

File No. 200759

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date September 16, 2020

Board of Supervisors Meeting

Date _____

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Completed by: Linda Wong

Date September 9, 2020

Completed by: Linda Wong

Date _____

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

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

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

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

15 Section 1. Article 6 of the Business and Tax Regulations Code is hereby amended by
16 revising Sections 6.1-1, 6.2-17, 6.4-1, 6.5-2, 6.8-1, 6.9-1, 6.9-3, 6.9-5, 6.9-7, 6.10-3, 6.11-1,
17 6.11-2, 6.11-3, 6.12-4, 6.13-1, 6.15-1, 6.15-2, 6.17-1, 6.17-2, 6.17-3, 6.17-4, 6.17-5, 6.20-1,
18 and 6.21-1 and adding Sections 6.11-1.1, 6.17-1.1, 6.17-2.1, 6.17-3.1, and 6.17-4.1, to read
19 as follows:

20 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

21 (a) These common administrative provisions shall apply to Articles 6, 7, 8, 9, 10, 10B,
22 11, 12, 12-A, 12-A-1, 12-B, 21, 28, 30, and 32 of this Code and to Chapter 105 of the
23 Administrative Code, unless the specific language of either Code otherwise requires. Any
24 provision of this Article 6 that references or applies to Article 10 shall be deemed to also
25 reference or apply to Article 10B. Any provision of this Article 6 that references or applies to a

1 tax shall be deemed to also reference or apply to a fee administered pursuant to this Article,
2 and shall be deemed to also reference or apply to an assessment levied pursuant to the
3 Property and Business Improvement District Law of 1994 (California Streets and Highways
4 Code sections 36600 *et seq.*) or Article 15 of this Code. A fee administered pursuant to
5 Article 6 or an assessment levied pursuant to the Property and Business Improvement District
6 Law of 1994 or Article 15 of this Code shall for purposes of this Article be deemed to be
7 imposed pursuant to the provisions of the Business and Tax Regulations Code.

8 * * * *

9
10 **SEC. 6.2-17. RETURN.**

11 The term “return” means any written statement required to be filed under Articles 6, 7,
12 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, 21, 28, 30, or 32, or under laws applicable to a fee
13 administered pursuant to Article 6, or under laws applicable to an assessment levied pursuant
14 to the Property and Business Improvement District Law of 1994 (California Streets and
15 Highways Code sections 36600 *et seq.*) or Article 15 of this Code.

16
17 **SEC. 6.4-1. RECORDS; INVESTIGATION; SUBPOENAS.**

18 * * * *

19 (b) Upon request of the Tax Collector, a taxpayer shall produce such business records
20 at the Tax Collector’s Office during normal business hours for inspection, examination, and
21 copying. Refusal to allow full inspection, examination, or copying of such records shall
22 subject the taxpayer to all penalties authorized by law, including but not limited to the
23 penalties set forth in Section 6.17-3 or Section 6.17-3.1, as applicable. As an alternative to
24 production at the Tax Collector’s Office, the Tax Collector may agree to inspect, examine, and
25 copy the requested books, papers, and records at the taxpayer’s place of business or some

1 other mutually acceptable location, and may require the taxpayer to reimburse the City for the
2 Tax Collector’s ordinary and reasonable expenses incurred in the inspection, examination,
3 and copying of such books, papers, and records, including food, lodging, transportation, and
4 other related items, as appropriate.

5 * * * *

6
7 **SEC. 6.5-2. PENALTIES FOR FAILURE TO RESPOND TO REQUEST FOR FINANCIAL**
8 **INFORMATION.**

9 Any persons, including taxpayers, alleged taxpayers, witnesses, or custodians of
10 records, who fail to respond to the Tax Collector’s written request for financial information
11 shall be subject to any penalties and sanctions provided by law, including but not limited to the
12 penalties and sanctions provided in Section 6.17-3 *or Section 6.17-3.1, as applicable.*

13
14 **SEC. 6.8-1. CITY, PUBLIC ENTITY, AND CONSTITUTIONAL EXEMPTIONS.**

15 (a) Nothing in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, 21, 28, 30, or 32 shall
16 be construed as imposing a tax upon:

- 17 (1) The City;
- 18 (2) The State of California, or any county, municipal corporation, district, or
19 other political subdivision of the State, except where any constitutional or statutory immunity
20 from taxation is waived or is not applicable;
- 21 (3) The United States of America, or any of its agencies or subdivisions, except
22 where any constitutional or statutory immunity from taxation is waived or is not applicable; or
- 23 (4) Any person exempted from the particular tax by the Constitution or statutes
24 of the United States or the Constitution or statutes of the State of California.

1 (b) The foregoing exemption from taxation does not relieve an exempt party from its
2 duty to collect, report, and remit third-party taxes.

3
4 **SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF TAXES.**

5 Except for jeopardy determinations under Section 6.12-2, and subject to remittances
6 required under Sections 6.9-2 and 6.9-3, all amounts of taxes and fees imposed by Articles 6,
7 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, 21, 28, 30, and 32 are due and payable, and shall be
8 delinquent if not paid to the Tax Collector on or before the following dates:

9 * * * *

10 (b) For the payroll expense tax (Article 12-A), the gross receipts tax (Article 12-A-1)
11 (including the tax on administrative office business activities imposed under Section 953.8 of
12 Article 12-A-1), the Early Care and Education Commercial Rents Tax (Article 21), ~~and~~ the
13 Homelessness Gross Receipts Tax (Article 28) (including the homelessness administrative
14 office tax imposed under Section 2804(d) of Article 28), and the Cannabis Business Tax
15 (Article 30), on or before the last day of February of each year;

16 * * * *

17 (g) For the Traffic Congestion Mitigation Tax (Article 32), for each month, on or
18 before the last day of the following month.

19
20 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS; REMITTANCES.**

21 (a) **Remittances.** Notwithstanding the due dates otherwise provided in Section 6.9-1,
22 taxpayers shall make remittances of taxes and third-party taxes to the Tax Collector as
23 follows:

24 * * * *

1 (3) **Payroll Expense Tax, Gross Receipts Tax, Early Care and Education**
2 **Commercial Rents Tax, ~~and Homelessness Gross Receipts Tax, and Cannabis Business~~**

3 **Tax: Estimated Tax Payments.** Except as provided in Section 6.9-3(a)(3)(G) with respect to
4 estimated tax payments of the gross receipts tax, every person or combined group liable for
5 payment of the payroll expense tax (Article 12-A), the gross receipts tax (Article 12-A-1)
6 (including the tax on administrative office business activities imposed under Section 953.8 of
7 Article 12-A-1), the Early Care and Education Commercial Rents Tax (Article 21), ~~or the~~
8 Homelessness Gross Receipts Tax (Article 28) (including the homelessness administrative
9 office tax imposed under Section 2804(d) of Article 28), or the Cannabis Business Tax (Article 30)
10 shall make three estimated tax payments, in addition to the annual payments in
11 Section 6.9-3(a)(4), as follows:

12 (A) Due Dates. The first, second, and third estimated tax payments for a
13 tax year shall be due and payable, and shall be delinquent if not paid on or before, April 30,
14 July 31, and October 31, respectively, of that tax year. Estimated tax payments shall be a
15 credit against the person or combined group's total annual payroll expense tax, gross receipts
16 tax (including the tax on administrative office business activities imposed under Section 953.8
17 of Article 12-A-1), Early Care and Education Commercial Rents Tax ~~liability, or~~ Homelessness
18 Gross Receipts Tax ~~liability~~ (including ~~liability for~~ the homelessness administrative office tax
19 imposed under Section 2804(d) of Article 28), or Cannabis Business Tax liability, as applicable,
20 for the tax year in which such estimated tax payments are due.

