

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Jon Givner, Deputy City Attorney, Office of the City Attorney  
Ben Rosenfield, City Controller, Office of the City Controller

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee

DATE: December 21, 2016

SUBJECT: LEGISLATION INTRODUCED

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

**File No. 161264**

**Ordinance amending the Business and Tax Regulations Code to modify the quarterly filing and payment requirements for payroll expense taxes and gross receipts taxes, to clarify the requirements for obtaining a return filing extension, and to expressly permit taxpayers to apply refunds of the business registration fee, the payroll expense tax, and the gross receipts tax to subsequent tax periods.**

If you have any 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.

c: Todd Rydstrom, Office of the City Controller

1 [Business and Tax Regulations Code - Estimated Payments, Filing Extensions, and Refunds]

2  
3 **Ordinance amending the Business and Tax Regulations Code to modify the quarterly**  
4 **filing and payment requirements for payroll expense taxes and gross receipts taxes, to**  
5 **clarify the requirements for obtaining a return filing extension, and to expressly permit**  
6 **taxpayers to apply refunds of the business registration fee, the payroll expense tax,**  
7 **and the gross receipts tax to subsequent tax periods.**

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

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

16 Section 1. The Business and Tax Regulations Code is hereby amended by revising  
17 Sections 6.9-1, 6.9-3, 6.9-4, 6.15-1, and 6.15-2 to read as follows:

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

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

23 (a) For the ~~H~~hotel ~~T~~ax (Article 7) and the ~~P~~parking ~~T~~ax (Article 9), for each month, on  
24 or before the last day of the following month;

1 (b) For the payroll expense tax (Article 12-A) and the gross receipts tax (Article 12-A-  
2 1) (including the tax on administrative office business activities imposed under Section 953.8 of Article  
3 12-A-1), on or before the last day of February of each year;

4 (c) For the utility users tax (Article 10) and the access line tax (Article 10B), for each  
5 monthly period, on or before the last day of the following month;

6 (d) For the stadium operator admission tax (Article 11), within 5 days after the event,  
7 subject to the provisions of Section 804 of Article 11; and

8 (e) For the business registration certificate (Article 12), on or before the last day of  
9 May preceding the registration year commencing July 1 of that year.

10  
11 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS.**

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

15 (1) Hotel and Parking Taxes. Except as provided in subsection (2) below, the  
16 ~~H~~hotel ~~T~~tax (Article 7) and the ~~P~~parking ~~T~~tax (Article 9) returns shall be filed monthly and taxes  
17 shall be remitted monthly. Such monthly remittances shall be due and payable to the Tax  
18 Collector on or before the last day of the month immediately following the month for which  
19 such remittance is due.

20 (2) Deemed Small Operators. A "Deemed Small Operator" is either a Hotel  
21 Operator or Parking Station Operator that has gross revenues from Rent that do not exceed  
22 \$40,000 annually attributed to either Rent from hotel or parking operations but not a  
23 combination thereof. No Hotel Operator or Parking Station Operator shall be a "Deemed  
24 Small Operator" if their total combined revenue from all parking and hotel operations within  
25 San Francisco is greater than \$250,000 per year. Any valet parking operator required to hold

1 a permit under Police Code Section 1216 shall not be a "Deemed Small Operator."  
2 Notwithstanding any other provision of this Code, a Deemed Small Operator shall be relieved  
3 of certain obligations, specified in subsection (A) below, provided it meets all of the  
4 requirements of subsection (B) below.

5 (A) The Deemed Small Operator shall be relieved of the obligation to do  
6 the following:

7 (i) Obtain a certificate of authority from the Tax Collector under  
8 Section 6.6-1(a) or to execute a bond under Section 6.6-1(h).

9 (ii) Make monthly tax remittances pursuant to Section 6.9-3(a)(1),  
10 provided that its gross revenues from Rent do not exceed \$40,000 annually. At any time that  
11 the gross revenues from Rent exceed \$40,000 annually, the operator must report and file  
12 monthly tax returns as required by Section 6.9-3(a)(1) beginning with the following month.

