

1.) If you are a W2 employee of the broker, you are not a separate business and need not obtain a business license or report "gross receipts" on money you earn from real estate transactions within the City. You come under the broker's "umbrella" under State law and the Azusa Municipal Code. However, there are two things to note:

- The City may require you to sign a declaration affirming that you are a W2 employee and, therefore, exempt from the requirement to obtain a separate business license and pay business license tax. The City may also request confirmation of this fact from your broker. If the City cannot verify that you are a W2 employee, the City will assume you are a 1099 independent contractor and require you to obtain a separate business license.
- For each sale you and your broker successfully close, your broker must report all commission/income earned on the sale as his or her own "gross receipts", so that the business license tax can be fully and properly applied.

2.) If you are a 1099 independent contractor of the broker, you are a separate business and must obtain a separate business license. How to report "gross receipts" will depend upon how you and your broker agree to split and report the commission/income from a real estate sale.

- If your broker claims and reports the entire commission/income as his or her own "gross receipts", you need not report "gross receipts" from a sale under your own business license. In this case, the tax has already been applied to the full value of the commission/income, so there are no further "gross receipts" for you to report for tax purposes. If you have no "gross receipts" for the year, you must report a "\$0" figure in your annual business license tax return to the City.
- If you and your broker split the commission/income and your broker only claims and reports their portion as "gross receipts", you are required to report your portion of the commission/income as "gross receipts" in your annual business license tax return to the City. In this way, the tax is applied to the full value of the commission/income, consistent with the Azusa Municipal Code.

## **Azusa Municipal Code**

### **Sec. 18-5. - Licenses required generally.**

There are imposed upon the businesses, trades, professions, callings and occupations specified in this chapter license taxes in the amounts prescribed in this chapter, and it is unlawful for any person to transact and carry on any business, trade, profession, calling or occupation in the city without first having procured a license from the city to do so or without complying with any and all applicable provisions of this chapter.

(Code 1971, § 5.08.040)

### **Sec. 18-9. - Evidence of doing business in city such as to require license.**

It is determined that a business is being conducted and a business license is required when any person shall:

- (1) By use of signs, circulars, cards, telephone books, newspapers or other means advertise, hold out or represent that he is in business in the city;
- (2) File a fictitious business name statement or be in possession of a resale number issued by the state board of equalization; or
- (3) Deliver, distribute, supply, manufacture, sell at retail or wholesale, lease, rent, provide a service or generate revenue in any manner within the city.

(Code 1971, § 5.08.052)