

1 [Business and Tax Regulations Code - Procedural Rules for Refunds of Business Taxes and
2 Real Property Transfer Taxes]

3 **Ordinance amending the Business and Tax Regulations Code to conform the City’s**
4 **business tax and real property transfer tax refund provisions to State law, expand the**
5 **circumstances and extend the time in which the Tax Collector can issue refunds of**
6 **business taxes, extend the date on which a claim accrues for purposes of filing a claim**
7 **for refund of business taxes, and make other revisions to the City’s rules regarding**
8 **refunds of business taxes and real property transfer taxes.**

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

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

17 Section 1. The Business and Tax Regulations Code is hereby amended by revising
18 Sections 6.13-5, 6.15-1, 6.15-2, and 6.15-4 (including renumbering it as Section 6.15-3), and
19 deleting Section 6.15-3, to read as follows:

20 **SEC. 6.13-5. EXHAUSTION OF ADMINISTRATIVE REMEDIES.**

21 Prior to seeking judicial relief, persons against whom a jeopardy determination or
22 deficiency determination is made must exhaust their administrative remedies by:

23 (a) petitioning to the Tax Collector for redetermination and including all specific
24 grounds supporting the petition for redetermination;

25 (b) paying the full amount owed as set forth in the final determination; and

1 (c) presenting a claim for refund to the Controller under subsections (a) – (f) of Section
2 6.15-1 ~~et seq.~~, which the City Attorney has denied or which the claimant has deemed denied
3 under Section 6.15-1 (d) California Government Code, Title 1, Division 3.6, Part 3.

4 **SEC. 6.15-1. REFUNDS.**

5 (a) Claims for Refund; Limitations. Except as otherwise provided in subsections~~division~~
6 (e) and (g) of this Section 6.15-1~~below~~, the Controller shall refund or cause to be refunded the
7 amount of any tax, interest, or penalty that has been overpaid or paid more than once, or has
8 been erroneously or illegally collected or received by the City, provided the person that paid
9 such amount files a claim in writing with the Controller, within the later of one year of:
10 (1) payment of such amount; (2) the date ~~or when~~ the return accompanying such payment was
11 due; or (3) the date on which such amount requested on an amended return or request for refund
12 timely filed under subsection (g) of this Section 6.15-1 was denied under that subsection (g).

13 (b) Claims for Refund; Contents. Any claim filed under subsections (a) – (f) of this Section
14 6.15-1 must state, a verified claim in writing therefor, stating under penalty of perjury: (i)(1) the
15 specific amount claimed to have been overpaid or paid more than once, or erroneously or
16 illegally collected or received by the City; (ii)(2) the tax periods at issue; and (iii)(3) the
17 grounds upon which the claim is founded, with specificity sufficient to enable the ~~Tax Collector~~
18 ~~and other~~ responsible City officials to understand and evaluate the claim; and (4) the date on
19 which the amount requested on an amended return or request for refund timely filed under subsection
20 (g) of this Section 6.15-1 was denied under that subsection (g), if the person filing the claim filed such
21 an amended return or request for refund.

22 (c) Claims for Refund; Third-Party Taxes. The customer who pays a third-party tax to an
23 Operator is the proper party to seek the refund of a disputed third-party tax. No Operator or other
24 person responsible for collecting or remitting a disputed third-party tax may obtain a tax refund unless
25

1 that Operator or other person proves that the tax has not been passed on to its customers or any other
2 person.

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

9 (e) Claims for Refund; Actions by the City. The Controller shall enter the claim in the
10 claim register, and shall forthwith forward it to the City Attorney. ~~If~~The City Attorney
11 ~~determines the claim is~~ designated to take such actions on claims as authorized by California
12 Government Code, Title 1, Division 3.6, Part 3, Chapter 2, except that~~insufficient,~~ the City Attorney's
13 authority with regard to rejecting or allowing claims shall be as provided in this Section 6.15-1~~shall~~
14 ~~give the claimant written notice of how the claim is insufficient, stating with particularity the defects or~~
15 ~~omissions therein. The City Attorney shall send the claimant that notice within 20 days after the~~
16 ~~claimant presents the claim.~~ The City Attorney may reject ~~any and all~~the ~~claims the Controller~~
17 ~~forwards to the City Attorney,~~ and shall notify the claimant of such rejection. Allowance or
18 compromise and settlement of claims under this Section 6.15-1 in excess of \$25,000 shall
19 require the written approval of the City Attorney and approval of the Board of Supervisors by
20 resolution. The City Attorney may allow or compromise and settle such claims if the amount
21 is \$25,000 or less. No claim may be paid until the Controller certifies that monies are
22 available from the proper funds or appropriations to pay the claim as allowed or as
23 compromised and settled. If the City approves the claim, the City may refund the excess amount
24 collected or paid, or may credit such amount toward any amount due and payable to the City from the
25 person from whom it was collected or by whom it was paid, and the balance may be refunded to such