13 (iii) A Deemed Small Operator of a Parking Station, shall not be  
14 required to pay the Revenue Control Equipment Compliance Fee in Article 22, Section 2219.5  
15 for that Parking Station and shall not be required to hold a commercial parking permit under  
16 Section 1215(b) of the Police Code.

17 (B) To be eligible for relief under this Section 6.9-3(a)(2), a Deemed  
18 Small Operator must meet all of the following requirements:

19 (i) Register for relief using the form prescribed by the Tax  
20 Collector for that purpose, and provide information required by the Tax Collector. The  
21 operator shall demonstrate to the satisfaction of the Tax Collector that it meets all of the  
22 requirements of this Section 6.9-3(a)(2).

23 (ii) Maintain documents and records of all parking transactions in  
24 a manner acceptable to the Tax Collector. Such documents and records must objectively  
25

1 substantiate any relief claimed under subsection (a) of this Section 6.9-3 and be provided to  
2 the Tax Collector upon request.

3 (iii) Timely file with the Tax Collector annually a parking space  
4 occupancy tax or a hotel tax return, regardless of the amount of tax liability shown on the  
5 return. All returns shall be filed on or before January 31 of each year.

6 (iv) Any operator who makes a material misrepresentation in a  
7 return or fails to amend a return within seven days of a material change or who fails to comply  
8 in a timely manner with a rule or regulation promulgated by the Tax Collector shall, in addition  
9 to any other liability that may be imposed under the provisions of this Article 6, be ineligible to  
10 claim relief under this Section 6.9-3.

11 (3) Payroll Expense Tax and Gross Receipts Tax: Estimated Tax Payments.  
12 Except as provided in Section 6.9-3(a)(3)(D) with respect to estimated tax payments of the gross  
13 receipts tax, every person or combined group liable for payment of The payroll expense tax (Article  
14 12-A) ~~and~~ the gross receipts tax (Article 12-A-1) (including the tax on administrative office  
15 business activities imposed under Section 953.8 of Article 12-A-1) shall make three estimated tax  
16 payments, in addition to the annual payments in Section 6.9-3(a)(4), be paid in quarterly installments  
17 as follows:

18 (A) Due Dates. ~~Every person liable for payment of payroll expense tax or~~  
19 ~~gross receipts tax for any tax year shall pay such tax for that tax year in 4 quarterly installments. The~~  
20 ~~first, second, and third quarterly installments~~ The first, second, and third estimated tax payments for a  
21 tax year shall be due and payable, and shall be delinquent if not paid on or before, April 30,  
22 July 31, and October 31, respectively, of that tax year. ~~The fourth installment shall be reported~~  
23 ~~and paid on or before the last day of February of the immediately following tax year.~~ Estimated tax  
24 payments shall be a credit against the person or combined group's total annual payroll expense tax or  
25 gross receipts tax (including the tax on administrative office business activities imposed under Section

1 953.8 of Article 12-A-1) liability, as applicable, for the tax year in which such estimated tax payments  
2 are due.

3 (B) Installment Payments.

4 ~~(i) The first, second, and third quarterly installments shall be a credit~~  
5 ~~against the person's total payroll expense tax or gross receipts tax, as applicable, for the tax year in~~  
6 ~~which such first, second, and third quarterly installments are due. The fourth quarterly installment~~  
7 ~~shall be in an amount equal to the person's total payroll expense tax or gross receipts tax liability for~~  
8 ~~the tax year, as applicable, less the amount of the payroll expense tax or gross receipts tax first,~~  
9 ~~second, and third quarterly installments and other tax payments, if any, actually paid.~~

10 ~~(ii) Payroll Expense Tax Estimated Tax Payments/Installments. For~~  
11 ~~purposes of this Section 6.9-3, a person's estimated tax first, second, and third quarterly installment~~  
12 ~~payments of payroll expense tax for any tax year shall each equal the lesser of:~~