21 * * * *

22 (H) **Cannabis Business Tax Estimated Tax Payments.** *For purposes of this*
23 *Section 6.9-3, a person or combined group's estimated tax payments of Cannabis Business Tax for any*
24 *tax year shall each equal the lesser of:*

1 (i) 25% of the Cannabis Business Tax liability shown on the person or
2 combined group's return for the tax year (or, if no return is filed, 25% of the person or combined
3 group's actual Cannabis Business Tax liability for the tax year); or

4 (ii) 25% of the Cannabis Business Tax liability shown on the person or
5 combined group's return for the preceding tax year. If the person or combined group did not file a
6 return for the preceding tax year, the person or combined group shall be deemed to have filed a return
7 showing no liability for purposes of this Section 6.9-3(a)(3)(H)(ii), and no estimated tax payments of
8 Cannabis Business Taxes shall be due for the current tax year.

9 **~~(H) Estimated Tax Penalties.~~**

10 ~~(i) Every person or combined group who fails to pay any estimated tax~~
11 ~~payment required under this Section 6.9-3(a)(3) before the relevant delinquency date shall pay an~~
12 ~~"Estimated Tax Penalty" in the amount of 5% of the amount of the underpayment. For purposes of this~~
13 ~~Section 6.9-3(a)(3)(H), the amount of the underpayment shall be the required estimated tax payment~~
14 ~~less the amount, if any, of the estimated tax payment paid on or before the delinquency date. The~~
15 ~~Estimated Tax Penalty provided under this Section 6.9-3(a)(3)(H) shall not apply if the sum of the~~
16 ~~payroll expense tax estimated tax payments, gross receipts tax estimated tax payments (including~~
17 ~~estimated tax payments of the tax on administrative office business activities imposed under Section~~
18 ~~953.8 of Article 12-A-1), Early Care and Education Commercial Rents Tax estimated tax payments,~~
19 ~~and Homelessness Gross Receipts Tax estimated tax payments (including estimated tax payments of the~~
20 ~~homelessness administrative office tax imposed under Section 2804(d) of Article 28) for the quarter is~~
21 ~~equal to or greater than the sum of the estimated tax payments due for these taxes.~~

22 ~~(ii) An Estimated Tax Penalty imposed under this Section 6.9-3(a)(3)(H)~~
23 ~~may be waived by the Tax Collector, in whole or in part, upon a finding that the person or combined~~
24 ~~group meets the requirements under Section 6.17-4.~~

1 ~~amount calculated under Sections 6.9-3(a)(3)(B)(ii), 6.9-3(a)(3)(C)(ii), 6.9-3(a)(3)(D)(ii), or 6.9-~~
2 ~~3(a)(3)(F)(ii), as applicable, until the person or combined group files an annual return for the tax year~~
3 ~~(or, if no annual return is filed, until the person or combined group's actual tax liability for the tax year~~
4 ~~is known), at which time the estimated tax payments due shall be recalculated under Sections 6.9-~~
5 ~~3(a)(3)(B), (C), (D), and (F), as applicable. This subsection (a)(3)(I)(ii) shall not apply to estimated~~
6 ~~tax filings of the Early Care and Education Commercial Rents Tax for tax periods ending on or before~~
7 ~~December 31, 2019.~~

8 **(4) Payroll Expense Tax, Gross Receipts Tax, Early Care and Education**
9 **Commercial Rents Tax, ~~and Homelessness Gross Receipts Tax, and Cannabis Business~~**
10 **Tax: Computation of Annual Liability; Payments.**

11 (A) The total payroll expense tax liability of a person shall be computed
12 using the rate for that tax year computed, certified, and published by the Controller under
13 Section 903.1 of Article 12-A or as otherwise provided in Article 12-A. The total gross receipts
14 tax liability of a person or combined group, other than a person or combined group subject to
15 tax under Section 953.8 of Article 12-A-1, shall be computed using the rate for that tax year
16 computed, certified, and published by the Controller under Section 959 of Article 12-A-1, or as
17 otherwise provided in Article 12-A-1. The total liability for the tax on administrative office
18 business activities of a person or combined group subject to tax under Section 953.8 of
19 Article 12-A-1 shall be computed as provided in Section 953.8, or as otherwise provided in
20 Article 12-A-1. The total Early Care and Education Commercial Rents Tax liability of a person
21 or combined group shall be computed as provided in Section 2104, or as otherwise provided
22 in Article 21. The total Homelessness Gross Receipts Tax liability, including liability for the
23 homelessness administrative office tax imposed under Section 2804(d) of Article 28, of a
24 person or combined group shall be computed as provided in Section 2804, or as otherwise
25 provided in Article 28. The total Cannabis Business Tax liability of a person or combined group shall

1 be computed as provided in Section 3003, or as otherwise provided in Article 30. Except as
2 otherwise provided, the total payroll expense tax, gross receipts tax (including the tax on
3 administrative office business activities under Section 953.8 of Article 12-A-1), Early Care and
4 Education Commercial Rents Tax, ~~and~~ Homelessness Gross Receipts Tax (including the
5 homelessness administrative office tax imposed under Section 2804(d) of Article 28), and
6 Cannabis Business Tax liabilities, less any estimated tax payments for the tax year, shall be
7 reported and paid on or before the last day of February of the year immediately following the
8 tax year.

9 (B) Any amounts paid on a person's payroll expense tax liability for a tax
10 year that are in excess of that person's actual payroll expense tax liability for that year shall be
11 credited to that person's gross receipts tax, Early Care and Education Commercial Rents Tax,
12 or Homelessness Gross Receipts Tax liability for that year, if any. Any amounts paid on a
13 person's gross receipts tax liability for a tax year that are in excess of that person's actual
14 gross receipts tax liability for that year shall be credited to that person's payroll expense tax,
15 Early Care and Education Commercial Rents Tax, or Homelessness Gross Receipts Tax
16 liability for that year, if any. Any amounts paid on a person's Early Care and Education
17 Commercial Rents Tax liability for a tax year that are in excess of that person's actual Early
18 Care and Education Commercial Rents Tax liability for that year shall be credited to that
19 person's payroll expense tax, gross receipts tax, or Homelessness Gross Receipts Tax
20 liability for that year, if any. Any amounts paid on a person's Homelessness Gross Receipts
21 Tax liability for a tax year that are in excess of that person's actual Homelessness Gross
22 Receipts Tax liability for that year shall be credited to that person's payroll expense tax, gross
23 receipts tax, or Early Care and Education Commercial Rents Tax liability for that year, if any.

24 This Section 6.9-3(a)(4)(B) shall apply to tax years ending on or before December 31, 2019.

25 * * * *

1 **SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND**
2 **EXEMPTIONS.**

3 The credits and exemptions set forth in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A,
4 12-A-1, 12-C, 21, 28, 30, and 32, in laws applicable to fees administered pursuant to Article 6,
5 and in laws applicable to assessments levied pursuant to the Property and Business
6 Improvement District Law of 1994 (California Streets and Highways Code sections 36600 *et*
7 *seq.*) or Article 15 of this Code, are provided on the assumption that the City has the power to
8 offer such credits and exemptions. If a credit or exemption is invalidated by a court of
9 competent jurisdiction, the taxpayer must pay any additional amount that the taxpayer would
10 have owed but for such invalid credit or exemption. Amounts owed as a result of the
11 invalidation of a credit or exemption that are paid within three years after the decision of the
12 court becomes final shall not be subject to interest or penalties.

