

BOARD of SUPERVISORS



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MEMORANDUM

TO: Jose Cisneros, Treasurer, Office of the Treasurer & Tax Collector
Jeff Kositsky, Director, Department of Homelessness and Supportive Housing
Ben Rosenfield, City Controller, Office of the Controller
Jon Givner, Deputy City Attorney, Office of the City Attorney

FROM: *ll*
ba Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

DATE: March 14, 2019

SUBJECT: SUBSTITUTE LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Sub-Committee has received the following substitute legislation, introduced by Mayor Breed on March 5, 2019:

File No. 190092-2

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: Amanda Kahn Fried, Office of the Treasurer & Tax Collector
Abigail Stewart-Kahn, Department of Homelessness and Supportive Housing
Todd Rydstrom, Office of the Controller

1 [Business and Tax Regulations Code - Credits For Waiver of Homelessness Gross Receipts
2 Tax Refund and Certain Gifts]

3 **Ordinance amending the Business and Tax Regulations Code to add a credit against a**
4 **person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10%**
5 **of the portion of a person or combined group's Tax liability for a tax year with respect**
6 **to which the person or combined group enters into an agreement waiving its right to a**
7 **refund of its Tax payments associated with any claim that the Homelessness Gross**
8 **Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a**
9 **majority of the electorate to pass; to add a credit against a person's Tax equal to 110%**
10 **of a person's gift to support the Our City, Our Home Fund; and to authorize the Office**
11 **of the Treasurer and Tax Collector to accept gifts from persons to support the Our City,**
12 **Our Home Fund.**

13 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
14 **Additions to Codes** are in *single-underline italics Times New Roman font*.
15 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
16 **Board amendment additions** are in double-underlined Arial font.
17 **Board amendment deletions** are in ~~strikethrough Arial font~~.
18 **Asterisks (* * * *)** indicate the omission of unchanged Code
19 subsections or parts of tables.

20 Be it ordained by the People of the City and County of San Francisco:

21 Section 1. Findings.

22 (a) In November 2018, the San Francisco electorate approved Proposition C with
23 approximately 61% of the vote. Proposition C imposes the Homelessness Gross Receipts
24 Tax, which is an additional tax on certain businesses to fund services for the City's homeless
25 population. In doing so, Proposition C amended the San Francisco Business and Tax
Regulations Code to add Article 28 – the Homelessness Gross Receipts Tax Ordinance.

1 (b) A question has been raised as to the validity of the Homelessness Gross Receipts
2 Tax Ordinance because of a legal issue about whether the tax, adopted through a voter
3 initiative, required a simple majority or a two-thirds vote of the electorate to pass. Pending
4 resolution of the legal issue, the Controller plans to impound the revenues from the
5 Homelessness Gross Receipts Tax.

6 (c) Despite the unresolved legal question, the City desires to appropriate and spend
7 revenues from the Homelessness Gross Receipts Tax for the purposes allowed under the
8 Homelessness Gross Receipts Tax Ordinance. But the City is not willing to appropriate and
9 spend these revenues unless taxpayers irrevocably waive any right to a refund of those
10 revenues based on any argument that the Homelessness Gross Receipts Tax Ordinance
11 required at least a two-thirds vote of the electorate to pass, or based on any lawsuit
12 challenging the Homelessness Gross Receipts Tax Ordinance or any other initiative tax
13 measure in San Francisco or elsewhere in California that invalidates the Homelessness Gross
14 Receipts Tax Ordinance or similar initiative tax measure because it was not passed by at least
15 a two-thirds vote of the electorate.