1 person, or the person's administrator or executor ~~For purposes of this Section, a claim shall be deemed~~
2 ~~to accrue on the later of the date the return was due or the tax was paid.~~

3 ~~(b) The claim shall be on a form furnished by the Controller. A claim may be returned to the~~
4 ~~person if it was not presented using the form. A refund claim may be made only by the taxpayer or~~
5 ~~other person determined to be liable for the tax or said person's guardian or conservator. No other~~
6 ~~agent, including the taxpayer's attorney, may sign a refund claim. Class claims for refunds shall not be~~
7 ~~permitted. The customer who pays a third party tax to an operator is the proper party to seek the~~
8 ~~refund of a disputed third party tax. No operator or other person responsible for collecting or remitting~~
9 ~~a disputed third party tax may obtain a tax refund unless that operator or other person has paid the tax~~
10 ~~to the Tax Collector pursuant to a deficiency determination or a jeopardy determination in which case~~
11 ~~the operator or other person who paid the tax, and not the individual customer, may seek a refund. If~~
12 ~~the claim is approved as set forth in subsection (a) above, the excess amount collected or paid may be~~
13 ~~refunded or may be credited on any amount due and payable, from the person from whom it was~~
14 ~~collected or by whom paid and the balance may be refunded to such person, his administrator or~~
15 ~~executors.~~

16 ~~(e)~~ **Claims for Refund; Waiver of Written Filing Requirement.** The City Attorney, in his or
17 her discretion and upon good cause shown, prior to the expiration of the ~~one~~-year limitations
18 period, may waive the requirement set forth in sub~~section~~division (a) ~~of this Section 6.15-1 above~~
19 that a taxpayer file a written ~~verified~~ claim for a refund in any case in which the Tax Collector
20 and City Attorney determine on the basis of other evidence that:

21 ~~(i)(1)~~ an amount of tax, interest, or penalty has been overpaid or paid more than
22 once, or has been erroneously or illegally collected or received by the City; and

23 ~~(ii)(2)~~ all other conditions precedent to the payment of a refund to the taxpayer
24 have been satisfied.

1 ~~(d) The City Attorney shall allow, reject or otherwise act upon a claim for refund in a manner~~
2 ~~specified in Government Code Section 912.6 within 45 days after it is presented to the Controller. If~~
3 ~~the claim is amended, the City Attorney shall act on the amended claim within 45 days after the~~
4 ~~amended claim is presented. The claimant may agree in writing to extend the period within which the~~
5 ~~City Attorney must act on the claim for refund prior to expiration of the original 45-day period. The~~
6 ~~claimant may deem the claim for refund denied and seek judicial relief if the City Attorney does not act~~
7 ~~upon the claim within the 45-day period, or such extended period to which the claimant has agreed.~~

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

21 ~~(i) the tax was paid more than once; or~~

22 ~~(ii) the amount paid exceeds the amount due as a result of an arithmetic or clerical~~
23 ~~error. The Tax Collector may authorize such a refund no later than 1 year after payment of the tax.~~

1 **SEC. 6.15-2. REFUNDS; INTEREST.**

2 (a) Any amounts refunded prior to entry of a final judgment in a judicial proceeding shall
3 bear interest at the rate for prejudgment interest on refunds of local taxes or fees provided by section
4 3287(c) of the California Civil Code, as amended from time to time of 2/3 of 1 percent per month or
5 fraction thereof; or the average rate of interest computed over the preceding 6-month period obtained,
6 by the San Francisco Treasurer on deposits of public funds at the time refund is made, whichever rate
7 is lower, and shall be computed from the date of payment to the date of refund.

8 (b) If the Controller offsets overpayments for a period or periods against underpayments
9 for another period or periods another liability or liabilities owed to the City, or against penalties or
10 against interest on the underpayments other liability or liabilities owed to the City, the taxpayer will
11 be credited with interest on the amount so applied at the rate of interest set forth above,
12 computed from the date of payment.

13 (c) If a taxpayer elects~~chooses~~ to apply all or part of a refund, inclusive of any interest
14 accrued up to the date of the taxpayer's election, against a future San Francisco tax liability ~~for a~~
15 future period, the taxpayer will not be credited with interest on the amount so applied from the
16 date of the taxpayer's election.