13
14 **SEC. 6.9-7. PARTIAL PAYMENTS.**

15 (a) Where a taxpayer owes payments for prior years, the Tax Collector may accept
16 partial payments. The difference between the amount paid by the taxpayer and the total
17 amount due shall be treated as a delinquent tax and shall be subject to penalties and interest
18 on the unpaid balance pursuant to Section 6.17-1 or Section 6.17-1.1, as applicable.

19 * * * *

20
21 **SEC. 6.10-3. COLLECTION OF TAX; LEGAL ACTIONS.**

22 (a) (1) The Tax Collector may bring an action in the courts of this State, or any
23 other state, or of the District of Columbia, or of the United States and its territories or
24 possessions, or any other forum where permitted by law to recover in the name of the City
25 any amount of taxes due and payable under the Business and Tax Regulations Code and

1 remaining unpaid, together with penalties, interest, and costs, including reasonable attorneys'
2 fees.

3 (2) In any action filed pursuant to this subdivision, the Complaint shall attach a
4 certificate executed by the Tax Collector or his representative that contains the following
5 information:

6 (A) the name of the operator, taxpayer, or other person determined to be
7 liable for the tax;

8 (B) the description of the operator's, taxpayer's, or other person's
9 business against which the tax has been assessed;

10 (C) the location and/or address of the business;

11 (D) the amount of the tax, penalty, and interest remaining unpaid as of
12 the last day of the month prior to the month in which the Complaint is filed; and

13 (E) the fact that the City has complied with all provisions of the Business
14 and Tax Regulations Code in the computation and the levy of the tax, penalty, or interest.

15 (3) In prosecuting such actions, the Tax Collector shall be entitled to all of the
16 provisional remedies provided by law. Any such action shall be commenced within 3 years
17 from the date any amount of taxes became due and payable, or from the date the return is
18 required to be filed or actually filed, whichever period expires later; except in the case of any
19 deficiency determination pursuant to Sections 6.11-1 *et seq.* or 6.11-1.1 *et seq.*, as applicable,
20 6.12-1 *et seq.*, or 6.13-1 *et seq.*, in which case any such action shall be commenced within 3
21 years after such determination became final. However, there shall be no limitation on the time
22 in which such actions may be commenced in cases of fraud, intent to evade the Business and
23 Tax Regulations Code, or failure to file a return.

24 * * * *

25

1 **SEC. 6.11-1. DEFICIENCY DETERMINATIONS; RECOMPUTATION; INTEREST.**

2 * * * *

3 (d) This Section 6.11-1 shall apply as follows:

4 (1) to all returns and payments for tax periods ending and taxable events occurring on
5 or before December 31, 2020, except as provided in subsections (d)(2) and (d)(3) of this
6 Section 6.11-1;

7 (2) to all returns and payments for registration years ending on or before June 30, 2021
8 with respect to the registration fee imposed under Section 855 of Article 12; and

9 (3) to all returns and payments for fiscal years ending on or before June 30, 2021 with
10 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
11 year basis.

12
13 **SEC. 6.11-1.1. DEFICIENCY DETERMINATIONS; RECOMPUTATION; ESTIMATE OF**
14 **LIABILITY.**

15 (a) If the Tax Collector determines that a taxpayer has failed to make a return or has failed to
16 pay or has underpaid a tax, that an operator has failed to collect and remit all of a third-party tax, or
17 that a person other than the taxpayer is jointly and severally liable for any unpaid or underpaid tax,
18 including third-party taxes, the Tax Collector may compute and determine any tax deficiency based
19 upon an estimate of the tax liability, upon the return or returns, or upon any other information within
20 the Tax Collector's possession or that may come into the Tax Collector's possession. One or more
21 deficiency determinations of the amount due may be made for one or for more than one period. Any
22 such determination shall be prima facie evidence of the person's liability in any subsequent
23 administrative or judicial proceeding.

24 (b) In making a determination, the Tax Collector may offset overpayments for a period or
25 periods together with interest on the overpayments, against underpayments for another period or

1 periods, against penalties, and against the interest on the underpayments. The interest on
2 underpayments and overpayments shall be computed under Section 6.17-1.1 for underpayments and
3 Section 6.15-2 for overpayments.

4 (c) This Section 6.11-1.1 shall apply as follows:

5 (1) to all returns and payments for tax periods ending and taxable events occurring on
6 or after January 1, 2021, except as provided in subsections (c)(2) and (c)(3) of this Section 6.11-1.1;

7 (2) to all returns and payments for registration years ending on or after July 1, 2021
8 with respect to the registration fee imposed under Section 855 of Article 12; and

9 (3) to all returns and payments for fiscal years ending on or after July 1, 2021 with
10 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
11 year basis.

12
13 **SEC. 6.11-2. DEFICIENCY DETERMINATIONS; REVOCATION DETERMINATIONS;**
14 **NOTICE AND SERVICE.**

15 (a) Upon making a determination pursuant to Section 6.11-1 or Section 6.11-1.1, as
16 applicable, or upon making a determination pursuant to Section 6.6-1 that a certificate shall not
17 be issued or to revoke a registration, the Tax Collector shall give to the taxpayer or other
18 person affected written notice of the Tax Collector's determination. Except in the case of
19 fraud, intent to evade the Business and Tax Regulations Code or rules and regulations issued
20 or promulgated by the Tax Collector, or failure to file a return, in which case there is no statute
21 of limitations, every notice of a deficiency determination shall be served within 3 years after
22 the date that a return was due for a tax for the reporting period or 3 years after the return was
23 actually filed for that reporting period, whichever is later. The ~~T~~taxpayer may agree in writing
24 to extend the period for service of a notice of a deficiency determination otherwise provided in
25 this subsection (a)~~paragraph~~.

1 * * * *

2
3 **SEC. 6.11-3. DETERMINATION IF NO RETURN MADE; ESTIMATE OF LIABILITY,**
4 **PENALTIES AND INTEREST.**

5 * * * *

6 (d) This Section 6.11-3 shall apply as follows:

7 (1) to all returns and payments for tax periods ending and taxable events occurring on
8 or before December 31, 2020, except as provided in subsections (d)(2) and (d)(3) of this
9 Section 6.11-3;

10 (2) to all returns and payments for registration years ending on or before June 30, 2021
11 with respect to the registration fee imposed under Section 855 of Article 12; and

12 (3) to all returns and payments for fiscal years ending on or before June 30, 2021 with
13 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
14 year basis.

15
16 **SEC. 6.12-4. JEOPARDY DETERMINATIONS; EFFECT OF NONPAYMENT.**

17 (a) If the amount specified in the jeopardy determination is not paid within 15 days after
18 service of notice thereof upon the person against whom the determination is made, and no
19 petition for redetermination is filed within the 15 days, the delinquency penalty provided in
20 Section 6.17-1 shall attach to the tax or the amount of the tax required to be collected.

21 (b) This Section 6.12-4 shall apply as follows:

22 (1) to all returns and payments for tax periods ending and taxable events occurring on
23 or before December 31, 2020, except as provided in subsections (b)(2) and (b)(3) of this
24 Section 6.12-4;

1 (2) to all returns and payments for registration years ending on or before June 30, 2021
2 with respect to the registration fee imposed under Section 855 of Article 12; and

3 (3) to all returns and payments for fiscal years ending on or before June 30, 2021 with
4 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
5 year basis.

6
7 **SEC. 6.13-1. REDETERMINATIONS; PETITION; TIME FOR FILING; INCOMPLETE**
8 **PETITIONS.**

9 * * * *

10 (b) (1) Every petition for redetermination shall be verified by the person against
11 whom the Tax Collector made the determination, stating under penalty of perjury the specific
12 grounds upon which the petition is founded, with specificity sufficient to enable the Tax
13 Collector to understand and evaluate the petition, and verifying the information and
14 authenticating the records upon which the petitioner relies in support of the petition. Any
15 ground for redetermination that is not specified in the petition for redetermination shall be
16 deemed waived by the petitioner in any later judicial proceeding.

