

CITY OF MIAMI
OFFICE OF THE CITY ATTORNEY
MEMORANDUM

TO: Honorable Marc Sarnoff, City Commissioner, District 2
FROM: Jose L. Arango, Assistant City Attorney *JEA*
DATE: September 5, 2012
RE: Business Tax Receipt for Paralegals - City Requirements
Matter ID No.: 12-1631

You have asked the following question: whether paralegals are required to obtain a business tax receipt (“BTR”).

Pursuant to Section 31-26 of the Code, any individual, partnership, or other incorporated or unincorporated business entity, as referred to by Section 31-50 of the Code, must obtain a BTR prior to engaging in or operating a business, profession or occupation within the City. This municipal authority to tax is grounded in Chapter 205, Florida Statutes, which provides that a business tax may be levied on a person¹ who exercises “the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.” If the municipality chooses² to invoke this authority to tax, it must do so solely³ on those persons described by Section 205.042, Florida Statutes.

The American Bar Association (“ABA”) defines a paralegal as “a person, qualified by education, training or work experience who is *employed or retained by a lawyer, law office, corporation, governmental agency or other entity* and who performs specifically delegated substantive legal work for which a lawyer is responsible.”⁴ Based on said definition, the profession of a paralegal is limited to those who are *employed* by any of the aforementioned legal entities. Accordingly, a paralegal should be considered an employee for purposes of Chapter 205, Florida Statutes. In that respect, Section 205.066, Florida Statutes, exempts employees from the tax imposed by Chapter 205, Florida Statutes. Specifically, Section 205.066 (1), Florida Statutes, provides that an individual who “*engages in or manages a business, profession, or occupation as an employee of another person* is not required to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt.”⁵ However, this exemption does not apply to BTR’s imposed on such employees by resolution or ordinance adopted before October 13, 2010.⁶

¹ According to Section 205.022 (7), Florida Statutes, a “person” is defined as any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary.

² In opinion 2010-41, the attorney general acknowledged that a municipality is not mandated by statute to impose the tax. However, if it does so, it must do so in compliance with Chapter 205, Florida Statutes.

³ The municipal authority to tax pursuant to Chapter 205, Florida Statutes is strictly limited to those categories set forth by Section 205.042, Florida Statutes. “[A] municipality must rely upon specific constitutional or statutory authority to exercise taxing powers.” Op. Att’y Gen. Fla. 2010-41 (2010). See also, *Thayer vs. State*, 335 So. 2d 815, 817 (Fla. 1976) (where a statute enumerates the things on which it is to operate, or forbids certain things, it is ordinarily to be construed as excluding from its operation all those not expressly mentioned).

⁴ Bolding and italics added for emphasis.

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⁶ Section 205.066 (4), Florida Statutes.

Presently, Section 31-50 of the Code requires paralegals to pay a yearly BTR fee in the amount of \$116.00. Said section was originally adopted by ordinance on July 23, 1987, and amended⁷ on July 27, 1999, to include a BTR for the paralegal profession.⁸ Moreover, the City has continually collected annual fees since the requirement for a BTR was imposed upon paralegals. As such, pursuant to Section 205.066 (4), Florida Statutes, the City may continue to require paralegals to obtain a BTR in accordance with the Code.

⁷ Amended by Ordinance no. 11825.

⁸ Municipal ordinances are presumed to be valid and constitutional. Kuvin vs. City of Coral Gables, 62 So. 3d 625, at 632 (Fla. 3rd DCA 2010).