

1 [Business and Tax Regulations Code - Excluding Stock-Based Compensation from Payroll  
2 Expense, Tax Years 2011 through 2017]

3 **Ordinance amending the San Francisco Business and Tax Regulations Code, Article**  
4 **12-A, Section 906.4, to clarify the amount of payroll expense tax attributable to stock-**  
5 **based compensation that a person may exclude from its payroll expense tax liability.**

6  
7 NOTE: Additions are *single-underline italics Times New Roman*;  
8 deletions are ~~*strike-through italics Times New Roman*~~.  
9 Board amendment additions are double-underlined;  
10 Board amendment deletions are ~~strike through normal~~.

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

12 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended  
13 by amending Section 906.4, to read as follows:

14 **SEC. 906.4. STOCK-BASED COMPENSATION EXCLUSION.**

15 (a) Definitions.

16 (1) "Eligible Person" shall mean a person who undertakes an initial  
17 public offering on a public stock exchange, or experiences a change in control prior to any  
18 such initial public offering, during the period this exclusion is in effect.

19 (2) "Stock-Based Compensation" includes all incentive and non-  
20 statutory stock options granted prior to the date a person makes an initial public offering or  
21 undergoes a change in control including all underlying stock relating to such options,  
22 restricted stock, restricted stock units, and stock acquired as a result of employee stock  
23 purchase plans.  
24  
25

1 (b) An Eligible Person may exclude from its Payroll Expense, as defined in  
2 Section 902.1, compensation related to Stock-Based Compensation for the tax years 2011  
3 through 2017.

4 (c) The amount of Payroll Expense attributable to Stock-Based  
5 Compensation that a person may exclude on an annual basis from its Payroll Expense is  
6 calculated as follows:

7 (1) A person who, in tax year 2010, paid more than \$750,000 in  
8 Payroll Expense Tax attributable to Stock-Based Compensation may exclude Payroll Expense  
9 attributable to Stock-Based Compensation in excess of that paid in tax year 2010;

10 (2) A person who, in tax year 2010, did not pay more than \$750,000 in  
11 Payroll Expense Tax attributable to Stock-Based Compensation may exclude Payroll Expense  
12 Tax attributable to Stock-Based Compensation in excess of \$750,000.

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

15 (1) File with the Tax Collector, on a form prescribed by the Tax  
16 Collector, an affidavit attesting to the facts establishing entitlement to the tax exclusion. The  
17 affidavit shall be supported by such other documentation as the Tax Collector shall prescribe.

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

21 (3) File an annual payroll expense tax return with the Tax Collector  
22 regardless of the amount of tax liability shown on the return after claiming the exclusion  
23 provided for in this Section.

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

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

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

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

8 (i) The Stock-Based Compensation Exclusion in this Section may not be  
9 claimed concurrently with any other Payroll Expense Tax exclusion.

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

14 (k) Not later than six months prior to the expiration of this ordinance, the  
15 Controller shall perform an assessment and review of the effect of the Stock-Based  
16 Compensation Exclusion under this Section. Based on such assessment and review, the  
17 Controller shall prepare and submit an analysis to the Board of Supervisors. The analysis  
18 shall be based on criteria deemed relevant by the Controller, and may include but is not  
19 limited to, data contained in the annual report to the Board of Supervisors as required by  
20 subsection (j). In its analysis, the Controller shall recommend to the Board of Supervisors  
21 whether the exclusion should be extended for an additional period.

22 (l) This Section 906.4 shall expire by operation of law on December 31,  
23 2017, unless extended by the Board of Supervisors or the voters, and the City Attorney shall  
24 cause it to be removed from future editions of the Business and Tax Regulations Code.

1           Section 2. Effective Date. This ordinance shall become effective 30 days from the  
2 date of passage.

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

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

12 By: \_\_\_\_\_  
13       STEPHANIE PROFITT  
14       Deputy City Attorney

15 n:\tax\as2011\1200226\00741537.doc