

Frequently Asked Questions

Enhanced Business License Tax on Five or More Residential Rental Units

RESIDENTIAL RENTAL BUSINESS LICENSE & TAX QUESTIONS

1. What is a business license?

A business license is proof that the business license tax has been paid. It does not by itself authorize the conduct or continuance of any business, nor does it avoid the need to obtain any required zoning permits, building permits, health permits, fire inspections, or toxic code requirements.

2. What is a business license tax?

A business license tax is the tax paid on the gross income received from the defined business activity (in this case, residential rental income). There are two tax rates for business license tax on rental income.

Business licenses must be renewed on an annual basis.

Please see the “Enhanced Business License Tax Questions” below to see which tax rate will apply to you.

3. I am a residential property owner in the City of Berkeley, do I need a business license?

In general, if you conduct business within the Berkeley city limits you must obtain a business license. The Berkeley Municipal Code (9.04.035) requires that you obtain a license to conduct business within Berkeley’s city limits, even if your physical office is located outside of the city’s limits.

You will need a business license if one or more of the following applies if you:

- own three or more dwelling units on any parcel, you are required to obtain a business license, regardless of whether any unit is owner-occupied or rent is not charged (e.g., it is occupied by a family member)
- own, directly or indirectly, five or more residential rental units (as of 1/1/17 or later)

4. I own a single family residence, duplex, triplex, and/or fourplex. In total, I own five or fewer residential rental units. What tax rate applies?

The table below provides additional ownership scenarios for direct or indirect owners of five or fewer residential rental units:

Parcel #1	Parcel #2	Parcel #3	Parcel #4	Parcel #5	Total units	Is this taxable?	Applicable Rate
SFR					1	No	
SFR	SFR				2	No	
SFR	SFR	SFR			3	No	
SFR	SFR	SFR	SFR		4	No	
SFR	SFR	SFR	SFR	SFR	5	Yes	.0288 on all properties
SFR	Duplex				3	No	
SFR	Triplex				4	Yes	.01081 on the triplex
SFR	Fourplex				5	Yes	.0288 on all properties
Duplex					2	No	
Duplex	Duplex				4	No	
Duplex	Triplex				5	Yes	.02880 on all properties
Duplex	Duplex	Duplex			6	Yes	.02880 on all properties
Triplex					3	Yes	.01081 on the triplex
Triplex	SFR				4	Yes	.01081 on the triplex
Triplex	Duplex				5	Yes	.02880 on all properties
Triplex	Triplex				6	Yes	.02880 on all properties
Fourplex					4	Yes	.01081 on the fourplex
Fourplex	SFR				5	Yes	.02880 on both properties

Note: If you have an ownership scenario with fewer than five residential rental units that does not appear in the above table and have questions, please contact the Finance Department at 5ormore@cityofberkeley.info or (510) 981-7200.

5. What is a residential rental unit?

A residential rental unit is a dwelling unit that is rented or available for rent during the calendar year.

Per Berkeley Municipal Code Title 23F, a dwelling unit is a "building or portion of a building designed for, or occupied exclusively by, persons living as one (1) household."

6. Previously, all owners of residential property with three or more dwelling units on any parcel were required to obtain a business license. Is that still true?

All owners of residential property with three or more dwelling units on any parcel are required to obtain a business license. If property with three or more units is fully owner occupied, the owners must still submit an annual business license stating the property remains owner occupied. In addition, any person who provides lodging for 14 days or longer or for five or more persons, must maintain a current business license.

If an owner owns fewer than five residential rental units within Berkeley and owns only one or two dwelling units per parcel, a business license is not needed.

7. How many business licenses do I need?

Per Berkeley Municipal Code Section 9.04.040, a separate license must be obtained for each location. As such, each parcel that includes any of the five or more residential rental units will require a separate business license. If there are multiple owners of one parcel, they should file jointly for one business license.

8. What fees are involved with opening a business license?

There is a \$25 registration fee, \$77 rental properties license tax, and a \$4 State Mandated Fee.