13 ~~(i) 25% of the payroll expense tax liability shown on the person's return~~  
14 ~~for the tax year (or, if no return is filed, 25% of the person's actual payroll expense tax liability for the~~  
15 ~~tax year): or~~

16 ~~(ii) 25% of the payroll expense tax liability shown on the person's return~~  
17 ~~for the preceding tax year. If the person did not file a return for the preceding tax year, the person~~  
18 ~~shall be deemed to have filed a return showing no liability for purposes of this Section 6.9-~~  
19 ~~3(a)(3)(B)(ii), and no estimated tax payments of payroll expense taxes shall be due for the current tax~~  
20 ~~year, be computed by using the person's taxable payroll expense (as defined under Article 12-A) for~~  
21 ~~each quarter and the rate of tax applicable to the tax year in which the first, second, and third quarterly~~  
22 ~~installments are due. Notwithstanding the foregoing sentence, and except for taxpayers under Section~~  
23 ~~953.8 of Article 12-A-1, for tax years commencing after December 31, 2013, the first, second, and third~~  
24 ~~quarterly installments shall be computed using the rates set forth in the following table:~~

<i>Tax Year</i>	<i>1st, 2nd and 3rd Installments</i>
2014	1.350%
2015	1.125%
2016	0.750%
2017	0.375%
2018	0.000%

~~(iii)-(C)~~ Gross Receipts Tax ~~Estimated Tax Payments~~ Installments. For purposes of this Section 6.9-3, ~~a~~ person or combined group's estimated tax payments first, second, and third quarterly installments of gross receipts tax, including the tax on administrative office business activities imposed under Section 953.8 of Article 12-A-1, for any tax year shall each equal the lesser of:

(i) 25% of the gross receipts tax liability (including any liability for the tax on administrative office business activities imposed under Section 953.8 of Article 12-A-1) shown on the person or combined group's return for the tax year (or, if no return is filed, 25% of the person or combined group's actual gross receipts tax liability for the tax year); or

(ii) 25% of the gross receipts tax liability (including any liability for the tax on administrative office business activities imposed under Section 953.8 of Article 12-A-1) shown on the person or combined group's return for the preceding tax year. If the person or combined group did not file a return for the preceding tax year, the person or combined group shall be deemed to have filed a return showing no liability for purposes of this Section 6.9-3(a)(3)(C)(ii), and no estimated tax payments of gross receipts taxes shall be due for the current tax year. ~~be computed by using the person's taxable gross receipts (as defined under Article 12-A-1) for each quarter and the rate of tax applicable to the tax year in which the first, second and third quarterly installments are due.~~

~~Notwithstanding the foregoing sentence, and except for taxpayers under Section 953.8 of Article 12-A-1, for tax years commencing after December 31, 2013, the first, second and third quarterly installments~~

1 shall be computed using the rates applicable to the person's taxable gross receipts under Sections  
2 953.1 through 953.7 of Article 12-A-1, multiplied by the percentages set forth in the following table:

<i>Tax Year</i>	<i>1st, 2nd and 3rd Installments</i>
2014	10%
2015	25%
2016	50%
2017	75%
2018	100%

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7  
8  
9 (C) *Computation of Liability; Payments.*

10 (i) ~~A person's total payroll expense tax liability shall be computed using~~  
11 ~~the rate for that tax year computed, certified, and published by the Controller under Section 903.1 of~~  
12 ~~Article 12-A or as otherwise provided in Article 12-A. A person's total gross receipts tax liability shall~~  
13 ~~be computed using the rate for that tax year computed, certified and published by the Controller under~~  
14 ~~Section 959 of Article 12-A-1, or as otherwise provided in Article 12-A-1.~~

15 (ii) ~~Any amounts paid on a person's payroll expense tax liability for a~~  
16 ~~tax year that are in excess of that person's actual payroll expense tax liability for that year shall be~~  
17 ~~credited to that person's gross receipts tax liability for that year. Any amounts paid on a person's~~  
18 ~~gross receipts tax liability for a tax year that are in excess of that person's actual gross receipts tax~~  
19 ~~liability for that year shall be credited to that person's payroll expense tax liability for that year.~~

