

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Tax Penalties and Interest; Administration of Cannabis Business Tax]

Ordinance amending the Business and Tax Regulations Code to amend the penalties, and the provisions for waiver of penalties and interest, relating to taxes that are subject to the common administrative provisions of that Code, and to add provisions for administering the Cannabis Business Tax.

Existing Law

Existing law provides for the imposition of penalties for the failure to comply with the Business and Tax Regulations Code ("BTRC") and authorizes the Tax Collector to waive certain penalties and interest in certain circumstances.

BTRC Section 6.17-1 imposes a penalty on persons who fail to pay, collect, or remit tax to the City of 5% of the tax, if the failure is for not more than one month after the tax became delinquent, plus an additional 5% for each following month during which such failure continues, up to 20% in the aggregate, until the date of payment. Any taxes remaining unpaid for 90 days after notification that the tax is delinquent are subject to an additional penalty of 20% of the amount of the tax. If the failure to pay is due to fraud or an intent to evade tax, an additional penalty of 50% of the amount due is imposed, in addition to any other penalties and interest. Unpaid taxes also accrue interest at the rate of 1% per month from the date the taxes become delinquent through the date the person pays the delinquent taxes, penalties, interest, and fees accrued to the date of payment in full.

BTRC Section 6.17-2 imposes a penalty on persons who underreport any amount of tax required to be reported on a return, if the Tax Collector determines that such underreporting was attributable to negligence. The penalty is 5% of the amount of the underreported tax, if the negligence is for not more than one month, with an additional 5% for each month during which such negligence continues, up to 20% in the aggregate. If the underreporting is due to fraud or an intent to evade tax, the Tax Collector may impose a penalty in the amount of 50% of the underreported tax. If the Tax Collector determines that a taxpayer has made a substantial underreporting of tax, the Tax Collector may impose an additional 50% penalty.

BTRC Section 6.17-3(a) imposes the penalty under BTRC Section 6.17-1 for persons who fail to register in a timely manner. BTRC Section 6.17-3 also imposes penalties for other failures, including with respect to registration, return filing, and the inspection and production of records.

BTRC Section 6.17-4 authorizes the Tax Collector to waive, in whole or in part, any penalty or interest assessed under BTRC Sections 6.17-1, 6.17-2, or 6.17-3, if certain conditions are satisfied.

If the Tax Collector determines that a person has failed to pay or has underpaid a tax, BTRC Section 6.11-1 authorizes the Tax Collector to determine the tax deficiency based upon the tax return or any other information in the Tax Collector's possession, and add thereto interest at the rate of 1% per month. If a person fails to make a timely return or remittance, the Tax Collector may make a determination based upon an estimate of the amount of the total tax liability of the person, and shall add to that determination a penalty equal to 20% thereof and interest at the rate of 1% per month.

BTRC Section 6.12-4 imposes the penalty under BTRC Section 6.17-1 if the amount specified in a jeopardy determination is not paid, and no petition for redetermination is filed, within 15 days after notice of that determination is served.

BTRC Section 6.9-3 imposes a penalty on every person or combined group who fails to timely pay any estimated tax payment. The penalty is 5% of the amount of the underpayment.

At the November 6, 2018 election, San Francisco voters approved Proposition D, which imposes the Cannabis Business Tax, effective January 1, 2021. Existing law provides for the administration of most of the City's taxes. These administrative provisions include definitions; the Tax Collector's audit and collection authority; filing and payment requirements; rules for refunds and lawsuits; penalty, interest, and citation provisions; and taxpayer confidentiality provisions, among others.

Amendments to Current Law

For tax periods ending on or after January 1, 2021 and, for fiscal years ending on or after July 1, 2021 in the case of the business registration fee and other charges imposed on a fiscal year basis, this ordinance would increase the penalty in BTRC Section 6.17-1 to a maximum of 25% of the unpaid tax. It would eliminate the additional 20% penalty in BTRC Section 6.17-1 for any taxes remaining unpaid for 90 days after notification, would eliminate the 50% substantial underreporting penalty in 6.17-2, and would eliminate the penalties in BTRC Section 6.9-3 for failure to make estimated tax payments. This ordinance would incorporate the penalties in BTRC Sections 6.11-3, 6.12-4, 6.17-2(a), and 6.17-3(a), and the interest provisions in BTRC Sections 6.11-1 and 6.11-3, into BTRC Section 6.17-1. It would consolidate the penalties for fraud or an intent to evade the tax into a new BTRC Section 6.17-2.

This ordinance would amend the waiver provisions in BTRC Section 6.17-4 by not making any interest waivable and tracking the property tax penalty waiver standard.

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This ordinance would consolidate the tax deficiency determination provisions under BTRC Sections 6.11-1 and 6.11-3.

This ordinance would make other conforming and nonsubstantive changes, including the deletion of a redundant penalty provision in BTRC Section 906.2 relating to the clean technology business exclusion and the removal of the now expired Business Tax Penalty Amnesty Program in BTRC Article 17.

This ordinance would extend the existing administrative provisions, as amended by this ordinance, as applicable, to the Cannabis Business Tax.

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