17 (2) If the Tax Collector determines that the petition fails to state specific grounds
18 for redetermination, lacks sufficient specificity to understand and evaluate the petition, or is
19 not accompanied by information and records in support of the petition the Tax Collector
20 reasonably deems necessary to evaluate and decide the petition, the Tax Collector in his or
21 her discretion may either deny the petition as incomplete or may require the petitioner in
22 writing to supplement the petition with additional information or records the Tax Collector
23 deems reasonably necessary to decide the petition. The petitioner shall submit such
24 information and records in support of the petition to the Tax Collector within 30 days of service
25 of the Tax Collector's written request, which shall be served in the manner prescribed in

1 Section 6.11-2. If mailed, service of the notice is complete at the time of deposit with the
2 United States Postal Service. Failure of the petitioner to provide all of the information and
3 records set forth in the written request within the 30-day period shall be sufficient ground for
4 the Tax Collector to deny the petition, and the petitioner shall be subject to the penalties and
5 sanctions provided in Section 6.17-3 or Section 6.17-3.1, as applicable.

6
7 **SEC. 6.15-1. REFUNDS.**

8 * * * *

9 (g) **Requests for Refund; Refunds Permissible Without a Claim.** The Tax
10 Collector may authorize the Controller to refund tax, interest, or penalty payments, without a
11 refund claim having been filed and without review by the City Attorney, if the Tax Collector
12 determines that the amount paid exceeds the tax, penalties, and interest due. The person
13 that made the overpayment may request such a refund from the Tax Collector on a return,
14 amended return, or request for refund form that is issued by the Tax Collector and that is filed
15 with the Tax Collector within the later of one year of the payment of such amount or the date
16 the return accompanying such payment was due. The Tax Collector may also authorize the
17 Controller to refund the overpaid tax, interest, or penalty payments on its own initiative within
18 this one-year period. A refund requested on a return, amended return, or request for refund
19 form under this subsection (g) shall automatically be deemed denied for purposes of
20 subsections (a), (b), and (d) of this Section 6.15-1 if the Tax Collector does not grant or deny
21 the refund request within one year of the date it was filed. Any action by the Tax Collector
22 after a refund request under this subsection (g) has been deemed denied shall not constitute
23 a denial and shall have no effect on the statute of limitations for filing a claim for refund under
24 subsections (a)-(f) of this Section 6.15-1. In lieu of requesting a refund on a return, amended
25 return, or request for refund form, a taxpayer may elect to apply an overpayment of the

1 business registration fee in Article 12, the payroll expense tax in Article 12-A, the gross
2 receipts tax in Article 12-A-1 (including the tax on administrative office business activities
3 under Section 953.8 of Article 12-A-1), the sugary drinks distributor tax in Article 8, the Early
4 Care and Education Commercial Rents Tax in Article 21, ~~or~~ the Homelessness Gross
5 Receipts Tax in Article 28 (including the homelessness administrative office tax under Section
6 2804(d) of Article 28), or the Cannabis Business Tax in Article 30 as a credit against the
7 taxpayer's immediately succeeding payment or payments due of any of these several~~six~~ tax
8 types. Any election to apply an overpayment to the taxpayer's future liability shall be binding
9 and may not later be changed by the taxpayer.

10
11 **SEC. 6.15-2. REFUNDS; INTEREST.**

12 * * * *

13 (c) If a taxpayer elects to apply all or part of an overpayment of the business
14 registration fee in Article 12, the payroll expense tax in Article 12-A, the gross receipts tax in
15 Article 12-A-1 (including the tax on administrative office business activities under
16 Section 953.8 of Article 12-A-1), the sugary drinks distributor tax in Article 8, the Early Care
17 and Education Commercial Rents Tax in Article 21, ~~or~~ the Homelessness Gross Receipts Tax
18 in Article 28 (including the homelessness administrative office tax under Section 2804(d) of
19 Article 28), or the Cannabis Business Tax in Article 30 as a credit against the taxpayer's
20 immediately succeeding payment or payments due of any of these several~~six~~ tax types, the
21 taxpayer will not be credited with interest on the amount so applied.

1 **SEC. 6.17-1. PENALTIES AND INTEREST FOR FAILURE TO PAY.**

2 * * * *

3 (d) This Section 6.17-1 shall apply as follows:

4 (1) to all returns and payments for tax periods ending and taxable events occurring on
5 or before December 31, 2020, except as provided in subsections (d)(2) and (d)(3) of this
6 Section 6.17-1;

7 (2) to all returns and payments for registration years ending on or before June 30, 2021
8 with respect to the registration fee imposed under Section 855 of Article 12; and

9 (3) to all returns and payments for fiscal years ending on or before June 30, 2021 with
10 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
11 year basis.

12
13 **SEC. 6.17-1.1. PENALTIES AND INTEREST FOR FAILURE TO PAY.**

14 (a) Any person who fails to pay, collect, or remit to the City any tax shown on a return or
15 required to be shown on a return shall pay a penalty of 5% of the unpaid tax, if the failure is for not
16 more than one month after the tax was due and unpaid, plus an additional 5% for each following month
17 or fraction of a month during which such failure continues, up to 25% in the aggregate, until the date
18 of payment.

19 (b) Any person who fails to pay, collect, or remit to the City any tax shown on a return or
20 required to be shown on a return shall also pay interest on the unpaid tax at the rate of 1% per month,
21 or fraction of a month, from the date the taxes were due and unpaid through the date the person pays in
22 full the delinquent taxes, penalties, interest, and fees accrued to the date of payment.

23 (c) No penalties or interest imposed by this Section 6.17-1.1 shall apply to the failure to make
24 any estimated tax payments of payroll expense taxes, gross receipts taxes, Early Care and Education
25

1 Commercial Rents Taxes, Homelessness Gross Receipts Taxes, or Cannabis Business Taxes under
2 Section 6.9-3(a)(3).

3 (d) This Section 6.17-1.1 shall apply as follows:

4 (1) to all returns and payments for tax periods ending and taxable events occurring on
5 or after January 1, 2021, except as provided in subsections (d)(2) and (d)(3) of this Section 6.17-1.1;

6 (2) to all returns and payments for registration years ending on or after July 1, 2021
7 with respect to the registration fee imposed under Section 855 of Article 12; and

8 (3) to all returns and payments for fiscal years ending on or after July 1, 2021 with
9 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
10 year basis.

11
12 **SEC. 6.17-2. PENALTIES FOR UNDERREPORTING OF TAX.**

13 * * * *

14 (d) This Section 6.17-2 shall apply as follows:

15 (1) to all returns and payments for tax periods ending and taxable events occurring on
16 or before December 31, 2020, except as provided in subsections (d)(2) and (d)(3) of this
17 Section 6.17-2;

18 (2) to all returns and payments for registration years ending on or before June 30, 2021
19 with respect to the registration fee imposed under Section 855 of Article 12; and

20 (3) to all returns and payments for fiscal years ending on or before June 30, 2021 with
21 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
22 year basis.

