

BOARD of SUPERVISORS



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MEMORANDUM

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

FROM: *ll*
bn Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

DATE: April 19, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Sub-Committee

The Board of Supervisors' Budget and Finance Sub-Committee has received the following 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. 180373

Motion ordering submitted to the voters at an election to be held on November 6, 2018, an Ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services and private transit vehicle services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

Please return this cover sheet with the Commission's response to me 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

1 [Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on
2 Transportation Network Company Services and Private Transit Vehicle Services]

3 **Motion ordering submitted to the voters at an election to be held on November 6, 2018,**
4 **an Ordinance amending the Business and Tax Regulations Code to add a new gross**
5 **receipts tax category for transportation network company services and private transit**
6 **vehicle services, revise the application of the gross receipts tax for persons engaged in**
7 **multiple business activities, and eliminate the payroll expense tax exclusion and the**
8 **gross receipts tax limit for certain persons in the Central Market Street and Tenderloin**
9 **Area; and increasing the City's appropriations limit by the amount collected under the**
10 **new gross receipts tax category for four years from November 6, 2018.**

11
12 **MOVED,** That the Board of Supervisors hereby submits the following ordinance to the
13 voters of the City and County of San Francisco, at an election to be held on November 6,
14 2018.

15
16 **Ordinance amending the Business and Tax Regulations Code to add a new gross**
17 **receipts tax category for transportation network company services and private transit**
18 **vehicle services; revising the application of the gross receipts tax for persons engaged**
19 **in multiple business activities; eliminating the payroll expense tax exclusion and the**
20 **gross receipts tax limit for certain persons in the Central Market Street and Tenderloin**
21 **Area; and increasing the City's appropriations limit by the amount collected under the**
22 **new gross receipts tax category for four years from November 6, 2018.**

23 **NOTE:** **Unchanged Code text and uncodified text** are in plain font.
24 **Additions to Codes** are in *single-underline italics Times New Roman font*.
25 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

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

2
3 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
4 ordinance shall be submitted to the qualified electors of the City and County of San Francisco
5 at the November 6, 2018, consolidated general election.
6

7 Section 2. Purpose and Findings. The People of the City and County of San Francisco
8 declare their purpose and findings in enacting this ordinance as follows:

9 (a) Promoting and maintaining the City's economic competitiveness requires a high
10 level of investment in the City's infrastructure and operations.

11 (b) The gross receipts tax provides a significant source of the City's revenue for
12 general purposes of the City.

13 (c) As a charter city and to raise revenue for general purposes of the City, the City
14 desires to exercise its sovereign right of taxation under the California Constitution to the
15 maximum extent permissible.

16 (d) Transportation service industries utilizing emerging and new technologies need to
17 pay their fair share of taxes to the City.

18 (e) The addition of a new gross receipts tax category for transportation network
19 company services and private transit vehicle services reflects emerging and new technologies
20 that are supplementing or replacing previous business models and recognizes the need to
21 generate revenue to maintain a high quality of life and continued economic growth in the City.
22

23 Section 3. The Business and Tax Regulations Code is hereby amended by adding
24 Section 953.7.5 to Article 12-A-1 and revising Sections 953, 953.9, and 956, to read as
25 follows:

1 **SEC. 953. IMPOSITION OF GROSS RECEIPTS TAX.**

2 (a) Except as otherwise provided under this Article 12-A-1, the City imposes and every
3 person engaging in business within the City shall pay an annual gross receipts tax measured
4 by the person's gross receipts from all taxable business activities attributable to the City.
5 A person's liability for the gross receipts tax shall be calculated according to Sections 953.1
6 through 953.7.5.

7 (b) The gross receipts tax is a privilege tax imposed upon persons engaging in
8 business within the City for the privilege of engaging in a business or occupation in the City.
9 The gross receipts tax is imposed for general governmental purposes. Proceeds from the tax
10 shall be deposited in the City's general fund and may be expended for any purposes of the
11 City.

12 (c) The voters intend by adopting this measure to authorize application of the gross
13 receipts tax in the broadest manner consistent with the provisions of this Article 12-A-1 and the
14 requirements of the California Constitution, the United States Constitution, and any other
15 applicable provision of federal and state law.

