

MEMORANDUM OF LAW

DATE: October 2, 1996

NAME: Erica Fuchs, Council Representative, District 7

FROM: City Attorney

SUBJECT: Rental Unit Business Tax

This is in response to your route slip regarding a citizen who questioned the rental unit business tax. The general authority for governmental entities to derive directly from the California Constitution. Article XI, section 7 of "a county or city may make and enforce within its limits all local, police ordinances and regulations not in conflict with general laws." The California Pines v. City of Santa Monica, 29 Cal. 3d 656, 660 (1981), held that "taxation granted to charter cities by the Constitution."

In addition, California Business and Professions Code section 16000, e Fee exemption for nonprofit organizations, states:

(a) The legislative body of an incorporated city may, in the exercise of its police power, and for the purpose of regulation, as herein provided, and may license any kind of business not prohibited by law transacted and conducted within the limits of its jurisdiction, including all shows, exhibits, games, and may fix the rates of the license fee and provide for its suit or otherwise. . . .

There are several court opinions that cite and follow these statutes. information. The California Supreme Court in *Weekes v. City of Oakland*, 21 held that "the power of a governmental entity to tax the privilege of engaging trade or business within its jurisdiction is not open to serious question." law has occupied the field of regulation, cities may tax businesses carried enforce such taxes by requiring business licenses for revenue and by criminal Bus Lines, Inc. v. Municipal Court, 66 Cal. 2d 893, 896 (1967). See also *In* (1960); *Ainsworth v. Bryant*, 34 Cal. 2d 465 (1949); *United Business Commission* 91 Cal. App. 3d 156 (1979); *Marsh & McLennan of California, Inc. v. City of* App. 3d 108 (1976).

In addition, businesses may legally be classified for purposes of taxation. Appeals cited the U.S. Supreme Court in *City of Berkeley v. Oakland Raiders*, 639, cert. denied *Oakland Raiders v. City of Berkeley*, 464 U.S. 939 (1983), of legislative bodies to make classifications of persons or property for tax broad.' (Citation omitted.) Businesses . . . may properly be subdivided and license tax purposes. (Citation omitted.) "

The City's rental unit business tax has been in effect since 1942 and has since then. The latest changes concern the manner in which numbers of rental attached Report to Council and Manager's Report may help if further clarification stand ready to respond directly to you if you wish. Thank you for your patience.

JOHN W. WITT, City Attorney

By  
Mary Kay Jackson  
Deputy City Attorney

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Attachments  
ML-96-47