



# the Licensing Professional

Serving government administration, business licensing, and code enforcement officials since 1983



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## Seasons Greetings:

By: [Paul Morris](#), ESQ & NBBLO Founder

Happy Holidays to All! With furloughs and elimination of positions occurring throughout the nation, those who retained their positions have true cause for thanks. Publication of our last newsletter seems to have wrapped just yesterday. Nevertheless, it's newsletter time again.

- » Arrangements for the 2010 Conference have been made and Registration is available via the NBBLO website at: <http://www.nbblo.org/conferences>
- » The PayPal Conference payment process has been improved to facilitate registration of additional attendees.
- » A multi-tier early discount program has been initiated to obtain better preliminary attendance numbers,
- » A partial scholarship program has been rolled out .
- » To reduce challenges associated with last minute requests for Certified Licensing Official awards, a formal request form and nominal fee have been implemented for 2010.
- » A list of all Certified Licensing Officials from the beginning has been posted to the internet and may be accessed via: <http://www.nbblo.org/certification/CLO-List200912.pdf>
- » Our resource area has been ex-

*panded to include job postings, affiliated organizations and nationwide regulation as samples of how other states do things.*

- » *NBBLO now offers sponsorship opportunities to other licensing organizations to facilitate dissemination of information (News and Resources) to all sponsor members. Sponsors may promote their annual conference and link back to their main website .*

### Coming:

- » Ability to filter articles & resources by State
- » Ability to filter by category.
- » Online member self administration
- » Member Surveys
- » Member Forum
- » Member Public Data Sharing

*All of us with the NBBLO thank you for the opportunity to be of service. We hope these improvements and those to come will enhance your performance as a licensing official and increase revenue for your jurisdiction. If you have any suggestions or other changes we might consider please contact us by email at: [moderator@nbblo.org](mailto:moderator@nbblo.org).*

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## News & Notes

- » The 2010 Conference will be held at the New York, New York Resort in Las Vegas, NV.
- » Paul Morris and Mark Arnold will again serve as our keynote speakers. Paul will present updates in case law. Mark will present his perspective on other legal considerations and opportunities.

## Presentation Outline-The Road to Revenue

By: [Dedrick Stephens](#), Commissioner City of Cleveland, Ohio

**Full Title:** The Road to Revenue, Effectiveness and Efficiency

**Proposition:** How does a governmental entity re-engineer itself to add greater value to its constituents? I will:

- Describe how to gain internal support for change;
- Provide the model used to evaluate current operations and opportunities for improvement;
- Discuss the evaluation team - internal versus external personnel and the value added to the re-engineering process;
- Describe how an organization transitions from theoretical recommendations to implemented solutions;
- Discuss potential pitfalls in the transition of theory to practicality;
- Discuss the importance of aligning legislation to strengthen and reinforce organizational mission and pur-

pose;

- Understand when to change historic policies and procedures that are not aligned with organizational mission and purpose, including when to outsource functions;

- Describe the utilization of service level agreements which serve as a tool for accountability with other governmental entities; and

- Discuss when and how to engage consultants to maximize results and outsource functions? Briefly discuss the pros, cons and risk of six different pricing alternatives. Determine whether you are buying time or a deliverable.

**Results** - How we use measures to continuously improve. Case study of organizational wins regarding revenue and effectiveness - criminal and civil enforcement, audits, outsourcing of audits and collections where we

didn't have competency or manpower. Description of our evaluation of collection agencies. Description of how automation of manpower intensive processes has significantly improved efficiency and effectiveness of various processes including our false alarm cost recovery efforts that deter businesses from repeated false alarms. Describe how GPS and GIS dramatically improved the accuracy of vacant property clean-up billing and protest initiatives. Briefly discuss how automation of the emergency ambulance invoice process has improved cash flow, accuracy and accountability.

**Audience members** will learn project management techniques and how to: evaluate operations, gain buy-in from key stakeholders, turn theoretical ideas/recommendations into reality and receive the results you want from consultants.

## Thought Teaser: Considerations in Interpreting Local Code

By: [Glenn R. Vodhanel](#), President of Progressive Solutions Inc.

Publication of this article was prompted by a recent lawsuit filing which is documented in the [Orange-County Register](#).