20 (D) Lessor of Residential Real Estate: Exemption. Notwithstanding anything  
21 else in this Section 6.9-3(a)(3), a lessor of residential real estate, as defined in Section 954.1 of Article  
22 12-A-1, shall not be required to make estimated tax payments of gross receipts tax, but shall pay its full  
23 gross receipts tax liability on or before the last day of February following the tax year, if the lessor's  
24 gross receipts within the City shown on the lessor's return for either the current tax year or the  
25 preceding tax year did not exceed the threshold in Section 954.1(b)(1) of Article 12-A-1.



1                                    ~~(b)-(E) Estimated Tax Installment Penalties.~~

2                                    ~~(i) Every person or combined group who fails to pay any estimated~~  
3 ~~tax payment installment required under this Section 6.9-3(a)(3) before the relevant delinquency~~  
4 ~~date shall pay an "Estimated Tax Penalty" in the amount of 5 percent of the amount of the~~  
5 ~~underpayment delinquent tax installment per month, or fraction thereof, up to 20 percent in the~~  
6 ~~aggregate, and shall also pay interest on the amount of the delinquent tax installment from the date of~~  
7 ~~delinquency at the rate of 1 percent per month, or fraction thereof, for each month the installment is~~  
8 ~~delinquent, until paid. For purposes of this Section 6.9-3(a)(3)(E), the amount of the underpayment~~  
9 ~~shall be the required estimated tax payment less the amount, if any, of the estimated tax payment paid~~  
10 ~~on or before the delinquency date. The Estimated Tax Penalty and interest provided under this~~  
11 ~~sub~~Section 6.9-3(a)(3)(E) shall not apply if ~~each of the payroll expense tax and gross receipts tax~~  
12 ~~payments are equal to or greater than the actual tax owed for that quarter, or the sum of the payroll~~  
13 ~~expense tax estimated tax payments and gross receipts tax estimated tax payments (including~~  
14 ~~estimated tax payments of the tax on administrative office business activities imposed under Section~~  
15 ~~953.8 of Article 12-A-1) for the quarter is equal to or greater than the sum of the estimated tax~~  
16 ~~payments due for these taxes.~~

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

20                                    ~~26 percent of the sum of the payroll expense tax and gross receipts tax liability for the~~  
21 ~~immediately preceding tax year. For taxpayers under Section 953.8 of Article 12-A-1, for tax year~~  
22 ~~2014 only, the penalty and interest provided under this subsection shall also not apply if a first, second,~~  
23 ~~or third gross receipts tax quarterly installment payment is in an amount that is at least 26 percent of~~  
24 ~~the payroll expense tax liability for the immediately preceding tax year.~~

1 (F) Estimated Tax Filings.

2 (i) Every person or combined group engaged in business in the City must  
3 submit estimated tax filings for payroll expense taxes and gross receipts taxes (including taxes on  
4 administrative office business activities imposed under Section 953.8 of Article 12-A-1), as applicable,  
5 before the delinquency dates for each estimated tax payment of those taxes, if either of the following  
6 are true:

7 a. the person or combined group owes payroll expense tax or  
8 gross receipts tax (including the tax on administrative office business activities imposed under Section  
9 953.8 of Article 12-A-1) estimated tax payments; or

10 b. the person or combined group reported payroll expense taxes  
11 or gross receipts taxes (including taxes on administrative office business activities imposed under  
12 Section 953.8 of Article 12-A-1) on their return for the preceding tax year, regardless of whether the  
13 person owes any estimated tax payments for the current tax year.

14 (ii) If a person or combined group fails to make an estimated tax filing  
15 under this Section 6.9-3(a)(3)(F), the Tax Collector shall deem the estimated tax payment due to be the  
16 amount calculated under Sections 6.9-3(a)(3)(B)(ii) or 6.9-3(a)(3)(C)(ii), as applicable, until the  
17 person or combined group files an annual return for the tax year (or, if no annual return is filed, until  
18 the person or combined group's actual tax liability for the tax year is known), at which time the  
19 estimated tax payments due shall be recalculated under Sections 6.9-3(a)(3)(B) and (C), as applicable.