1 **SEC. 6.17-2.1. PENALTY FOR FRAUD OR INTENT TO EVADE TAX.**

2 (a) If the failure to file any return, the failure to pay any tax, and/or the underreporting of any
3 tax is due to fraud or an intent to evade the Business and Tax Regulations Code or the Tax Collector's
4 rules and regulations, a penalty of 50% of the amount required to be paid or required to be reported on
5 a return that was not so paid or reported shall be assessed in addition to the penalties and interest
6 imposed under Section 6.17-1.1 and any other penalties and interest. A person against whom a penalty
7 under this Section 6.17-2.1 is assessed is entitled to a notice of such assessment to be issued in
8 accordance with the provisions of Sections 6.11-2 et seq. and to the appeal rights set forth in
9 Sections 6.13-1 et seq.

10 (b) This Section 6.17-2.1 shall apply as follows:

11 (1) to all returns and payments for tax periods ending and taxable events occurring on
12 or after January 1, 2021, except as provided in subsections (b)(2) and (b)(3) of this Section 6.17-2.1;

13 (2) to all returns and payments for registration years ending on or after July 1, 2021
14 with respect to the registration fee imposed under Section 855 of Article 12; and

15 (3) to all returns and payments for fiscal years ending on or after July 1, 2021 with
16 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
17 year basis.

18
19 **SEC. 6.17-3. NEGLIGENCE PENALTIES FOR FAILURE TO REGISTER,**
20 **MISSTATEMENTS IN REGISTRATION, FAILURE TO TIMELY UPDATE REGISTRATION,**
21 **FAILURE TO ALLOW INSPECTION OF RECORDS UPON REQUEST, AND FAILURE TO**
22 **FILE A RETURN; SANCTION FOR FAILURE TO PRODUCE REQUESTED RECORDS.**

23 * * * *

24 (f) This Section 6.17-3 shall apply as follows:

1 (1) to all returns and payments for tax periods ending and taxable events occurring on
2 or before December 31, 2020, except as provided in subsections (f)(2) and (f)(3) of this Section 6.17-3;

3 (2) to all returns and payments for registration years ending on or before June 30, 2021
4 with respect to the registration fee imposed under Section 855 of Article 12; and

5 (3) to all returns and payments for fiscal years ending on or before June 30, 2021 with
6 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
7 year basis.

8
9 **SEC. 6.17-3.1. PENALTIES FOR MISSTATEMENTS IN REGISTRATION, FAILURE TO**
10 **TIMELY UPDATE REGISTRATION, FAILURE TO ALLOW INSPECTION OF RECORDS**
11 **UPON REQUEST, AND FAILURE TO FILE A RETURN; SANCTION FOR FAILURE TO**
12 **PRODUCE REQUESTED RECORDS.**

13 (a) Any person who fails to amend a registration within seven days of a material change, or
14 who makes a material misrepresentation in a registration, or who fails to comply with a rule or
15 regulation promulgated by the Tax Collector in a timely manner, shall pay, in addition to any other
16 liability that may be imposed under the provisions of this Article 6, a penalty in an amount equal to
17 either \$100 or the penalty assessed pursuant to Section 6.17-1.1, whichever is greater.

18 (b) The Tax Collector may impose a penalty upon any person who fails to file a return or
19 returns required under this Article 6 on or before the date prescribed for filing up to \$500 for each
20 such failure. The penalty under this provision shall be in addition to any other liability that may be
21 imposed under the provisions of this Article. Filing a return that the Tax Collector determines to be
22 incomplete in any material aspect may be deemed failure to file a return in violation of this
23 Section 6.17-3.1. Any return required to be filed on a combined basis, and which is not filed on that
24 basis, is an incomplete return. In addition, any return required to report worldwide gross receipts and
25

1 payroll of a person or combined group under Section 956.2, which does not report gross receipts and
2 payroll on a worldwide basis, is an incomplete return.

3 (c) Any person who fails to allow a full inspection of records pursuant to a request made by the
4 Tax Collector within the time prescribed by the Tax Collector shall pay, in addition to any other
5 liability that may be imposed under the provisions of this Article 6, a penalty in the amount of \$500 for
6 each such failure.

7 (d) Any person who fails to provide records pursuant to a written request made by the Tax
8 Collector may not contest the Tax Collector's decision regarding the amount of such person's liability
9 for any taxes, administrative collection costs, interest, penalties, or other costs and charges imposed
10 under the Business and Tax Regulations Code, or oppose the collection of such amount, in any
11 subsequent administrative or judicial proceeding, on the basis of any record the Tax Collector
12 previously requested in writing that such person failed to make available to the Tax Collector on or
13 before the earliest to occur of the following:

14 (1) The conclusion of the hearing on a petition for redetermination held pursuant to
15 Sections 6.12-5 or 6.13-2;

16 (2) The date the jeopardy determination became final under Section 6.12-5 if such
17 person did not request a hearing thereon;

18 (3) The date the deficiency determination became final under Section 6.13-4 if such
19 person did not request a hearing thereon.

20 (e) This Section 6.17-3.1 shall apply as follows:

21 (1) to all returns and payments for tax periods ending and taxable events occurring on
22 or after January 1, 2021, except as provided in subsections (e)(2) and (e)(3) of this Section 6.17-3.1;

23 (2) to all returns and payments for registration years ending on or after July 1, 2021
24 with respect to the registration fee imposed under Section 855 of Article 12; and

1 (3) to all returns and payments for fiscal years ending on or after July 1, 2021 with
2 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
3 year basis.

4
5 **SEC. 6.17-4. WAIVER OF PENALTIES.**

6 * * * *

7 (d) This Section 6.17-4 shall apply as follows:

8 (1) to all returns and payments for tax periods ending and taxable events occurring on
9 or before December 31, 2020, except as provided in subsections (d)(2) and (d)(3) of this
10 Section 6.17-4;

11 (2) to all returns and payments for registration years ending on or before June 30, 2021
12 with respect to the registration fee imposed under Section 855 of Article 12; and

13 (3) to all returns and payments for fiscal years ending on or before June 30, 2021 with
14 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
15 year basis.

16
17 **SEC. 6.17-4.1. WAIVER OF PENALTIES.**

18 (a) Any penalty assessed under Sections 6.17-1.1, 6.17-2.1, or 6.17-3.1 may be waived by the
19 Tax Collector, in whole or in part, upon a finding of any of the following:

20 (1) The failure to timely pay, remit, collect, or report the tax liability, the failure to file
21 a return, or the failure to otherwise comply with the provisions of the Business and Tax Regulations
22 Code is due to reasonable cause and circumstances beyond the taxpayer's control, and occurred
23 notwithstanding the exercise of ordinary care in the absence of willful neglect;

1 (2) There was an inadvertent error in the amount of payment made by the taxpayer,
2 provided any deficiency is cured by payment in full to the Tax Collector within 10 days after notice of
3 the deficiency is mailed by the Tax Collector; or

4 (3) Waiver of the penalty was ordered by a court of competent jurisdiction.

5 (b) This Section 6.17-4.1 shall apply as follows:

6 (1) to all returns and payments for tax periods ending and taxable events occurring on
7 or after January 1, 2021, except as provided in subsections (b)(2) and (b)(3) of this Section 6.17-4.1;

8 (2) to all returns and payments for registration years ending on or after July 1, 2021
9 with respect to the registration fee imposed under Section 855 of Article 12; and

10 (3) to all returns and payments for fiscal years ending on or after July 1, 2021 with
11 respect to fees, assessments, and other charges subject to this Article 6 that are imposed on a fiscal
12 year basis.

13
14 **SEC. 6.17-5. COSTS.**

15 In addition to the penalties imposed by Sections 6.17-1, 6.17-1.1, 6.17-2, 6.17-2.1,
16 6.17-3, and 6.17-3.1, as applicable, the Tax Collector may recover the actual costs of collection
17 incurred by the City up to the time any amount owed is finally paid, including reasonable
18 attorney's fees and costs.