16 (d) To encourage taxpayers to waive their right to a refund as posited in
17 subsection (c), the City is willing to grant such taxpayers a credit of 10% of the Homelessness
18 Gross Receipts Tax refund waived. Similarly, if a taxpayer is willing to make an irrevocable
19 gift to the City for the City to use for the same purposes as the Homelessness Gross Receipts
20 Tax, the City is willing to grant such taxpayers a credit against their Homelessness Gross
21 Receipts Tax liability equal to 110% of their gift amount. Both of these credits further the
22 findings and intent of the Homelessness Gross Receipts Tax Ordinance as set forth in
23 Section 2802 of the Business and Tax Regulations Code by making its funds available earlier
24 than they would otherwise be available.
25

1 (e) In enacting this ordinance, the City takes no position on the federal or state tax
2 consequences to taxpayers of any provision of this ordinance, including, but not limited to, the
3 federal or state tax consequences of the waiver of the right to a refund posited in
4 subsection (c) or the irrevocable gift to the City for the City to use for the same purposes as
5 the Homelessness Gross Receipts Tax.

6
7 Section 2. Article 28 of the Business and Tax Regulations Code is hereby amended by
8 adding Section 2805.1, to read as follows:

9 **SEC. 2805.1. CREDIT FOR WAIVING RIGHT TO REFUND.**

10 (a) Any person or combined group that meets the requirements of subsection (b) for a tax year
11 shall be allowed a non-refundable credit against that person or combined group's Homelessness Gross
12 Receipts Tax liability for that tax year equal to 10% of the amount specified under
13 Section 2805.1(b)(1).

14 (b) To qualify for the credit in subsection (a), a person or combined group must, between
15 January 1 of the tax year following the tax year for which the credit is being claimed and the date the
16 person or combined group timely files its original annual tax return, enter into a binding agreement
17 with the City, in substantially the form of the agreement included in Board of Supervisors File No.
18 190092, in which:

19 (1) The person, or each person in the combined group that is engaging in business
20 within the City, irrevocably, fully, and unconditionally waives and releases its right to a refund
21 (whether by return of payment, credit, offset, carryforward, or otherwise) of a specified amount of the
22 Homelessness Gross Receipts Taxes reported on the person or combined group's originally-filed
23 Homelessness Gross Receipts Tax return for the tax year for which the person or combined group is
24 claiming the credit based on either or both of the following:

1 (A) Any argument that the Homelessness Gross Receipts Tax Ordinance
2 required at least a two-thirds vote of the electorate to pass.

3 (B) Any lawsuit challenging the Homelessness Gross Receipts Tax Ordinance or
4 any other initiative tax measure in San Francisco or elsewhere in California that invalidates the
5 Homelessness Gross Receipts Tax Ordinance or similar initiative tax measure because it was not
6 passed by at least a two-thirds vote of the electorate.

7 (2) Notwithstanding Section 6.22-1 of the Business and Tax Regulations Code or any
8 other provision of law that would limit public disclosure, the person or each person in the combined
9 group that is engaging in business within the City waives any right to confidentiality in the aggregate
10 amount of Homelessness Gross Receipts Tax liability subject to waiver under all agreements described
11 in Section 2805.1(b) of all persons and combined groups, regardless of the number of persons or
12 combined groups that enter into such agreements. Nothing in this subsection (b)(2) shall constitute a
13 waiver of the confidentiality of the information in the person or combined group's Homelessness Gross
14 Receipts Tax return, or the terms of each agreement under Section 2805.1(b), other than the aggregate
15 amount of Homelessness Gross Receipts Tax liability subject to waiver under all agreements described
16 in Section 2805.1(b) of all persons and combined groups.

17 (3) The person, or each person in the combined group that is engaging in business
18 within the City, agrees to indemnify the City if, subsequent to the person or combined group entering
19 into the agreement, there are additional persons determined to have been engaging in business within
20 the City as a member of the combined group for that tax year and such additional person or persons
21 requests a refund (whether by return of payment, credit, offset, carryforward, or otherwise) of all or
22 any portion of the amount waived under Section 2805.1(b)(1) for the tax year for which the person or
23 combined group is claiming the credit in contravention of Section 2805.1(d).