20 (4) Payroll Expense Tax and Gross Receipts Tax: Computation of Annual Liability:  
21 Payments.

22 (A) The total payroll expense tax liability of a person shall be computed using  
23 the rate for that tax year computed, certified, and published by the Controller under Section 903.1 of  
24 Article 12-A or as otherwise provided in Article 12-A. The total gross receipts tax liability of a person  
25 or combined group, other than a person or combined group subject to tax under Section 953.8 of

1 Article 12-A-1, shall be computed using the rate for that tax year computed, certified, and published by  
2 the Controller under Section 959 of Article 12-A-1, or as otherwise provided in Article 12-A-1. The  
3 total liability for the tax on administrative office business activities of a person or combined group  
4 subject to tax under Section 953.8 of Article 12-A-1 shall be computed as provided in Section 953.8, or  
5 as otherwise provided in Article 12-A-1. Except as otherwise provided, the total payroll expense tax  
6 and gross receipts tax (including the tax on administrative office business activities under Section 953.8  
7 of Article 12-A-1) liabilities, less any estimated tax payments for the tax year, shall be reported and  
8 paid on or before the last day of February of the year immediately following the tax year.

9 (B) Any amounts paid on a person's payroll expense tax liability for a tax year  
10 that are in excess of that person's actual payroll expense tax liability for that year shall be credited to  
11 that person's gross receipts tax liability for that year, if any. Any amounts paid on a person's gross  
12 receipts tax liability for a tax year that are in excess of that person's actual gross receipts tax liability  
13 for that year shall be credited to that person's payroll expense tax liability for that year, if any.

14 (be) Hotel and Parking Taxes. Unless otherwise provided, an operator subject to the  
15 H~~h~~otel T~~t~~ax (Article 7) or the P~~p~~arking T~~t~~ax (Article 9) shall make monthly remittances in the  
16 amount of the actual tax owed.

17 (ca) Forms and Adjustments. Tax remittances required under this Section 6.9-3 shall  
18 be accompanied by a tax remittance form prepared by the Tax Collector, but failure of the Tax  
19 Collector to furnish the taxpayer with a tax remittance form shall not relieve the taxpayer from  
20 any tax payment obligation.

21  
22 **SEC. 6.9-4. DETERMINATIONS, RETURNS AND PAYMENTS; EXTENSION OF TIME FOR**  
23 **FILING A RETURN AND PAYING TAX.**

24 (a) For good cause, the Tax Collector, in his or her discretion, may extend, for a period  
25 not to exceed 60 days, the time for filing any return pursuant to this Article 6 or regulations

1 prescribed by the Tax Collector. For taxes required to be deposited monthly, the Tax  
2 Collector may only extend the time for filing a return for a period not to exceed 30 days. As a  
3 condition of such extension, the person seeking the extension shall make a payment of not  
4 less than 90% ~~percent~~ of such person's *estimated* liability for such period. ~~For purposes of~~  
5 ~~determining the amount of the conditional payment, the Tax Collector may independently establish the~~  
6 ~~taxpayer's estimated tax liability.~~

7 (b) Failure to make the required ~~installment~~ 90% payment will result in the automatic  
8 denial of the person's extension and the person being subject to the standard due dates in this Article 6.  
9 including any penalties, interest, fees, and other consequences of failing to file and pay by those due  
10 dates ~~taxpayer being subject to penalties and interest under Section 6.17-1.~~

11 (c) Notwithstanding subsection (a) of this Section 6.9-4, the Tax Collector may extend  
12 any time for filing any return or payment of tax or excuse penalties for any late filing or late  
13 payment by a period not to exceed 60 days if billing or other administrative duties of the Tax  
14 Collector cannot be performed in a timely manner.