19
20 **SEC. 6.20-1. RELATION TO OTHER LICENSE ORDINANCES.**

21 (a) Persons required to pay a tax, fee, or charge on any activity under the Business
22 and Tax Regulations Code shall not be relieved from the payment of any amount owed for the
23 privilege of conducting such activity required under any other ordinance of the City, and shall
24 remain subject to the regulatory provisions of other ordinances.

1 (b) Upon providing written notice of nonpayment or noncompliance with any provision
2 of the Business and Tax Regulations Code to any licensee, and continued nonpayment or
3 noncompliance by the licensee, the Tax Collector may suspend or revoke any license or
4 privilege for conducting business under any ordinance of the City. Such notice of suspension
5 or revocation shall be issued in the same manner as a determination under Section 6.11-1 et
6 seq. or Sections 6.11-1.1 et seq., as applicable, and the person issued said notice shall have the
7 appeal rights applicable to determinations made pursuant to Sections 6.11-1 et seq. or
8 Sections 6.11-1.1 et seq., as applicable, and 6.13-1 et seq., and shall become final as provided in
9 those Sections.

10
11 **SEC. 6.21-1. TRANSFEREE AND SUCCESSOR LIABILITY.**

12 * * * *

13 (f) The liability at law or in equity of a successor, transferee, or alter ego of any
14 taxpayer or other person determined to be liable for any tax, interest, cost, or penalty subject
15 to this Article 6, imposed upon a taxpayer may be determined, collected, and paid in the same
16 manner and subject to the same provisions and limitations as a deficiency determination
17 pursuant to Sections 6.11-1 or 6.11-1.1, as applicable, 6.11-2, and 6.13-1 et seq. Nothing in
18 this subsection (f) shall be construed to limit the rights or procedures available to the Tax
19 Collector to collect from any successor, transferee, or alter ego, at law or in equity, as may be
20 provided by law.

21
22 Section 2. Article 12-A of the Business and Tax Regulations Code is hereby amended
23 by revising Section 906.2, to read as follows:
24
25

1 **SEC. 906.2. CLEAN TECHNOLOGY BUSINESS EXCLUSION.**

2 * * * *

3 ~~(l) A misrepresentation or misstatement by any person regarding eligibility for the clean~~
4 ~~technology payroll expense tax exclusion authorized by this section that results in the underpayment or~~
5 ~~underreporting of the payroll expense tax shall be subject to penalties as provided in Section 6.17-2 of~~
6 ~~Article 6 of the San Francisco Business and Tax Administrative Code.~~

7
8 Section 3. The Business and Tax Regulations Code is hereby amended by deleting
9 Article 17, as follows:

10
11 **~~ARTICLE 17: BUSINESS TAX PENALTY AMENSTY PROGRAM~~**

12 **~~SEC. 1700. SHORT TITLE.~~**

13 ~~This ordinance shall be known as the “Business Tax Penalty Amnesty Program.”~~

14
15 **~~SEC. 1702. AMNESTY PROGRAM.~~**

16 ~~(a) A tax penalty amnesty program is hereby established for persons required to obtain a~~
17 ~~business tax registration certificate under Sections 1003 and 1007 of Article 12B of this Code who have~~
18 ~~liabilities eligible for amnesty under Section 1703 of this Article and who satisfy the eligibility~~
19 ~~requirements established in Section 1704 of this Article.~~

20 ~~(b) For any person who has a liability eligible for amnesty under Section 1703 and who meets~~
21 ~~the eligibility requirements established in Section 1704 of this Article:~~

22 ~~(i) The Tax Collector shall waive all penalties owed for failure to pay any annual~~
23 ~~registration fee or file a return under Section 1009.2 of Article 12B of Part III of this Code; and~~

1 (ii) ~~The Tax Collector shall waive all penalties owed for delinquent payroll expense or~~
2 ~~business taxes owed under the provisions of Sections 907, 909, 910 or 912 of Article 12A or Sections~~
3 ~~1009, 1010, 1011, 1012, or 1013 of Article 12B of Part III of this Code; and~~

4 (iii) ~~No proceeding to suspend or revoke a registration certificate pursuant to Section~~
5 ~~1008 of Article 12B of Part III of this Code shall be initiated; and~~

6 (iv) ~~No civil or criminal action shall be brought against the taxpayer, for any tax period~~
7 ~~for which tax penalty amnesty is requested, based upon the nonreporting or under-reporting of tax~~
8 ~~liabilities or the nonpayment of any taxes owed under the provisions of Article 12A or Article 12B of~~
9 ~~Part III of this Code.~~

10
11 **~~SEC. 1703. LIABILITIES SUBJECT TO AMNESTY PROGRAM.~~**

12 (a) ~~The tax penalty amnesty program shall apply to annual registration fees and to payroll~~
13 ~~expense tax and business tax liabilities for tax periods ending on or before December 31, 1993, with the~~
14 ~~following exceptions:~~

15 (i) ~~The Tax Collector shall not waive penalties owed as a result of a jeopardy~~
16 ~~determination which has become final under the provisions of Section 910.1, Subsection (b) of Article~~
17 ~~12A or Section 1010.1, Subsection (b) of Article 12B prior to the commencement of the amnesty~~
18 ~~application period.~~

19 (ii) ~~The Tax Collector shall not waive, under the authority of this Article, penalties~~
20 ~~which are included in any civil tax collection litigation commenced by the Tax Collector pursuant to~~
21 ~~Section 914 of Article 12A or Section 1014 of Article 12B or which are included in any determination~~
22 ~~under administrative review under the provisions of Section 912 of Article 12A or Sections 1012 of~~
23 ~~Article 12B prior to the commencement of the amnesty application period.~~

24 ~~(b) No refund or credit shall be granted of any penalty paid by any person prior to the time~~
25 ~~the person submits an amnesty application pursuant to Section 1704 of this Article.~~

1 **~~SEC. 1704. AMNESTY APPLICATIONS.~~**

2 ~~(a) The provisions of this Article shall apply to any person required to obtain a business tax~~
3 ~~registration certificate under Sections 1003 and 1007 of Article 12B of this Code who files an~~
4 ~~application for payroll expense or business tax amnesty within the period designated by the Tax~~
5 ~~Collector pursuant to Section 1707 of this Article and who does both of the following:~~

6 ~~(i) Files completed tax returns for all periods for which he or she has not previously~~
7 ~~filed a tax return or files amended tax returns for all periods for which he or she under-reported taxes~~
8 ~~owed; and~~

9 ~~(ii) Pays in full all taxes and interest due.~~

10 ~~(b) Notwithstanding the provisions of Subsection (a) of this Section, if necessary to effectuate~~
11 ~~the purposes of this Article, the Tax Collector or the Board of Review may extend the period for~~
12 ~~payment of taxes and interest due or enter into an installment payment agreement, in lieu of complete~~
13 ~~payment. Failure of the taxpayer to comply with the terms of any extension granted or installment~~
14 ~~payment agreement entered under this Subsection by the Tax Collector or by the Board of Review shall~~
15 ~~render the waiver of any penalties applicable thereto null and void, and the total amount of tax, interest~~
16 ~~and all penalties shall be immediately due and payable.~~

17
18 **~~SEC. 1705. SUBSEQUENT DEFICIENCIES.~~**

19 ~~If the Tax Collector issues a deficiency determination based upon a return filed pursuant to~~
20 ~~Section 1704 of this Article, penalties shall be imposed only with respect to the difference between the~~
21 ~~amount shown on the return and the correct amount of tax.~~

22
23 **~~SEC. 1706. SUBSEQUENT REFUNDS.~~**

24 ~~If any overpayment of tax under this Article is refunded or credited, no interest shall be allowed~~
25 ~~on that overpayment.~~

1 **~~SEC. 1707. AUTHORITY OF TAX COLLECTOR.~~**

2 ~~By October 11, 1994, the Tax Collector shall designate a 60-day period, to begin no sooner~~
3 ~~than October 25, 1994, and to conclude no later than January 31, 1995, during which amnesty~~
4 ~~applications shall be accepted. The Tax Collector shall publicize the tax penalty amnesty program~~
5 ~~established by this Article and shall notify taxpayers about the amnesty program and about the new and~~
6 ~~increased penalties imposed by the provisions of Section 2 and Section 3 of this ordinance. The Tax~~
7 ~~Collector shall issue all forms and instructions necessary to implement this Article. The Tax Collector~~
8 ~~shall enforce the provisions of this Article and may prescribe, adopt, and enforce rules and regulations~~
9 ~~relating to the administration and enforcement of this Article.~~

10
11 Section 4. Effective Date. This ordinance shall become effective 30 days after
12 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
13 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
14 of Supervisors overrides the Mayor's veto of the ordinance.