The taxpayer is assessed a 10% penalty immediately upon becoming delinquent (30 days after ownership of property), and an additional 40% penalty if payment remains delinquent for another 30 days. All delinquent amounts are assessed interest at the rate of 1% per month, or fraction thereof.

ENHANCED BUSINESS LICENSE TAX RATE QUESTIONS

1. **What is the enhanced business license tax on five or more residential rental units? How does it affect me?**

On November 8, 2016, Berkeley voters passed a measure to permanently increase the business license tax from gross receipts on owners of five or more residential rental units. The increase is 1.081% to 2.880%. Owners subject to this tax must obtain a Berkeley business license and pay the tax annually.

Owners of five or more residential rental units include persons with direct or indirect interest in five or more residential rental units. This includes LLCs, partnerships, corporations, etc.

2. **When did the enhanced business license tax on five or more residential rental units go into effect?**

The ordinance passed in 2016 and tax collection could have begun on January 1, 2017 for 2016 gross receipts. However, the City Council delayed its implementation until January 1, 2018 for 2017 receipts.

Rental business license taxes are based on a calendar year's gross receipts from the previous year.

3. **Are tenants subject to paying the enhanced business license tax?**

No. The measure prohibits landlords from passing the tax to sitting tenants.

4. **Are there any exemptions to this enhanced business license tax?**

Yes. The enhanced tax rate does not apply to the following:

- Dwelling units owned by a nonprofit corporation whose primary purpose is the provision of affordable housing, as provided in BMC Section 9.04.300
- Dwelling units whose rents are controlled under state or federal law, deed restrictions, or agreements with public agencies, at rental rates that are affordable to households earning no more than 80% of AMI and whose tenants must be income-qualified
- Any unit subject to rent control under BMC Chapter 13.76 that are occupied by a tenant who resided in that unit prior to January 1, 1999
- Units occupied by tenants receiving monthly rental assistance (such as Section 8 vouchers or Shelter + Care) from the Berkeley Housing Authority or City of Berkeley

- Any dwelling unit during the first 12 years after the issuance of a certificate of occupancy
- Commercial rental units

Property owners may seek a one-year hardship exemption due to exceptional circumstances, which may be approved by the City Manager for good cause.

5. Which units count towards the enhanced business license tax?

All residential rental units (whether exempt from the enhanced business license tax or not) are included in the overall count. Gross receipts from exempt units are not subject to the enhanced business license tax, but are subject to the regular tax rate of 1.081%.

For example, if you own a five-unit apartment complex and live in one unit, this building has five dwelling units but only four are residential rental units. As such, you would be subject to the regular tax rate of 1.081% on the four residential rental units. However, if you own any other residential rental units, you would be subject to the enhanced business license tax of 2.880%.

6. Are single family homes and duplexes subject to the enhanced business license tax?

Only if an owner has a direct or indirect interest in five or more residential rental units. Berkeley Municipal Code Section 9.04.196 refers to “dwelling units” regardless of the housing type.

If an owner owns five or more residential rental units, then all units are subject to the enhanced business license tax.

7. Are property owners with fewer than five residential units, but own single family homes or duplexes subject to the enhanced business license tax?

The 1.081% tax applies to gross receipts from all residential rental properties in which there are three or more dwelling units on any one parcel. Owners of such properties are required to obtain a business license. Any person who provides lodging for 14 days or longer for five or more persons, must maintain a current business license.

Please see “[Ownership Calculation Questions](#)” for more details on possible ownership scenarios.

8. Prior to the enhanced business license tax, single family homes and duplexes were not subject to any business license tax. If I rent out a triplex and a duplex, what will be the applicable tax rate?

You are subject to the enhanced 2.880% business license tax rate because you have five residential rental units.

9. What if I sold a property during the year, and I no longer own five or more residential rental units?

For the time period in which you owned more than five residential rental units, you will pay the enhanced business license tax rate of 2.880%. For the time period in which you owned fewer than five units, you will only be subject to the 1.081% business license tax on parcels containing three or more dwelling units.