15  
16 **SEC. 6.15-1. REFUNDS.**

17 (a) Claims for Refund; Limitations. Except as otherwise provided in subsections (f)  
18 and (g) of this Section 6.15-1, the Controller shall refund or cause to be refunded the amount  
19 of any tax, interest, or penalty that has been overpaid or paid more than once, or has been  
20 erroneously or illegally collected or received by the City, provided the person that paid such  
21 amount files a claim in writing with the Controller within the later of one year of: (1) payment  
22 of such amount; (2) the date the return accompanying such payment was due; or (3) the date  
23 on which such amount requested on ~~an~~ return, amended return, or request for refund timely  
24 filed under subsection (g) of this Section 6.15-1 was denied under that subsection (g).  
25

1 (b) Claims for Refund; Contents. Any claim filed under subsections (a)-(f) of this  
2 Section 6.15-1 must state: (1) the specific amount claimed to have been overpaid or paid  
3 more than once, or erroneously or illegally collected or received by the City; (2) the tax  
4 periods at issue; (3) the grounds upon which the claim is founded, with specificity sufficient to  
5 enable the responsible City officials to understand and evaluate the claim; and (4) the date on  
6 which the amount requested on a ~~an~~ return, amended return, or request for refund timely filed  
7 under subsection (g) of this Section 6.15-1 was denied under that subsection (g), if the person  
8 filing the claim filed such a ~~an~~ return, amended return, or request for refund.

9 (c) Claims for Refund; Third-Party Taxes. The customer who pays a third-party tax to  
10 an Operator is the proper party to seek the refund of a disputed third-party tax. No Operator  
11 or other person responsible for collecting or remitting a disputed third-party tax may obtain a  
12 tax refund unless that Operator or other person proves that the tax has not been passed on to  
13 its customers or any other person.

14 (d) Claims for Refund; Applicable Law. Claims for refund shall be made according to  
15 California Government Code, Title I, Division 3.6, Part 3. For purposes of subsections (a)-(f)  
16 of this Section 6.15-1, a claim shall be deemed to accrue on the later of: (1) the date the  
17 return was due; (2) the date the tax was paid; or (3) the date the refund requested on a ~~an~~  
18 return, amended return, or request for refund timely filed pursuant to subsection (g) of this  
19 Section 6.15-1 was denied under that subsection (g). The Controller shall furnish a form to be  
20 used for claims.

21 (e) Claims for Refund; Actions by the City. The Controller shall enter the claim in the  
22 claim register, and shall forthwith forward it to the City Attorney. The City Attorney is  
23 designated to take such actions on claims as authorized by California Government Code, Title  
24 1, Division 3.6, Part 3, Chapter 2, except that the City Attorney's authority with regard to  
25 rejecting or allowing claims shall be as provided in this Section 6.15-1. The City Attorney may

1 reject the claim, and shall notify the claimant of such rejection. Allowance or compromise and  
2 settlement of claims under this Section 6.15-1 in excess of \$25,000 shall require the written  
3 approval of the City Attorney and approval of the Board of Supervisors by resolution. The City  
4 Attorney may allow or compromise and settle such claims if the amount is \$25,000 or less.  
5 No claim may be paid until the Controller certifies that monies are available from the proper  
6 funds or appropriations to pay the claim as allowed or as compromised and settled. If the City  
7 approves the claim, the City may refund the excess amount collected or paid, or may credit  
8 such amount toward any amount due and payable to the City from the person from whom it  
9 was collected or by whom it was paid, and the balance may be refunded to such person, or  
10 the person's administrator or executor.

11 (f) Claims for Refund; Waiver of Written Filing Requirement. The City Attorney, in his  
12 or her discretion and upon good cause shown, prior to the expiration of the one-year  
13 limitations period, may waive the requirement set forth in subsection (a) of this Section 6.15-1  
14 that a taxpayer file a written claim for a refund in any case in which the Tax Collector and City  
15 Attorney determine on the basis of other evidence that:

- 16 (1) an amount of tax, interest, or penalty has been overpaid or paid more than  
17 once, or has been erroneously or illegally collected or received by the City; and  
18 (2) all other conditions precedent to the payment of a refund to the taxpayer  
19 have been satisfied.