16 (d) The gross receipts tax imposed under this Article 12-A-1 is in addition to the payroll
17 expense tax imposed under Article 12-A. Persons not otherwise exempt from the gross
18 receipts tax or payroll expense tax shall pay both taxes. Persons exempt from either the
19 gross receipts tax or payroll expense tax, but not both, shall pay the tax from which they are
20 not exempt.

21 (e) Except for subsection (d) of this Section 953, the tax on Administrative Office
22 Business Activities imposed by Section 953.8 is intended as a complementary tax to the gross
23 receipts tax, and shall be considered a gross receipts tax for purposes of this Article 12-A-1.

24 (f) For a five-year period beginning in 2015, the Treasurer, Controller, and Chief
25 Economist shall jointly prepare an annual report to the Mayor and Board of Supervisors on the

1 implementation of the measure. The report shall include projections of collections of the gross
2 receipts tax, compare these projections to those anticipated in preparation of the measure,
3 and outline impacts of the measure on San Francisco's economy and business community.
4 The report may recommend policy, administrative, or technical changes for the consideration
5 of the Mayor and Board of Supervisors that further the goals established in the measure.
6

7 **SEC. 953.7.5. GROSS RECEIPTS TAX APPLICABLE TO TRANSPORTATION NETWORK**
8 **COMPANY SERVICES AND PRIVATE TRANSIT VEHICLE SERVICES.**

9 (a) Notwithstanding Sections 953.1 through 953.7, inclusive, the base gross receipts tax rate
10 provided by this Section 953.7.5 shall apply to the business activities of transportation network
11 company services and private transit vehicle services. The base tax rate provided by this
12 Section 953.7.5 is:

13 .625% (e.g., \$6.25 per \$1,000) for taxable gross receipts between \$0 and \$1,000,000

14 .705% (e.g., \$7.05 per \$1,000) for taxable gross receipts between \$1,000,000.01 and
15 \$2,500,000

16 .87% (e.g., \$8.70 per \$1,000) for taxable gross receipts between \$2,500,000.01 and
17 \$25,000,000

18 .975% (e.g., \$9.75 per \$1,000) for taxable gross receipts over \$25,000,000

19 Persons or combined groups with more than \$50,000,000 in total gross receipts, before any allocation
20 or apportionment, derived from the business activities of transportation network company services
21 and/or private transit vehicle services shall not be subject to the administrative office tax under
22 Section 953.8, even if they are engaging in business within the City as an administrative office, as
23 defined in Section 953.8(b).

24 (b) For purposes of this Section 953.7.5, the following definitions shall apply:
25

1 (1) "Private transit vehicle" has the same meaning as in Section 1202 of the
2 Transportation Code.

3 (2) "Private transit vehicle services" means any transportation provided by a private
4 transit vehicle.

5 (3) "Transportation network company services" means prearranged transportation
6 services, within and outside California, for compensation using an online-enabled application or
7 platform to connect passengers with drivers using a personal vehicle, as those terms are defined and
8 used in Section 5431 of the California Public Utilities Code but disregarding references to
9 "California," "this state," and the "commission."

10 (c) The amount of gross receipts from transportation network company services activities
11 subject to the gross receipts tax shall be one-half of the amount determined under Section 956.1 plus
12 one-half of the amount determined under Section 956.2.

13 (d) The amount of gross receipts from private transit vehicle services activities subject to the
14 gross receipts tax shall be the total amount determined under Section 956.1.

15
16 **SEC. 953.9. PERSONS OR COMBINED GROUPS ENGAGED IN MULTIPLE BUSINESS**
17 **ACTIVITIES.**

18 If a person, or a combined group as described in Section 956.3, engages in business
19 activities described in more than one of Sections 953.1 through 953.7.5, inclusive, of this
20 Article 12-A-1, the rate or rates of gross receipts tax to be applied to that person or group, and
21 the method for determining gross receipts in the City, shall be determined as follows:

22 (a) Tax Years Beginning On or After January 1, 2019. If a person or combined group's total
23 gross receipts, before any allocation or apportionment, derived from business activities described in
24 any of Sections 953.1 through 953.7.5, inclusive, are less than the separate activity threshold, then the
25 gross receipts of any such activities may, at the option of the person or combined group, be combined