10. What if I did not own five residential rental units until December of a given year? Am I still subject to the enhanced business license tax?

Yes, you will have to pay the enhanced business license tax for the period in which you owned five or more residential rental units, even if it was only for the last month of the tax year.

11. If I register my properties under different business names, can I get around the enhanced business license tax?

No. Owners of five or more residential rental units include persons with interest in five or more units such as through LLCs or partnerships. In such cases, your share of any business license taxes would be apportioned with other owners based on your share of ownership.

OWNERSHIP CALCULATION QUESTIONS

1. If I own a five-unit building and live in one unit, am I still subject to the enhanced business license tax?

No, because you have only four residential rental units. You are subject to the 1.081% business license tax rate. However, if you own any other residential rental units, you will be subject to the enhanced 2.880% rate.

2. If I own and rent fewer than five units, and they are all single-family residence or duplexes, am I still subject to a business license tax?

No. If you own fewer than five residential rental units, and none of the parcels contain three or more dwelling units on each parcel, you are not subject to any business license tax. If one of the parcels has three or more dwelling units, you are subject to the 1.081% tax rate.

3. If I own and rent two duplexes, am I subject to the enhanced business license tax?

No, because you do not meet the minimum criteria of being directly or indirectly engaged in the rental of five or more residential rental units. However, if two of the duplexes are on one parcel, you will be subject to the 1.081% business license tax rate.

4. If I own and rent two single family residences and a duplex, am I subject to the enhanced business license tax?

No, because you do not meet the minimum criteria of being directly or indirectly engaged in the rental of five or more residential rental units. However, if one or both of the single-family homes and the duplex are on the same parcel, you are subject to the 1.081% business license tax rate.

5. If I own and rent two triplexes on different parcels, am I expected to pay the original 1.081% and the enhanced 2.880% tax rates for a total of 3.961%?

No. You are required to pay only the enhanced business license tax rate of 2.880% for all rental income.

6. I own and rent a triplex and a single-family residence that are located on different parcels. Am I subject to the enhanced business license tax?

No. However, you are required to pay the 1.081% business license tax on your triplex.

7. I own and rent a single-family home, a duplex, and a triplex. I have never had to pay a business tax on the single-family home or on the duplex. Am I subject to the enhanced business license tax?

Yes, because you own five or more residential rental units. Additionally, the single-family home and duplex will each require a new business license.

8. I own and rent five units that are a mix of condominiums and single-family residences. Am I subject to the enhanced tax?

Yes, because you own five or more residential rental units.

9. Two equal partners own an eight-unit building. One partner also individually owns a triplex. Are both owners subject to the enhanced business license tax?

Both partners are subject to the enhanced business license tax because they each have a direct interest in five or more residential rental units and should file a joint license for the eight-unit building. The owner of the triplex should file a separate business license for that property. The partner who also owns a triplex will have to pay tax on their share of taxable gross receipts from both properties.

10. If I own three sets of duplexes, each on a different parcel, am I subject to the enhanced business license tax?

Yes, you are subject to the enhanced business license tax because you have an ownership interest in five or more residential rental units. Each property requires its own business license.

11. If I own three sets of duplexes, each on a different parcel, but my relatives live in three units, am I subject to the enhanced business license tax?

If your relatives pay rent, you will be subject to the enhanced business license tax because you own five or more residential rental units.

If they do not pay you rent, you will not be subject to the enhanced business license tax because only three of the six units are residential rental units and you do not have three or more units per parcel. Additionally, you do not need a business license for any of your parcels because you do not meet either criteria for a license: 1. five or more residential rental units in the City, 2. three or more dwelling units on one parcel.

12. I own and rent a duplex and a triplex on different parcels, for a total of five residential rental units. One of my triplex units meets one of the enhanced business license tax exemption criteria. What tax rate would apply to that unit?

All residential rental units, regardless of whether they are exempt from the enhanced business license tax, are included in the overall count of total residential rental units owned. Gross receipts from exempt units are not subject to the enhanced business license tax.