20 (g) Requests for Refund; Refunds Permissible Without a Claim. The Tax Collector  
21 may authorize the Controller to refund tax, interest, or penalty payments, without a refund  
22 claim having been filed and without review by the City Attorney, if the Tax Collector  
23 determines that the amount paid exceeds the tax, penalties, and interest due. The person  
24 that made the overpayment may request such a refund from the Tax Collector on ~~a~~ return,  
25 amended return, or request for refund form that is issued by the Tax Collector and that is filed

1 with the Tax Collector within the later of one year of the payment of such amount or the date  
2 the return accompanying such payment was due. The Tax Collector may also authorize the  
3 Controller to refund the overpaid tax, interest, or penalty payments on its own initiative within this one-  
4 year period. A refund requested on ~~a~~ return, amended return, or request for refund form  
5 under this subsection (g) shall automatically be deemed denied for purposes of subsections  
6 (a), (b), and (d) of this Section 6.15-1 if the Tax Collector does not grant or deny the refund  
7 request within one year of the date it was filed. Any action by the Tax Collector after a refund  
8 request under this subsection (g) has been deemed denied shall not constitute a denial and  
9 shall have no effect on the statute of limitations for filing a claim for refund under subsections  
10 (a)-(f) of this Section 6.15-1. In lieu of requesting a refund on a return, amended return, or request  
11 for refund form, a taxpayer may elect to apply an overpayment of the business registration fee in  
12 Article 12, the payroll expense tax in Article 12-A, or the gross receipts tax in Article 12-A-1 (including  
13 the tax on administrative office business activities under Section 953.8 of Article 12-A-1) as a credit  
14 against the taxpayer's immediately succeeding payment or payments due of any of these three tax types.  
15 Any election to apply an overpayment to the taxpayer's future liability shall be binding and may not  
16 later be changed by the taxpayer.

17  
18 **SEC. 6.15-2. REFUNDS; INTEREST.**

19 (a) Any amounts refunded prior to entry of a final judgment in a judicial proceeding  
20 shall bear interest at the rate for prejudgment interest on refunds of local taxes or fees  
21 provided by ~~S~~ Section 3287(c) of the California Civil Code, as amended from time to time, and  
22 shall be computed from the date of payment to the date of refund.

23 (b) If the Controller offsets overpayments for a period or periods against another  
24 liability or liabilities currently owed to the City, or against penalties or interest on the other  
25

1 liability or liabilities currently owed to the City, the taxpayer will be credited with interest on the  
2 amount so applied at the rate of interest set forth above, computed from the date of payment.

3 (c) If a taxpayer elects to apply all or part of an overpayment of the business registration  
4 fee in Article 12, the payroll expense tax in Article 12-A, or the gross receipts tax in Article 12-A-1  
5 (including the tax on administrative office business activities under Section 953.8 of Article 12-A-1) as  
6 a credit against the taxpayer's immediately succeeding payment or payments due of any of these three  
7 tax types, a refund, inclusive of any interest accrued up to the date of the taxpayer's election, against a  
8 future San Francisco tax liability, the taxpayer will not be credited with interest on the amount so  
9 applied ~~from the date of the taxpayer's election~~.

10  
11 Section 2. Effective and Operative Dates.

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

16 (b) Operative Dates. This ordinance shall become operative immediately upon the  
17 effective date of this ordinance. The amendments in this ordinance made to Sections 6.9-1  
18 and 6.9-3 shall apply to all tax periods commencing on or after January 1, 2017, with prior law  
19 governing all tax periods commencing prior to January 1, 2017. The amendments in this  
20 ordinance made to Sections 6.15-1 and 6.15-2 shall apply to all pending and future  
21 overpayments, regardless of whether the overpayments relate to tax periods ending before or  
22 after the effective date of this ordinance.

