File No. 120377 Committee Item No. 2
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight **Date** May 24, 2012

Board of Supervisors Meeting **Date** _____

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Completed by: Alisa Miller **Date** May 18, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

[Business and Tax Regulations Code - Payroll Expense Tax Exclusion for Small Business Net New Payroll - 2012 through 2015]

Ordinance amending the San Francisco Business and Tax Regulations Code Article 12-A by adding Section 906.5 to permit a Payroll Expense Tax Exclusion for Small Business Net New Payroll for years 2012 through 2015.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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

Section 1. The San Francisco Business and Tax Regulations Code is hereby amended by adding Section 906.5, to read as follows:

SEC. 906.5. NET NEW PAYROLL EXCLUSION.

(a) The purpose of this Section is to increase the number of jobs within the City and County of San Francisco by providing an incentive for Small Businesses to create new jobs or to relocate existing jobs to the City and County of San Francisco.

(b) Notwithstanding any other provisions of this Article, for purposes of this Section the following terms shall have the meaning set forth below:

(1) "Small Business" means a person whose Base Year Payroll Expense is between $1 and $500,000.

(2) "Base Year" means the 2011 tax year for a person who had Payroll Expense in 2011. If a person did not have Payroll Expense in the 2011 tax year, then the first year that the person incurs Payroll Expense shall be that person's Base Year.

(c) A Small Business may exclude from its Payroll Expense the lesser of $250,000 or the amount of Payroll Expense that is greater than its Base Year Payroll Expense for the 2012, 2013, 2014 and 2015 tax years; provided, however, that in no event shall this exclusion reduce a person's

Payroll Expense Tax liability for 2012, 2013, 2014 or 2015 to less than the person's Base Year Payroll Expense Tax liability.

(d) In order to be eligible for the Payroll Expense Tax exclusion authorized under this Section, persons wishing to claim the exclusion must:

(1) Maintain records and documents in a manner acceptable to the Tax Collector. Such records and documents must objectively substantiate any exclusion claimed under this Section and be provided to the Tax Collector upon request.

(2) Timely file with the Tax Collector an annual Payroll Expense Tax return claiming the exclusion provided for in this Section, regardless of the amount of tax liability shown on the return after claiming the exclusion provided for in this Section. All returns shall be filed by the due date set forth in Article 6 of the San Francisco Business and Tax Regulations Code.

(3) If, after the timely filing of a person's Payroll Expense Tax return, it is determined that the person was delinquent in remitting any taxes, fees or penalties owed to the City and County of San Francisco at the time of filing, that person shall be ineligible to claim the exclusion under this Section for the period covered by the return.

(e) A person may not use or claim any unused portion of the exclusion available under this Section after the expiration of this Section.

(f) The Tax Collector shall verify that any exclusion claimed pursuant to this Section is appropriate.

(g) A misrepresentation or misstatement by any person regarding eligibility for the exclusion authorized under this Section that results in the underpayment or underreporting of the Payroll Expense Tax shall be subject to penalties and interest.

(h) The Office of the Treasurer and Tax Collector may adopt rules and regulations regarding the exclusion provided under this Section.

(i) The exclusion provided by this Section may not be claimed concurrently with any other Payroll Expense Tax exclusion.

(j) The Tax Collector shall submit an annual report to the Board of Supervisors for each year for which the exclusion authorized under this Section is available. The report shall set forth aggregate information on the dollar value of the exclusions taken each year and the number of persons claiming this exclusion.

(k) The exclusion set forth in this Section shall expire by operation of law on December 31, 2015, and the City Attorney shall cause it to be removed from future editions of the Business and Tax Regulations Code unless the Board of Supervisors or the voters extend the exclusion prior to December 31, 2015. Alternatively, should the voters of the City and County of San Francisco pass a gross receipts tax prior to December 31, 2015, the exclusion under this Section shall terminate upon the effective date of such gross receipts tax.

Section 2. Effective Date. The exclusion set forth in this Section shall become effective 30 days from the date of passage.

Section 3. This Section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Business and Tax Regulations Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

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

By: _____
STEPHANIE PROFITT
Deputy City Attorney

FILE NO. 120377

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Payroll Expense Tax Exclusion for Small Business Net New Payroll 2012 Through 2015]

Ordinance amending the San Francisco Business and Tax Regulations Code Article 12-A by adding Section 906.5 to permit a Payroll Expense Tax Exclusion for Small Business Net New Payroll for years 2012 through 2015.

Existing Law

San Francisco imposes a Payroll Expense Tax on business entities based on the compensation they pay to employees and others for work or services performed in San Francisco. (Business and Tax Regulations Code Section 901 et seq.) The tax rate is 1.5% of taxable Payroll Expense. This tax is determined each year based on the Payroll Expense of the entity.

Amendments to Current Law

The proposed amendment would amend Section 906 to establish an exclusion for net new Payroll Expense incurred by a Small Business in years 2012 through 2015. The amount a Small Business may exclude is the lesser of $250,000 or the amount of Payroll Expense that is greater than the Small Business' Base Year Payroll Expense. The exclusion cannot reduce a person's Payroll Expense Tax liability to less than the person's Base Year Payroll Expense Tax liability. The Net New Payroll Expense Tax exclusion is available for years 2012 and 2013.

Background

The purpose of this legislation is to increase the number of jobs within the City and County of San Francisco by providing an incentive for Small Businesses to create new jobs or to relocate existing jobs to the City and County of San Francisco.