

Business Opportunities / Bulk Sales

To Our Clients:

We thank you for the opportunity to be of service to you as your Escrow Agent in connection with the sale or purchase of your business.

Before escrow can close and funds or ownership be distributed to you, Escrow must receive a release of Buyer's liability from the State Board of Equalization (sales tax) and the Employment Development Department (state employee withholding taxes and SDI). Both of these taxing agencies have the ability to impose the Seller's tax liability on the Buyer unless these clearances are obtained. We urge you to start promptly with the procedures necessary for the issuance of such releases. This memorandum is provided to facilitate that task and should be used in conjunction with information which may be provided to you by these taxing agencies.

In General...

Both taxing agencies will require that you close your tax accounts and pay all amounts owing before they will issue their tax clearance. If you are selling only one of your locations of your business, you can obtain a partial release for the one location being sold and keep your account open for the remaining ones. These tax clearances are issued by the local district office in which the main business is located. Normally, your tax returns are filed with the State offices in Sacramento and paid with business checks; in which case, the district offices cannot confirm your payments to the State until: 1.) 60 days has elapsed from the date of your payment or 2.) Copies of the cancelled checks are provided by your bank.

Therefore, to speed up the process of clearing the account, you should:

1. During the course of the escrow, file all returns as they become due, with the local district office and pay the taxes with a Cashier's Check, in person, with the clerk handling "Escrow Clearances".

DURING THE COURSE OF YOUR ESCROW, DO NOT MAIL ANY RETURNS.

2. Obtain copies of your cancelled checks for the previous two returns filed with the State and submit the copies to the district office along with copies of the returns to show that you are current.

State Board of Equalization

The Board of Equalization will require that you file a Final Return as of your out-of-business date. This usually cannot be done until you have transferred possession of your business over to the Buyer. The return should include sales for the portion of the month or quarter since your previous return was filed and should also declare the sale of the fixtures and equipment of the business (Line 2). The tax on the fixtures and equipment is often reimbursed to the Seller by the Buyer in escrow. If this is a condition to your sale, the tax will be collected in escrow and may be paid directly to the District Office after close.

If possession of the business is not being delivered to the Buyer prior to close, then your Escrow Office may request an amount to hold in escrow after closing until said tax clearance is issued. The Seller may not file a Final Return until such time as he is no longer operating the business; therefore, Seller and Buyer must agree on an adequate amount for the Escrow Agent to hold after close, from the amounts due to Seller, until they are in receipt of said clearance. Buyer and Seller must keep in mind, when determining an adequate amount, that

the Seller's final return is subject to an audit by the Board and the Seller may owe more than he anticipates, depending on the outcome of such an audit.

In addition to the above, the Board may send you a letter requesting that the Seller provide them with your out-of-business date, a forwarding address, your sales tax permit and possibly other information to complete their files. Once the above is provided, the Board will review the filings and decide if the account is to be audited. If the account is clear and no audit is ordered, they will proceed and issue a clearance. Any bonds and/or deposits held by the Board will be refunded to the Seller separately, once the account is clear. This usually takes about 4-6 weeks.

If the Seller does not have a sales tax permit and was not required to have the resale permit for the operation of this business, the Buyer may request that the Seller provide the Buyer with a warranty to that effect in lieu of the Clearance requirement.

Employment Development Department

The Seller's final DE-3 form through his out-of-business date must be filed with the District Office, along with the W-2 forms for the year and the DE-45 recap form. Any taxes due must be paid by Cashier's Check.

If the Seller has not had employees during the operation of the business, the State will issue a Release once the Seller goes to their District Office and signs a form to that effect. The Buyer may instead have you sign a Warranty to the Buyer in lieu of the Clearance requirement.

PRIOR TO POSSESSION OF BUSINESS

1. Bank Account

Open up a Business Checking Account in the Business Name. NOTE: Many banks will require you to file and publish a Fictitious Business Name Statement prior to opening an account. You may do this at the County Clerk's Office in the County Seat where your business is located.

2 PG&E

Seller and Buyer must give order to change ACCOUNT and DATE that the meter is to be read. They may require Buyer to make deposit.

3. Pacific Bell / AT&T

If Buyer wishes a new telephone number, Buyer must place the order at least five days prior to the required date of installation. They may also require Buyer to make a deposit. NOTE: If the Buyer intends to keep the same telephone number, he must recognize that he may be required to sign a "Supercede Agreement" which may make him liable for any obligations incurred by the Seller prior to the date of transfer. Buyer may also be liable for any current unpaid billings for Yellow Page advertising.

