

Business Tax Administrative Rule 400.93-3A

400.93-3A – Business License Tax Exemption for Real Estate Brokers (LIC-4.03)

Oregon Revised Statute 696.365 states “A city or county may not impose a business license tax on or collect a business license tax from an individual licensed as a real estate broker who engages in professional real estate activity only as an agent of a principal real estate broker.”

The Proctor case determined that this statute still applies to the City of Portland Business License Tax. Therefore, an individual licensed as a real estate broker may be exempted from payment of the City of Portland Business License Tax if the individual does not engage in other business activity in Portland. This exemption does not apply to the Multnomah County Business Income Tax.

No exemption under ORS 696.365 will be granted for the following situations:

1. A corporation, s-corporation, partnership or any business entity other than an individual. *This is based upon case law upholding imposition of a tax upon a tax entity even though the owners of the tax entity were tax exempt.*
2. An individual licensed as a principal real estate broker. *This is true whether or not the individual's activities are as a mere broker or as a principal broker because the law exempting the individual is not based upon activity but on the license held by the individual.*
3. An individual licensed as a “sole practitioner”. *By definition under ORS 696.010 (20) a holder of this license is not an agent of a principal real estate broker, but is independent.*

A real estate broker that engages in other non-exempt business activity within Portland will be subject to the City of Portland Business License Tax upon the segregated net income of the non-exempt business activity. Exemptions under the business license law consider all activities, even otherwise exempt activities, in determining qualification for an exempt status. Therefore, gross receipts for exemption purposes will be determined on the sum of exempt and non-exempt incomes. The residential rental exemption for less than 10 dwelling units (available for tax years 2011 and prior for the City of Portland) is not available to a broker that has residential rental activity/income because the business activity is not “exclusively limited” to residential rentals. In certain circumstances, such as a change of license from real estate broker to principal real estate broker in mid-year, the loss of exemption will either be prorated on a monthly basis (dividing the total year's income by 12 and multiplying this sum of months liable) or by prorating on an actual income basis. Without information about a mid-year change, the Division will make an assumption based on the best information available, which may not be favorable to the taxpayer.

Example 1. Sam Iyam, a holder of a real estate broker's license engaging in professional real estate activity in Portland under the supervision of principal real estate broker Sally Ivers, also owns an 8 unit apartment building within the City of Portland. Sam receives \$40,000 in gross receipts as a real estate broker with a net profit of \$30,000 and \$20,000 of the gross receipts earned from sales activity in Clackamas County. Sam receives \$40,000 in rents from the 8 unit apartment building with a net income of \$5,000. In determining the Multnomah County Business Income Tax, Sam would report a net income of \$35,000 with a Multnomah gross income of

\$60,000 and total gross income of \$80,000. In determining the City of Portland Business License Tax only the segregated income of the rentals would be reported. Portland net income of \$5,000 and a Portland gross income of \$40,000 (100% apportionment) would be the basis for the computation of the Portland Business License Tax.

Example 2. Rose Swan changed her license from real estate broker to principal real estate broker on July 1, 2011. Rose earned \$60,000 in gross receipts as a realtor during 2011 with a net income of \$50,000. For the City of Portland Business License Tax, Rose may either report a net income of \$25,000 (\$50,000 divided by 6/12) or she may go into her records and determine the date of the actual sales and apportion them (e.g., if \$40,000 of her commissions were before July 1, 2011 the Portland net income would be \$16,666 -- \$50,000 divided by 1/3). If Rose does not report this change in licensure on her 2011 tax return, the Division will likely assume that she was a principal real estate broker for the entire year and bill accordingly.

This rule was suspended beginning with the 2008 tax year. The Proctor case effectively reinstates this rule. Accordingly, this rule is retroactive and applies to all tax years beginning on or after January 1, 2008.

Note: This rule sunsets 12/31/2022 and does not apply to tax years beginning on or after 1/1/2023. See 400.23-3 (LIC 4.07) for later tax years.

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Date

Director, Revenue Division

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