Business Licensing Officials and Code Enforcement Officers are required to know and interpret the local code of their jurisdiction throughout their careers. The truth is that many of us are saddled by woefully inadequate code that was outdated decades ago.

While as government staff members we may not like it, in today's environment many government entities are also restricted by law in their abilities to increase taxes. Any such change often requires a vote of the people. So yes--unless we go out for a vote of the people and they approve our change--many of us are just plain stuck!

From our perspective as Business Licensing Officials, we frequently are

called to deal with taxation. What is an appropriate response versus an inappropriate one? The set of facts below deals with a real world conflict between a sales/service organization and a business tax official. *The items in bold may be relevant in applying the code.*

**How to respond appropriately:**

**Review the code--** Given these sample definitions and undefined terms (*your ordinance is likely to be*

**different**): **Product.** A tangible commodity or any physical substance produced, processed, stored, distributed or sold.

**Retailing, Merchandising & Processing** are not defined.

**General Business.** Every business of **retailing, merchandising, wholesaling, manufacturing, processing, distributing, warehousing, or** any other business activity involving a **product** not otherwise specifically provided for herein nor exempt from the provisions of this division; and which business is conducted **from any premises within the**

**jurisdiction.**

**Services.** Every business of providing, transporting, maintaining, or performing labor for the benefit of another WITHIN the jurisdiction of supplying some general demand for the benefit of another WITHIN the jurisdiction which does not produce a tangible commodity; **Soliciting** means any person who by phone or any other means of communication or in person goes from house to house, or place to place and who, by appointment, invitation, visitation or other means, performs, or seeks to perform, consummates or seeks to consummate any element of any sale or of any order for sale for any goods, wares, merchandise, service, or other things of value for future delivery.

**Review the facts--** Given the local business:

- is a software publisher that *manufactures* an intangible product, solicits sales of both tangible (hardware) and intangible products (software) and maintenance of products sold.

- engages in merchandising from within and outside the local jurisdiction.

- processes maintenance calls from within the local jurisdiction.

- does not produce a tangible commodity.

- does not have a single customer in or benefit another in the jurisdiction.

**Be impartial**—A truth is still a truth no matter who speaks it. It should make no difference if the challenge to your position comes from one who:

- has challenged the jurisdiction or our department previously

- views life differently (such as Diogenes-(See info at the end of this article)

- is not our favorite person

- or is a general annoyance

**Be especially diligent in sticking to the relevant facts.** Both staff and the governmental entity will be viewed in a much better light.

*No matter how outdated the code is, if it is clear and not likely to support an alternative interpretation, no matter how much we may dislike the code, we should adhere to it until any subsequent modification becomes effective.*

**Failure to do so could potentially expose our government entity to issuing a mass of refunds and potentially dealing with a class action suit.**

***Prejudice has no place where professionalism should prevail.***

Given the above code and circumstances, **a professional would make no attempt to support classification of such an organization as a Service business even if you have incorrectly done so previously!**

**How not to respond:**

***By stretching the law to collect as much revenue as possible .***

The consequences could be our employer expending critical funds in litigation, penalties and damages resulting in additional required budget cutting.

***By extrapolating an intent that is unsupported by the code.***

Intent in a safety related code is much easier to infer or to interpret using a reasonable man approach. However in a tax code, intent is generally exactly what is written. Nevertheless, intentionally vague provisions often are included to offer leeway.

Below is an example to be considered in context to only the above code. It demonstrates the thinking a licensing official may have had when applying the code as if it was written below rather than how it is actually worded. ***Mental addition or deletion of the red wording (from the original on the previous page) which follows may allow one to reach a desired conclusion which conflict s with the letter of the law.***

**Services.** Every business of providing, transporting, maintaining, or performing labor [+which operates within the jurisdiction+] for the benefit of another [-within the jurisdiction-] of supplying some general demand for the benefit of another [-within the jurisdiction-] which does not produce a tangible commodity;

***By alleging that a business falls only into the code section in question.*** This could allow a business to claim exemption from business taxation entirely should their operations be deemed excluded from the proposed code by a judge.

**Keep in mind that interpreting code is not about what we would like it to be. Instead and most importantly, it is about what our legal counsel and ultimately a judge will support.**

Wikipedia defines: **Merchandising** as referring to methods, practices and operations conducted to promote and sustain certain categories of commercial activity.