4. City Business License / Permit

If the business is located within the city limits, then Buyer must go to the City Hall and obtain a Business License. NOTE: some cities require a current permit from the Health Department for establishment in its jurisdiction.

5. Water Company

Buyer and Seller must call the Water Company and arrange for a meter reading and Buyer may be required to pay a deposit.

6. Garbage Service

Buyer must call the Garbage Service Company and arrange for service.

7. Resale Permit

Buyer must go to the District Office of the State Board of Equalization and open an account. NOTE: a Resale Permit is normally not required for a "service" business that does not sell tangible stock inventory. A deposit will also be required from the Buyer.

8. Federal Identification Number

Buyer must obtain this number for the business. He should contact the Internal Revenue Service or ask his account/bookkeeper to apply for F.I.N. for him.

9. *Employment Development Department, State of California*

If the Buyer plans on having employees, then he must also open an account with the Employment Development Department for his employee's State Withholding Income Taxes and State Disability payments.

10. *Insurance*

Buyer will need Fire, Liability, Workman's Compensation, insurance coverage, etc. He probably should first discuss the current coverage Seller has with the Seller's insurance agent as he is familiar with the particular business. Buyer should then contact at least a second insurance agent for a comparable premium cost, etc. Insurance coverage is usually required by the landlord per the terms of your lease agreement. Please refer to your lease for its requirements.

11. *Alcoholic Beverage Control License*

If business has such a license, then Buyer must obtain a "Pre-Application Package" from the appropriate district office of the "ABC". Your Escrow Agent can assist you with the completion of some of the forms.

12. *Special Licenses*

Apply and secure any special licenses, which may be required for your particular business, i.e., State Licensing Board of Dry Cleaners, Cosmetology, etc.

REMARKS: _____

STARTING A BUSINESS

Listed below are some agencies you may need to contact in order to start your business.

1. **BUSINESS LICENSE:**

Contact your City Offices
Unincorporated areas of the county:

County Tax Collector
625 Court Street, Room 100
Martinez, California 94553
(925) 957-5290

2. **FICTITIOUS BUSINESS NAME:**

In most cases, you must register your business name with the County Clerk. Before you file your Fictitious Business Name Statement, research the name to insure that the name is not currently being used by someone else.

Contra Costa County Clerk
555 Escobar Street
Martinez, California 94553-1105
(925) 335-7900

3. **HOME OCCUPATION PERMITS:**

If you are operating your business from home, you should apply for a Home Occupation Permit with your
City Planning Department

4. **FEDERAL IDENTIFICATION NUMBER:**

If you have employees, you need to apply for a Federal Identification Number. Contact the local IRS Office or call toll-free (800) 829-4933.

5. **STATE IDENTIFICATION NUMBER:**

If you have employees, you need to apply for a State Identification Number.

State Employment Development Department
3478 Buskirk Avenue, Suite 215
Pleasant Hill, California 94523
1(888) 745-3886

6. **SALES TAX:**

If you charge sales tax, you will need to apply for a Sales Tax Number or Resale Number.

State Board of Equalization
1515 Clay Street, Suite 303
Oakland, California 94612
(510) 622-4100

7. **HEALTH PERMITS:**

If you have a restaurant, catering or business handling food, you may need to file for Public Health/Licensing permits. This Agency is now called Environmental Health.

Environmental Health
2120 Diamond Boulevard, Suite 200
Concord, California 94520
(925) 646-5225

8. **ALCOHOLIC BEVERAGES:**

If you serve alcoholic beverages, you may need to apply for licensing with:

Alcoholic Beverage Control Licensing
1515 Clay Street, Suite 2208
Oakland, California 94612
(510) 622-4970

9. **IMPORT BUSINESSES:**

Contact U.S. Customs Services

OTHER TELEPHONE NUMBERS:

Better Business Bureau:
510 16th Street, Suite 550,
Oakland, California 94612-1584
(510) 238-1000

Contractors State License Board:
9821 Business Park Drive
Sacramento, California 95827
(800) 321-2752

Contra Costa Small Business Development Center:
(Formerly called Business Resource Center, Private Industry Council of CCC)
2425 Bisso Lane, Suite 200,
Concord, California 94520
(925) 646-5377

COMMUNITY CARE LICENSING DIVISION CHILD CARE OFFICE
(Serving Alameda and Contra Costa County):
1515 Clay Street, Suite 1102,
Oakland, California 94612
(510) 622-2602

California Secretary of State
General information (916) 653-6814

Notary Public Division
(916) 653-3595

Your local Chamber of Commerce can be very helpful as a resource should you have additional questions.