15
16 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
17 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
18 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
19 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
20 additions, and Board amendment deletions in accordance with the "Note" that appears under
21 the official title of the ordinance.

1 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance, or any application thereof to any person or circumstance, is held to be
3 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
4 shall not affect the validity of the remaining portions or applications of the ordinance. The
5 Board of Supervisors hereby declares that it would have passed this ordinance and each and
6 every section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: /s/ Kerne H. O. Matsubara
13 KERNE H. O. MATSUBARA
14 Deputy City Attorney

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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.

FILE NO. 200759

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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Item 6 File 20-0759	Department: Treasurer and Tax Collector (TTX)
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed ordinance amends the Business and Tax Regulations Code to (1) amend the penalties and the provisions for waiver of penalties and interest for the taxes subject to the common administrative provisions of the Code, and (2) apply the common administrative provisions to the Cannabis Business Tax.

Key Points

- Article 6 of the San Francisco Business and Tax Regulations Code (BTRC) defines the date by which payment of applicable taxes are due and sets the penalties that the Tax Collector may assess for the failure to pay the applicable tax in accordance with Code provisions. The proposed ordinance eliminates the penalty for not making quarterly estimated tax payments, and revises the penalty structure for failing to pay, remit, or collect taxes, and for underreporting taxes.
- Currently, Article 6 of the Business and Tax Regulations Code does not reference the Cannabis Business Tax. The proposed ordinance amends the Code to include the Cannabis Business Tax in the Article 6 provisions, including defining estimated tax payments pertaining to the Cannabis Business Tax and other provisions to administer the Cannabis Business Tax.
- The proposed ordinance would delete obsolete text from the City’s Business and Tax Regulations Code, including (1) Section 906.2(k)(1) regarding underreporting payroll expenses for Clean Technology Business Exclusion, which is redundant, and (2) deletion of Article 17 relating to the Business Tax Penalty Amnesty Program, which applied to tax liabilities ending on or before December 31, 1993.

Fiscal Impact

- According to the Treasurer/Tax Collector’s Office, the proposed ordinance would result in reduced penalties, estimated to be \$290,000 in FY 2020-21, \$485,000 in FY 2021-22, and \$660,000 in FY 2023-24

Policy Consideration

- According to the Treasurer/Tax Collector’s Office, the proposed changes to the Business and Tax Regulations Code are to improve compliance by streamlining penalties. According to the Treasurer/Tax Collector’s Office presentation to the August 24, 2020 Small Business Commission meeting, Proposition F on the November 3, 2020 ballot will further reduce the impact of penalties on businesses by eliminating the payroll expense tax and increasing the small business exemption threshold. The Small Business Commission approved a motion supporting the proposed ordinance at the August 24, 2020 meeting.

Recommendation

- Approval of the proposed ordinance is a policy matter for the Board of Supervisors.

MANDATE STATEMENT

City Charter Section 2.105 states that all legislative acts shall be by ordinance, approved by a majority of the members of the Board of Supervisors.

DETAILS OF PROPOSED LEGISLATION

The proposed ordinance amends the Business and Tax Regulations Code to (1) amend the penalties and the provisions for waiver of penalties and interest for the taxes subject to the common administrative provisions of the Code, and (2) apply the common administrative provisions to the Cannabis Business Tax.

Changes to Tax Penalties

Article 6 of the San Francisco Business and Tax Regulations Code (BTRC) defines the date by which payment of applicable taxes are due and sets the penalties that the Tax Collector may assess for the failure to pay the applicable tax in accordance with Code provisions.¹

Estimated Taxes and Penalty

Currently, certain businesses are required to pay estimated taxes quarterly, which are credited against the final tax owed for the year. Businesses who do not make an estimated tax payment by the date defined in the Code must pay an “estimated tax penalty” equal to 5 percent of the underpayment of the estimated tax. Article 6 allows the Treasurer/Tax Collector to waive the estimated tax penalty under certain circumstances.

The proposed ordinance eliminates this provision upon the effective date of the ordinance.

Failure to Pay, Collect or Remit Taxes

Currently, businesses who fail to pay, collect or remit taxes are assessed a penalty of 5 percent of the unpaid taxes, plus an additional penalty of 5 percent for each month that the taxes are unpaid up to 20 percent. If the taxes are unpaid after 90 days, the penalty is increased by 20 percent of the unpaid tax. Unpaid taxes accrue interest of one percent per month.²

The proposed ordinance would eliminate the additional 20 percent penalty effective after 90 days. Businesses who fail to pay taxes would be assessed a penalty of 5 percent of the unpaid

¹ Article 6 provisions apply to the following taxes and fees, among others: Tax on Transient Occupancy of Hotel Rooms; Sugary Drinks Distributor Tax; Tax on the Occupancy of Parking Space in Parking Stations; Utility Users Tax; Access Line Tax; Stadium Operator Admission Tax; Business Registration Fees; Payroll Expense Tax; Gross Receipts Tax; Early Care and Education Commercial Rents Tax; Homelessness gross receipts tax; Traffic Congestion Mitigation Tax; and the Cigarette Litter Abatement Fee.

² The provisions in this paragraph do not apply to payroll expense tax, the gross receipts tax, the Early Care and Education Commercial Rents Tax, and the Homelessness Gross Receipts Tax if the sum of the payroll expense tax payments, gross receipts tax payments, Early Care and Education Commercial Rents Tax payments, and Homelessness Gross Receipts Tax payment is equal to or greater than the sum of the payroll expense tax, gross receipts tax, Early Care and Education Commercial Rents Tax, and the Homelessness Gross Receipts Tax liability for that tax year.

taxes, plus an additional penalty of 5 percent for each month that the taxes are unpaid up to 25 percent. Unpaid taxes accrue interest of one percent per month.³

These provisions would apply to 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.

Underreporting of Taxes

Currently, if the Tax Collector determines a person underreported any amount of tax required to be reported on a return, and that such underreporting was attributable to negligence, the Tax Collector can impose a penalty of 5 percent of the unpaid taxes, plus an additional penalty of 5 percent for each month that the taxes are unpaid up to 20 percent. If the underreporting is substantial (defined by the Code as the tax finally determined by the Tax Collector exceeds the amount reported on a taxpayer's return for a taxable period by 25 percent or more, or if no return is filed, the tax liability determined by the Tax Collector exceeds \$5,000), the Tax Collector may impose a penalty of 50 percent of the substantially-underreported tax. If the Tax Collector determines that the underreporting is due to fraud, the Tax Collector may impose a penalty of 50 percent of the unpaid or underpaid tax.