**Diogenes** was a student of the philosopher Antisthenes, himself a student of Socrates. The main principles of their Cynic philosophy (Cynicism) were:

- Self-sufficiency (Ataraxia)
- Living by personal example
- Exposing the falsehood of conventional thinking
- Exposing vice and conceit

## The ABC's of Electronic Payment Processing-Part III or "How to collect all funds owed by over-the-counter payers"

By: [Glenn R. Vodhanel](#), President of Progressive Solutions Inc.

The City of Newport Beach, California, has been a proponent of receivables consolidation via a **master billing system**. They advocated linking all accounts/amounts due from a customer to a master records locator. The concept as promoted

and implemented in Newport Beach centers around a *custom* system with regularly scheduled monthly billing dates. The end goal is to ensure that when a taxpayer is at your counter, you require or encourage him/her to pay **all** balances due on the spot. At

the core of this design, all city departments must submit charges to the master billing manager prior to the regular monthly cut-off date. All charges associated with a single master records number that were submitted prior to the cut-off date are

included in a consolidated billing (which consolidates and presents all department submitted charges). Should a charge be omitted or , that charge would be submitted for billing in the subsequent month.

While the Newport Beach model has been disclosed in print, it is not the only model available to achieve a similar result. Nor is it the best option in all cases.

Another model ***instantly identifies and calculates*** the total balance due on all city receivables up to that moment (*while the taxpayer is at the*

*counter & without waiting for charges to be submitted by a department and/or a consolidated monthly bill to be processed.*) To obtain optimal benefit from this model, receivable consolidation functionality should be integrated with a jurisdiction's central cashiering, kiosk and internet payment systems.

This functionality performs a real-time search using an address, name or both to identify the taxpayer's total outstanding balance ***at that instant***.

Another model uses a ***master receivables index*** (great for an all in

one system) but requires costly integration of all 3rd party applications.

A secondary goal is to improve efficiency by reducing or eliminating multiple entry of cash receipts. Unfortunately unnecessary paper handling is all too common. This use of taxpayer funds could better be used for more productive purposes such as revenue enhancement.

Should this brief article inspire any suggestions or comment please feel free to email me at the above address!

## The End of the Processing Fees Era?

By: [Glenn R. Vodhanel](#), President of Progressive Solutions Inc

Many cities have imposed tax processing fees. The City of San Diego, CA was sued regarding imposition of a \$25 rental tax processing fee for their Rental Unit program. On August 18th 2009, San Diego lost their legal battle at the California Court of Appeal level. The complete court ruling may be reviewed via the link below:

<http://weblog.signonsandiego.com/news/breaking/taxfeeopinion.pdf>

The ruling states in part, "***Unlike taxes, fees are not subject to the voter approval limitation*** of article 13A section 4" As tax increases in California must be voted upon by the people (since Proposition 13,) ***a primary issue concerned whether the processing charge was a fee or a levy*** (tax).

**Section 50076**, the portion of the Proposition 13 enabling legislation with which we are concerned here, ***excludes from the term "special***

***tax" in section 4 of article 13A "any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue***

"Section 50076 on its face applies to fees imposed for *services or regulatory activities* provided by local entities."

Summarizing case law dealing with regulatory fees, the high court explained that " ***to show a fee is a regulatory fee and not a special tax***, the government ***should prove (1) the estimated costs of the service or regulatory activity, and (2) the basis for determining the manner in which the costs are apportioned, so that charges allocated to a payor bear a fair or reasonable relationship to the payor's burdens on or benefits from the regulatory activity.***

*The court concluded that San Diego imposed a levy for revenue pur-*

***poses, rather than for a specific benefit conferred or a privilege granted, .... thus the levy is a tax.***

In response to the above ruling, , San Diego, San Bernardino and many other cities subsequently removed their processing fees until they could subsequently implement legally compliant fees.

To avoid falling into the levy trap, it has been suggested that to support the fee moniker that when approving any fee, the costs and basis for calculation clearly reflect only those allowed ***regulatory services*** to be performed.

If your planning department must approve the location for each business prior to issuance of a business license or other regulatory services are performed such as a site inspection and photos, be sure to highlight those services in the authorizing resolution and separately account for such funds in the General Ledger.