23  
24 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors  
25 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,



1 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal  
2 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment  
3 additions, and Board amendment deletions in accordance with the "Note" that appears under  
4 the official title of the ordinance.

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

14  
15 APPROVED AS TO FORM:  
16 DENNIS J. HERRERA, City Attorney

17 By:   
18 Scott M. Reiber  
19 Deputy City Attorney

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## LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Estimated Payments, Filing Extensions, and Refunds]

**Ordinance amending the Business and Tax Regulations Code to modify the quarterly filing and payment requirements for payroll expense taxes and gross receipts taxes, to clarify the requirements for obtaining a return filing extension, and to expressly permit taxpayers to apply refunds of the business registration fee, the payroll expense tax, and the gross receipts tax to subsequent tax periods.**

### Existing Law

Existing law requires taxpayers to make quarterly payments of their current year's payroll expense taxes and gross receipts taxes calculated as the person's taxable payroll expense and taxable gross receipts for that quarter multiplied by tax rates specified in the code. Failure to pay such amounts subjects the taxpayer to a penalty of 5% per month (up to 20%), plus interest. However, such penalty and interest does not apply if the sum of the payroll expense tax and gross receipts tax quarterly payments made equals or exceeds 26% of the person's tax liability for the prior year.

Additionally, existing law permits taxpayers to obtain an extension of the date by which they must file their tax returns if they pay 90% of their estimated tax liability by the original due date for the return. Failure to make this 90% payment results in the denial of the extension and the application of penalties and interest under the code.

Finally, existing law does not address the ability of taxpayers to request that an overpayment of taxes be applied to a future tax liability, other than indicating that interest will be paid on such overpayment only through the date of the election to apply that overpayment to a future liability.

### Amendments to Current Law

For tax years commencing on or after January 1, 2017, this ordinance would modify the quarterly payments that taxpayers must make of their current year's payroll expense tax and gross receipts tax liabilities in several ways:

- Rather than calculating the quarterly payments based on the person's taxable payroll expense and taxable gross receipts for the quarter, this ordinance would generally require that the payments be calculated as the lower of 25% of the tax liability shown on the person's return for the current year or 25% of the tax liability shown on the person's return for the prior year.

- Lessors of residential real estate would be exempt from making the gross receipts tax quarterly payments if the gross receipts within the City shown on their current or prior year's tax return did not exceed \$1,000,000, as adjusted for inflation under the code.
- The penalty for failing to pay these quarterly amounts would be lowered to 5% of the underpayment, with no interest. This penalty would be subject to waiver if: (1) the failure to pay occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect; (2) the taxpayer made an inadvertent error in the amount of payment made, as long as the inadvertent error was corrected within 10 days of the Tax Collector issuing a notice of deficiency; or (3) waiver is ordered by a court of competent jurisdiction.
- Taxpayers would be required to make quarterly filings if they owe a quarterly payment, or if they reported a tax liability on their return for the prior tax year. Failure to make such filings would result in the Tax Collector temporarily deeming the required quarterly payment to be 25% of the tax liability reported on the person's return for the prior tax year. This temporary liability would be revised to reflect the person's actual quarterly payment obligation once the person makes the required quarterly filing or once the person files an annual tax return for the current tax year or the person's annual tax liability for the current tax year is known.

This ordinance would clarify that the required 90% payment to obtain an extension to file is 90% of the person's actual tax liability for the period. It would also clarify the consequences of failing to make such 90% payment.

Finally, this ordinance would specify that taxpayers could make a binding election to apply overpayments of business registration fees, payroll expense taxes, and gross receipts taxes to future liabilities of these taxes. If such election is made, this ordinance would repeal the provision granting the taxpayer interest through the date of the election, and would instead specify that no interest would be paid on such overpayments. This amendment would apply to all pending and future overpayments of business registration fees, payroll expense taxes, and gross receipts taxes, regardless of whether the overpayments relate to tax periods ending before or after the effective date of this ordinance.

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