1 (c) If a person or combined group enters into an agreement described in subsection (b), but
2 does not claim the credit authorized by this Section 2805.1, the person or combined group shall remain
3 subject to the terms of the agreement.

4 (d) Any person determined to have been engaging in business within the City as a member of a
5 combined group for a tax year after that combined group entered into an agreement described in
6 subsection (b) for that tax year shall be deemed to have entered into the agreement and shall be subject
7 to the terms of the agreement as if it had executed the agreement itself.

8 (e) The Tax Collector shall verify that any credit claimed pursuant to this Section 2805.1 is
9 correct.

10 (f) The tax credit authorized by this Section 2805.1 shall be effective for tax year 2019 and each
11 subsequent tax year, but shall expire by operation of law and not be available for the tax year and all
12 subsequent tax years from the earlier of:

13 (1) The tax year in which San Francisco Superior Court Case No. CGC-19-573230 (City
14 and County of San Francisco v. All persons interested in the matter of Proposition C on the
15 November 6, 2018 San Francisco ballot, authorizing an increase in specified business taxes to fund
16 specified homeless services in San Francisco, and all other matters and proceedings relating thereto),
17 is finally resolved; and

18 (2) Tax year 2024.

19 No person or combined group may claim the credit authorized by this Section for the tax year
20 in which San Francisco Superior Court Case No. CGC-19-573230 is finally resolved or in any tax year
21 thereafter, or for any tax year commencing on or after January 1, 2024, whichever is earlier.

22 (g) The Board of Supervisors hereby authorizes the Tax Collector to enter into the agreements
23 described in subsection (b), in substantially the form included in Board of Supervisors File No. 190092,
24 and authorizes the Tax Collector, in consultation with the City Attorney and the Controller, to agree to
25

1 changes to the agreements that do not materially decrease the benefits to the City or materially
2 increase the obligations to the City.

3
4 Section 3. Article 28 of the Business and Tax Regulations Code is hereby amended by
5 adding Section 2805.2, to read as follows:

6 **SEC. 2805.2. CREDIT FOR GIFTS TO THE OUR CITY, OUR HOME FUND.**

7 (a) Any person that, on or before the expiration of this Section 2805.2, makes an irrevocable
8 gift to the Our City, Our Home Fund (established in Administrative Code Section 10.100-164) shall be
9 allowed a non-refundable credit against the Homelessness Gross Receipts Tax liability of that person
10 or the combined group of which that person is a part.

11 (b) The credit authorized by this Section 2805.2 shall equal 110% of the amount of the
12 irrevocable gift made under subsection (a).

13 (c) If the irrevocable gift described in subsection (a) is made between January 1 and the date
14 the person or combined group timely files its original annual tax return, the credit authorized by this
15 Section 2805.2 shall be available for the tax year prior to the calendar year in which the person makes
16 the irrevocable gift. If the irrevocable gift is made between the date the person or combined group
17 timely files its original annual tax return and December 31, the credit authorized by this Section shall
18 be available for the tax year in which the irrevocable gift is made. The person making the irrevocable
19 gift may carry forward any unused portion of this credit to future tax years up to and including tax year
20 2023 to be used against the future Homelessness Gross Receipts Tax liability of the person or the
21 combined group of which that person is a part in that future tax year. No part of this credit may be
22 carried forward to tax years commencing on or after January 1, 2024.

23 (d) The Tax Collector shall verify that any credit claimed pursuant to this Section 2805.2 is
24 correct.

1 (e) Notwithstanding Administrative Code Section 10.100-305 or any other provision of the
2 Municipal Code restricting the department's acceptance of gifts, the Office of the Treasurer-Tax
3 Collector is authorized to accept the gifts described in subsection (a) of this Section 2805.2.