## Platinum Sponsor of the 2010-Las Vegas Conference:

**Company**

[Progressive Solutions, Inc.](#)

**Representative**

[Chris Retzinger](#)

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## 2011 Conference Proposals Requested:

Proposals are currently being accepted from all cities desiring to host the 2011 NBBLO Conference to be held on July 13th-15th 2011. Please provide a designated host city contact and proposed host hotel contact information.

## Upcoming Events:

Association Name	Conference	Website
Florida Association Business Tax Officials	Apr 19-23, 2010	<a href="http://www.fabto.org">www.fabto.org</a>
Code Enforcement officials of Alabama	May 17-20, 2010	<a href="http://www.coaa.com">www.coaa.com</a>
Florida Association Code Enforcement	June 16-19, 2010	<a href="http://www.face-online.org">www.face-online.org</a>
Alabama Municipal Revenue Officers Association	July 8-10, 2010	<a href="http://www.amroa.org">www.amroa.org</a>
Georgia Business Tax Officials	June 2010	<a href="http://www.gabto.org">www.gabto.org</a>
National Bureau of Business Licensing Officials	July 14-16, 2010	<a href="http://www.nbblo.org">www.nbblo.org</a>
California Association of Code Enforcement Officers	Sept 7-10, 2010	<a href="http://www.caceo.us">www.caceo.us</a>
California Municipal Revenue & Tax Association	Oct 2010	<a href="http://www.cmrt.org">www.cmrt.org</a>
South Carolina Business Licensing Officials Association	Oct 2010	<a href="http://www.masc.sc">www.masc.sc</a>

## 2010 CERTIFIED LICENSING OFFICIAL CANDIDATES:

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JENNIFER	ALTHOFF	CITY OF GOOSE CREEK
INGRID	BALZA	CITY OF DORAL
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GRANT		

## Up for Recertification:

DON H	ANDERSON	CITY OF PHOENIX
JEFFREY	BOLLINGER	CITY OF TULSA
ANGELA	BROWN	TOWN OF HAMPTON
NORA	CLEMENTS	WEST VALLEY CITY
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**We welcome all article submissions. Any effort to share the editorial and content load is greatly appreciated!**



**NATIONAL BUREAU OF  
BUSINESS LICENSING OFFICIALS**

*Informing Licensing & Code  
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## Becoming a Member

NBBLO membership enables you access to information regarding code enforcement, regulatory and revenue raising business licensing at the local level of government.

Individual Membership is only \$45 and entitles you to a discounted annual conference registration and two newsletters a year. Entity level membership offers additional benefits. NBBLO also sponsors several national certifications.

For more information go to [www.nbblo.org](http://www.nbblo.org). There are links for membership, certification, and the annual conference.

## Save the dates for the 2010 Conference in Las Vegas NV

Sign up for the 26th Annual NBBLO State and Local Conference for Business Licensing, Code Enforcement and Administration to be held July 14-16, 2010 at the New York, New York Resort in Las Vegas, NV is now available via our website.

The best discounts with early registration are available until 1/31/2010.

Just go to [www.nbblo.org](http://www.nbblo.org) and click on "[Conferences](#)" and then "[Conference Registration](#)." There you

may fill out the form online and submit it. Thereafter, you may send the appropriate fee to the address shown. Above. Or should you wish to pay by credit card, transmit your registration and fax your credit card information to 702/943-3300.

We have an outstanding conference agenda. Come hear discussions of regulatory licensing issues as well as issues germane to tax collection. Local business licensing is a unique specialty and it's difficult to find re-

sources applicable to your needs.

What is particularly helpful, is associating with your peers from across the country who have similar issues that you are confronting.

In addition to the substantive material there is a great opportunity to see and experience Las Vegas in all of its many lighted colors and architectures.

We look forward to seeing you in Las Vegas NV !

THIS PUBLICATION IS NOT INTENDED AS LEGAL ADVICE. LAWS AND THEIR INTERPRETATION VARY FROM STATE TO STATE AND COURT TO COURT. PLEASE CONSULT WITH YOUR OWN LEGAL ADVISOR BEFORE RELYING ON ANY INFORMATION CONTAINED IN THIS NEWSLETTER.