17 ~~**SEC. 6.15-3. REFUNDS; NOTICE OF DENIAL.**~~

18 ~~*If the claim for refund is denied, the City Attorney shall serve or cause to be served notice of*~~
19 ~~*such denial upon the taxpayer personally or by mail. The notice of denial of such claim shall be in a*~~
20 ~~*form substantially similar to the form for notice of rejection of claims set forth in Government Code*~~
21 ~~*Section 913. If the City Attorney does not serve such a notice of denial of claim, then the statute of*~~
22 ~~*limitations for filing a suit for refund shall be as set forth in Section 6.15-4.*~~

1 **SEC. 6.15-43. EXHAUSTION OF ADMINISTRATIVE REMEDIES; PRESENTATION OF**
2 **CLAIM FOR REFUND AS PREREQUISITE TO SUIT; PAYMENT OF DISPUTED AMOUNT**
3 **AND PETITION FOR REFUND; LIMITATIONS.**

4 (a) Persons claiming they are aggrieved under the Business and Tax Regulations
5 Code must prior to seeking judicial relief:

6 (1) pay the amount of the disputed tax, penalty, and interest;

7 (2) if the disputed tax was paid pursuant to the Tax Collector's jeopardy
8 determination or deficiency determination, file a petition for redetermination, pursuant to
9 Section 6.12-5 or Section 6.13-1; and

10 (3) present a claim for refund to the Controller and allow action to be taken on
11 such claim, pursuant to subsections (a) – (f) of Section 6.15-1.

12 (b) The person who paid the tax, his or her guardian or conservator, the executor of his or her
13 will, or the administrator of his or her estate may bring an action in Superior Court against the City
14 and County of San Francisco to recover taxes, interest, or penalties that the City has refused to refund
15 on a claim for refund pursuant to subsections (a) – (f) of Section 6.15-1. No other person may bring
16 such an action; but if another person should do so, judgment shall not be rendered for the plaintiff.
17 Any suit for refund of taxes, interest, or penalties shall be commenced within the time provided by
18 California Government Code section 945.6, as amended from time to time~~Any suit for tax refund shall~~
19 ~~be commenced no later than 6 months from the date the notice of denial of the claim for refund was~~
20 ~~personally delivered or deposited in the mail, or within 2 years of accrual of the cause of action if~~
21 ~~notice of denial of the claim for refund is not served on the person as set forth in Section 6.15-3.~~

22 Persons claiming they are aggrieved under the Business and Tax Regulations Code may not
23 ~~file seek~~ any type of judicial ~~action~~ relief other than a refund action. Notwithstanding any other
24 section of this Code, no claim or defense that, for any reason, a tax is not due or cannot be
25

1 applied under this Code may be raised in any judicial proceeding except ~~as specified in an~~
2 action for refund of the disputed tax~~preceding sentence.~~

3
4 Section 2. The Business and Tax Regulations Code is hereby amended by revising
5 Section 1113, and adding Sections 1113.2 and 1113.3, to read as follows:

6 **SEC. 1113. CLAIMS FOR REFUNDS.**

7 (a) Except as otherwise provided in subsection (c) of this Section 1113 or as provided in
8 Section 1113.1, the Controller shall refund or cause to be refunded the amount of any tax, interest, or
9 penalty imposed under this Article 12-C that has been overpaid or paid more than once, or has been
10 erroneously or illegally collected or received by the City, provided the person that paid such amount
11 files a claim in writing with the Controller within the later of one year of payment of such amount or
12 the date the tax was due. The claim must state: (1) the specific amount claimed to have been overpaid
13 or paid more than once, or erroneously or illegally collected or received by the City; (2) the date of
14 transfer; and (3) the grounds upon which the claim is founded, with specificity sufficient to enable the
15 responsible City officials to understand and evaluate the claim.

16 (b) Claims for refund shall be made according to California Government Code, Title 1,
17 Division 3.6, Part 3. The Controller shall furnish a form to be used for these claims. The Controller
18 shall enter the claim in the register, and shall forthwith forward it to the City Attorney. The City
19 Attorney is designated to take such actions on claims as authorized by California Government Code,
20 Title 1, Division 3.6, Part 3, Chapter 2, except that the City Attorney's authority with regard to
21 rejecting or allowing claims shall be as provided in this Section 1113. The City Attorney may reject the
22 claim, and shall notify the claimant of such rejection. Allowance or compromise and settlement of
23 claims under this Section 1113 in excess of \$25,000 shall require the written approval of the City
24 Attorney and approval of the Board of Supervisors by resolution. The City Attorney may allow or
25 compromise and settle such claims if the amount is \$25,000 or less. No claim may be paid until the

1 Controller certifies that monies are available from the proper funds or appropriations to pay the claim
2 as allowed or as compromised and settled. If the City approves the claim, the City may refund the
3 excess amount collected or paid, or may credit such amount toward any amount due and payable to the
4 City from the person from whom it was collected or by whom it was paid, and the balance may be
5 refunded to such person, or the person's administrator or executor. For purposes of this Section 1113,
6 a claim shall be deemed to accrue on the later of the date the tax was due or the date the tax was paid.