The proposed ordinance would amend this provision to delete the provision pertaining to "substantial underreporting" and would retain the provision that if the Tax Collector determines that the underreporting is due to fraud, the Tax Collector may impose a penalty of 50 percent of the unpaid or underpaid tax.

These provisions would apply to 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.

Cannabis Tax

Currently, Article 6 of the Business and Tax Regulations Code does not reference the Cannabis Business Tax. The proposed ordinance amends the Code to include the Cannabis Business Tax in the Article 6 provisions, including defining estimated tax payments pertaining to the Cannabis Business Tax and other provisions to administer the Cannabis Business Tax.

Other Provisions

The proposed ordinance would delete obsolete text from the City's Business and Tax Regulations Code, including (1) Section 906.2(k)(1) regarding underreporting payroll expenses for Clean Technology Business Exclusion, which is redundant, and (2) deletion of Article 17 relating to the Business Tax Penalty Amnesty Program, which applied to tax liabilities ending on or before December 31, 1993.

³ The provisions in this paragraph do not apply to estimated tax payments of payroll expense taxes, gross receipts taxes, Early Care and Education Commercial Rents Taxes, Homelessness Gross Receipts Taxes, or Cannabis Business Taxes.

FISCAL IMPACT

According to the Treasurer/Tax Collector's Office, the proposed ordinance would result in reduced penalties, estimated to be \$290,000 in FY 2020-21, \$485,000 in FY 2021-22, and \$660,000 in FY 2023-24.

POLICY CONSIDERATION

According to Ms. Amanda Fried, Chief of Policy & Communications at the Treasurer-Tax Collector, the proposed changes to the Business and Tax Regulations Code are to improve compliance by streamlining penalties. According to Ms. Fried's presentation to the August 24, 2020 Small Business Commission meeting, Proposition F on the November 3, 2020 ballot will further reduce the impact of penalties on businesses by eliminating the payroll expense tax and increasing the small business exemption threshold. The Small Business Commission approved a motion supporting the proposed ordinance at the August 24, 2020 meeting.

RECOMMENDATION

Approval of the proposed ordinance is a policy matter for the Board of Supervisors.



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

August 28, 2020

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 200759 – Business and Tax Regulations Code - Tax Penalties and Interest;
Administration of Cannabis Business Tax

Small Business Commission Recommendation to the Board of Supervisors: **Support with modifications**

Dear Ms. Calvillo,

On August 24, 2020 the Small Business Commission (SBC or Commission) heard BOS File No. 200759 – Business and Tax Regulations Code - Tax Penalties and Interest; Administration of Cannabis Business Tax. Amanda Fried, Chief of Policy and Communications, Office of the Treasurer and Tax Collector provided the SBC with an overview of the legislation. Marisa Rodriguez, Director of the Office of Cannabis, was also present to answer the Commission's questions. After discussion, the SBC voted (7-0) to recommend that the Board of Supervisors support the legislation with modification.

Ms. Fried provided a thorough review of the legislation and the legislative intent for the Commission. In particular, she cited that this legislation was written in order to streamline the City's existing complicated tax penalty structure. And more specifically, that penalties administered under existing law resulted in unnecessarily harmful outcomes. She also clarified that moving forward with this legislation before the November 2020 election will allow businesses to enjoy the benefits of a more streamlined and less punitive penalty structure in the current tax year.

The Commissioners then discussed the provision of the legislation which would revoke the Tax Collector's ability to waive interest accrued on unpaid taxes. They highlighted the importance of retaining this ability in light of the economic crisis facing small businesses triggered by COVID-19. Ms. Fried offered that she would contemplate the Commission's staff's recommendation to strike that provision.

Ultimately, the Commission voted unanimously to support the legislation with the following modification:

- Retain the existing Business and Tax Regulations Code provision outlined in Section 6.17, which allows the Tax Collector to, whole or in part, waive interest if the failure to

make a payment or tax liability occurred notwithstanding the ordinary care of the taxpayer and in the absence of willful neglect; the taxpayer made an inadvertent error; or, if the waiver of the interest is ordered by a court of competent jurisdiction.

Thank you for considering the Commission's recommendation. Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Regina Dick-Endrizzi".

Regina Dick-Endrizzi
Director, Office of Small Business

cc: Jose Cisneros Treasurer, City County San Francisco
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Lisa Pagan, Office of Economic and Workforce Development
Linda Wong, Clerk, Budget and Finance Committee

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi
Small Business Commission, City Hall, Room 448

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: August 5, 2020

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 200759
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.

Please return this cover sheet with the Commission's response to Linda Wong at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment
 Recommendation Attached

Chairperson, Small Business Commission

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Marisa Rodriguez, Director, Office of Cannabis
Jose Cisneros, Treasurer, Office of the Treasurer and Tax Collector

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: August 5, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by the Office of the Treasurer and Tax Collector on July 21, 2020:

File No. 200759

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.

If you have comments or reports to be included with the file, please forward them to the Budget and Finance Clerk, Linda Wong, 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: Ray Law, Office of Cannabis
Amanda Kahn Fried, Office of the Treasurer and Tax Collector

From: [Fried, Amanda \(TTX\)](#)
To: [BOS Legislation, \(BOS\)](#)
Cc: [MATSUBARA, KERNE \(CAT\)](#); [Manke, Eric \(TTX\)](#)
Subject: Legislation for Introduction: [Business and Tax Regulations Code - Tax Penalties and Interest; Administration of Cannabis Business Tax]
Date: Friday, July 10, 2020 12:17:51 PM
Attachments: [ORD Penalty Amendments FINAL.docx](#)
[LEG DIG Penalty Amendments FINAL.DOCX](#)
[image002.png](#)
[image003.png](#)

Attached please find a proposed ordinance and legislative digest for consideration by the Board of Supervisors. I am cc'ing Deputy Attorney Matsubara for confirmation of his digital signature.

Please let me know if you need any additional information.

Best,

Amanda



Amanda Fried

Chief of Policy and Communications
Office of the Treasurer & Tax Collector | City and County
of San Francisco

c: [646-509-7026](tel:646-509-7026)
w: sftreasurer.org
e: amanda.fried@sfgov.org

Follow us:



From: Matsubara, Kerne (CAT) <Kerne.Matsubara@sfcityatty.org>
Sent: Tuesday, June 16, 2020 4:57 PM
To: Cisneros, Jose (TTX) <jose.cisneros@sfgov.org>; Shah, Tajel <tajel.shah@sfgov.org>; Augustine, David (TTX) <david.augustine@sfgov.org>; Fried, Amanda (TTX) <amanda.fried@sfgov.org>
Cc: REIBER, SCOTT (CAT) <Scott.Reiber@sfcityatty.org>; PEARSON, ANNE (CAT) <Anne.Pearson@sfcityatty.org>; ZAREFSKY, PAUL (CAT) <Paul.Zarefsky@sfcityatty.org>; BUTA, ODAYA (CAT) <Odaya.Buta@sfcityatty.org>; SAPERSTEIN, ALLIE (CAT) <Allie.Saperstein@sfcityatty.org>
Subject: Penalty Legislation for Introduction -- ATTORNEY-CLIENT PRIVILEGE/CONFIDENTIAL

PRIVILEGED AND CONFIDENTIAL

José,

Attached please find the Word versions of your proposed penalty and cannabis business tax implementation legislation and the accompanying legislative digest, which have been prepared for your introduction to the Board of Supervisors.

This email confirms that my use of the /s/ symbol is intended to have the same effect as my signature and my intent to approve the document as to form.

Regards,

Kerne

Kerne H. O. Matsubara

Deputy City Attorney

Office of City Attorney Dennis Herrera

(415) 554-4631 Direct

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