4 (f) This Section 2805.2 shall expire by operation of law and shall not be available for
5 irrevocable gifts made on or after the earlier of:

6 (1) The date on which San Francisco Superior Court Case No. CGC-19-573230 (City
7 and County of San Francisco v. All persons interested in the matter of Proposition C on the
8 November 6, 2018 San Francisco ballot, authorizing an increase in specified business taxes to fund
9 specified homeless services in San Francisco, and all other matters and proceedings relating thereto) is
10 finally resolved; and

11 (2) January 1, 2024.

12 Any irrevocable gift made to the Our City, Our Home Fund on or after the date on which San
13 Francisco Superior Court Case No. CGC-19-573230 is finally resolved, or on or after January 1, 2024,
14 whichever is earlier, shall not entitle the person making the irrevocable gift to the credit described in
15 this Section 2805.2.

16
17 Section 4. Effective Date. This ordinance shall become effective 30 days after
18 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
19 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
20 of Supervisors overrides the Mayor's veto of the ordinance.

21
22 Section 5. Severability.

23 (a) If any part of Section 2805.1 of the Business and Tax Regulations Code, or any
24 application of that Section to any person or circumstance, is held to be invalid or
25 unconstitutional by a decision of a court of competent jurisdiction, Section 2805.1 shall in its

1 entirety become inoperative; but any such decision shall not affect the validity of
2 Section 2805.2.

3 (b) If any part of Section 2805.2 of the Business and Tax Regulations Code, or any
4 application of that Section to any person or circumstance, is held to be invalid or
5 unconstitutional by a decision of a court of competent jurisdiction, Section 2805.2 shall in its
6 entirety become inoperative; but any such decision shall not affect the validity of
7 Section 2805.1.

8
9 Section 6. Pursuant to Section 2811 of the Business and Tax Regulations Code, this
10 ordinance requires a two-thirds vote of the Board of Supervisors to pass.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14
15 By:



16 _____
17 SCOTT M. REIBER
18 Chief Tax Attorney

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REVISED LEGISLATIVE DIGEST

(Substituted, 3/5/2019)

[Business and Tax Regulations Code - Credits For Waiver of Homelessness Gross Receipts Tax Refund and Certain Gifts]

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

Background and Existing Law

In November 2018, the San Francisco electorate approved Proposition C with approximately 61% of the vote. Proposition C imposes the Homelessness Gross Receipts Tax, which is an additional tax on certain businesses to fund services for the City's homeless population. In doing so, Proposition C amended the San Francisco Business and Tax Regulations Code to add Article 28 – the Homelessness Gross Receipts Tax Ordinance.

A question has been raised as to the validity of the Homelessness Gross Receipts Tax Ordinance because of a legal issue about whether the tax, adopted through a voter initiative, required a simple majority or a two-thirds vote of the electorate to pass. Pending resolution of the legal issue, the Controller plans to impound the revenues from the Homelessness Gross Receipts Tax.

This digest reflects a substitute ordinance introduced on March 5, 2019. The substitute ordinance clarified the timing of the waiver agreement, irrevocable gift, and tax credits described below.

Amendments to Current Law

To permit the City to appropriate and spend the revenues from the Homelessness Gross Receipts Tax before the legal issue described above is resolved, this ordinance grants taxpayers a credit against their Homelessness Gross Receipts Tax liability if they irrevocably waive any right to a refund of a specified amount of their Homelessness Gross Receipts Tax payments based on any argument that the Homelessness Gross Receipts Tax Ordinance required at least a two-thirds vote of the electorate to pass, or based on any lawsuit challenging the Homelessness Gross Receipts Tax Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Homelessness Gross Receipts Tax Ordinance or similar initiative tax measure because it was not passed by at least

a two-thirds vote of the electorate. The credit would equal 10% of amount waived. Taxpayers must enter into a form waiver agreement with the Office of the Treasurer and Tax Collector to obtain the credit.

Similarly, if a taxpayer is willing to make an irrevocable gift to the City for the City to use for the same purposes as the Homelessness Gross Receipts Tax, this ordinance would grant such taxpayers a credit against their Homelessness Gross Receipts Tax liability equal to 110% of their gift amount.

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