7 (c) The City Attorney, in his or her discretion and upon good cause shown, prior to the
8 expiration of the one-year limitations period, may waive the requirement set forth in subsection (a) of
9 this Section 1113 that a taxpayer file a written claim for a refund in any case in which the Recorder
10 and City Attorney determine on the basis of the evidence that:

11 (1) an amount of tax, interest, or penalty has been overpaid or paid more than once, or
12 has been erroneously or illegally collected or received by the City; and

13 (2) all other conditions precedent to the payment of a refund to the taxpayer have been
14 satisfied.

15 (d) If a refund claim is allowed under this Section 1113 or a refund request is allowed under
16 Section 1113.1, the Controller will not pay the refund unless the taxpayer first records a document that
17 reflects payment of tax in an amount reduced by the amount of the refund.

18 ~~Claims for refunds of taxes imposed pursuant to this ordinance shall be governed by the~~
19 ~~provisions of Sections 6.15-1, 6.15-3, and 6.15-4 of the San Francisco Business and Tax Regulations~~
20 ~~Code, as those sections currently read and as they may be amended, or interpreted by regulations, in~~
21 ~~the future. The references in those sections to a "return" shall mean the transfer tax affidavit, the~~
22 ~~references to "tax period" shall mean date of transfer, and the references to the "Tax Collector" shall~~
23 ~~mean the Recorder. If a refund claim is allowed under this section or Section 1113.1, the Controller~~
24 ~~will not pay the refund unless the taxpayer first records a document that reflects payment of tax in an~~
25

1 ~~amount reduced by the amount of the refund. This requirement does not apply if the taxpayer elected to~~
2 ~~record the deed in accordance with Section 1111 without any statement of transfer tax paid.~~

3 **SEC. 1113.2. REFUNDS; INTEREST.**

4 (a) Any amounts refunded prior to entry of a final judgment in a judicial proceeding shall bear
5 interest at the rate for prejudgment interest on refunds of local taxes or fees provided by section
6 3287(c) of the California Civil Code, as amended from time to time, and shall be computed from the
7 date of payment to the date of refund.

8 (b) If the Controller offsets overpayments for a particular transfer against another liability or
9 liabilities owed to the City, or against penalties or interest on the other liability or liabilities owed to
10 the City, the taxpayer will be credited with interest on the amount so applied at the rate of interest set
11 forth above, computed from the date of payment.

12 (c) If a taxpayer elects to apply all or part of a refund, inclusive of any interest accrued up to
13 the date of the taxpayer's election, against a future San Francisco tax liability, the taxpayer will not be
14 credited with interest on the amount so applied from the date of the taxpayer's election.

15 **SEC. 1113.3. EXHAUSTION OF ADMINISTRATIVE REMEDIES; PRESENTATION OF**
16 **CLAIM FOR REFUND AS PREREQUISITE TO SUIT; PAYMENT OF DISPUTED AMOUNT**
17 **AND PETITION FOR REFUND; LIMITATIONS.**

18 (a) Persons claiming they are aggrieved under the Business and Tax Regulations Code must
19 prior to seeking judicial relief:

20 (1) pay the amount of the disputed tax, penalty, and interest; and

21 (2) present a claim for refund to the Controller and allow action to be taken on such
22 claim, pursuant to Section 1113.

23 (b) The person who paid the tax, his or her guardian or conservator, the executor of his or her
24 will, or the administrator of his or her estate may bring an action in Superior Court against the City
25 and County of San Francisco to recover taxes, interest, or penalties that the City has refused to refund

1 on a claim for refund pursuant to Section 1113. No other person may bring such an action; but if
2 another person should do so, judgment shall not be rendered for the plaintiff. Any suit for refund of
3 taxes, interest, or penalties shall be commenced within the time provided by California Government
4 Code section 945.6, as amended from time to time. Persons claiming they are aggrieved under the
5 Business and Tax Regulations Code may not file any type of judicial action other than a refund action.
6 Notwithstanding any other section of this Code, no claim or defense that, for any reason, a tax is not
7 due or cannot be applied under this Code may be raised in any judicial proceeding except in an action
8 for refund of the disputed tax.

9
10 Section 3. Effective Date. This ordinance shall become effective 30 days after
11 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
12 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
13 of Supervisors overrides the Mayor's veto of the ordinance.

14
15 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the "Note" that appears under
20 the official title of the ordinance.

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

23 By: _____
24 SCOTT M. REIBER
25 Deputy City Attorney

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