The exempt unit of the triplex would pay the 1.081% business license tax rate, while the non-exempt units would pay 2.880% (as would the other two units in the duplex). The exempt unit pays 1.081% because Berkeley Municipal Code 9.04.195 applies to three units or more per parcel.

13. I own and rent a duplex and a triplex that are each located on different parcels. One of my duplex units meets one of the enhanced business license tax exemption criteria. What tax rate would apply to that unit?

The duplex unit with an exemption would not pay any business license tax. The non-exempt unit would pay 2.880% as would the remaining units. The exempt unit does not pay any tax because there is no provision allowing the City of Berkeley to tax an exempt unit that is part of a duplex. Berkeley Municipal Code 9.04.195 applies only to three units or more, and Berkeley Municipal Code 9.04.196 exempts that particular unit.

14. There are two equal owners of a triplex and of a five-unit building. If you divide the total number of units (eight) by the two equal owners, each owns four units. Is each owner subject to the enhanced business license tax?

Yes, because each person is engaged directly or indirectly in the rental of five or more residential rental units. Each owner is subject to the enhanced business license tax rate of 2.880% on the gross receipts from all eight units.

15. A legal entity (such as an LLC or corporation) has three equal partners. In total, they own four triplexes. Mathematically, each owner owns the equivalent to four rental units. Are they still subject to enhanced business license tax?

Yes. The entity is engaged in the rental of five or more residential rental units and is subject to the tax. The entity would be liable for the enhanced business license tax rate of 2.880% on the gross receipts from all twelve units.

16. I own and rent a five-unit apartment building. What is my business license tax rate?

The business license tax rate is 2.880%. However, if any of these units qualify for an exemption, the rate for these units will be 1.081%.

17. I own and rent two 10-unit apartment buildings. What is my business license tax rate?

The business license tax rate is 2.880%. However, if any unit qualifies for an exemption, the rate for those units will be 1.081%.

18. What if I own a triplex by myself and a triplex through an LLC? What is my business license tax rate on each building?

You have an indirect interest in five or more rental units so the 2.880% rate applies to you for both buildings. If the LLC entity does not own any additional units, they will qualify for a partial owner exemption and pay 1.081% on their respective gross receipts for the shared triplex. If the LLC owns two or more additional units, they will have to pay the enhanced 2.880% rate on all gross receipts.

PAYMENT OF BUSINESS LICENSE TAX & OTHER QUESTIONS

1. What are the consequences for not paying the tax?

Penalties and interest will be imposed per Berkeley Municipal Code Sections 9.04.110 and 9.04.120.

For business license applications, the Berkeley Municipal Code requires the tax and registration fee to be paid in full:

- Within 30 days of commencing a business;
- The taxpayer is assessed a 10% penalty immediately upon becoming delinquent (30 days after ownership of property), and an additional 40% penalty if payment remains

delinquent for another 30 days. All delinquent amounts are assessed interest at the rate of 1% per month, or fraction thereof

For existing businesses, the Berkeley Municipal Code requires the annual tax to be paid in full before March 1 of each year:

- The taxpayer is assessed a 10% penalty immediately upon becoming delinquent (as of March 1), and an additional 40% penalty if payment (as of April 1). All delinquent amounts are assessed interest at the rate of 1% per month, or fraction thereof.

The City can pursue additional remedies for delinquent licenses, such as:

- Passing the debt, plus a \$125 administrative charge, to the County Auditor to collect on the next property tax bill
- Issuing a citation
- Filing a lawsuit

Remedies prescribed in the Berkeley Municipal Code are cumulative, and the Berkeley Municipal Code allows more than one to be used on a delinquent license.

2. What if I do not agree with the tax amount? Or what if I want to appeal the license and tax decisions?

Businesses have the right to appeal decisions regarding the City's issuance or refusal to issue a license, or the amount of the business license tax. A hearing examiner from the City Manager's Office holds a hearing and evaluates all evidence provided, and issues a written decision to all parties.