1 for all purposes related to computing the gross receipts tax with the gross receipts of that person or
2 combined group derived from business activities described in whichever of Sections 953.1 through
3 953.7.5, inclusive, generated the highest amount of gross receipts for the person or combined group.
4 This subsection (a) is not applicable if the person or combined group did not derive total gross receipts
5 from business activities described in any of Sections 953.1 through 953.7.5, inclusive, that were equal
6 to or higher than the separate activity threshold. For tax year 2019, the separate activity threshold
7 shall be \$10,000. The Tax Collector may increase the separate activity threshold for a particular tax
8 year by specifying a new separate activity threshold prior to the beginning of the tax year if the Tax
9 Collector determines that doing so would improve filing simplicity without significantly reducing tax
10 revenues. If the Tax Collector does not set a new separate activity threshold prior to the beginning of
11 any tax year, the separate activity threshold for that tax year shall be \$10,000, even if the separate
12 activity threshold was higher during the prior tax year. This subsection (a) applies to tax years
13 beginning on or after January 1, 2019.

14 **(ab) Tax Years Beginning Before January 1, 2019.** If more than 80% of a person or
15 combined group's gross receipts, determined in accordance with Section 956, are derived
16 from business activities described in only one of Sections 953.1 through 953.7, inclusive, then
17 the rules of that applicable Section apply to all of its gross receipts derived from all business
18 activities. This subsection (b) applies to tax years beginning before January 1, 2019.

19 **(bc)** If, after any application of subsection (a) or (b) of this Section 953.9, a person or
20 combined group's business activities in the City are still described in more than one of
21 Sections 953.1 through 953.7.5, inclusive, and subsection (a) of this Section 953.9 does not apply,
22 then such person or combined group shall separately compute the gross receipts tax for each
23 set of business activities, after any application of subsection (a) or (b) of this Section 953.9, as
24 provided in the Section applicable to that particular set of business activities, modified as
25 follows:

1 ~~(1) if the set of business activities described in any of Sections 953.1 through 953.75,~~
2 ~~inclusive, generates less than 20 percent of the total gross receipts of the person or group, then the~~
3 ~~receipts and payroll of any such set of activities may be combined for all purposes related to computing~~
4 ~~the gross receipts tax with whichever set of that person's or group's activities are taxed at the highest~~
5 ~~rate;~~

6 (21) the small business exemption provided in Section 954.1 shall apply only if
7 the sum of receipts within the City from all sets of business activities does not exceed
8 \$1,000,000 in total, adjusted annually in accordance with the increase in the Consumer Price Index:
9 All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the
10 United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the
11 preceding year, beginning with December 31, 2014;

12 (32) the progressive rates described in Sections 953.1 through 953.7.5 apply on
13 an aggregate basis for businesses with multiple sets of activities;

14 (43) the applicable rate for each set of business activities shall be determined in
15 numbered order of the Sections describing each set of business activities; i.e., the gross
16 receipts and tax for business activities described in Section 953.1 should be determined first,
17 Section 953.2 second, and so on;

18 (54) the rate(s) applicable to any set of activities after the first shall be
19 determined by adding together the gross receipts determined for all previous sets of activities
20 and applying the rate scale commencing with the total gross receipts so determined; and

21 (65) the gross receipts tax liability for the person or combined group shall be the
22 sum of the liabilities for each set of business activities.

1 **SEC. 956. ALLOCATION AND APPORTIONMENT FOR ALL PERSONS DERIVING**
2 **GROSS RECEIPTS FROM BUSINESS ACTIVITIES BOTH WITHIN AND OUTSIDE THE**
3 **CITY.**

4 All persons deriving gross receipts from business activities both within and outside the
5 City shall allocate and/or apportion their gross receipts to the City, using the rules set forth in
6 Section 956.1 and 956.2, in the manner directed in Sections 953.1 through 953.7.5, inclusive,
7 *and in Section 953.9 of this Article.*

8
9 Section 4. The Business and Tax Regulations Code is hereby amended by revising
10 Section 903.6 of Article 12-A, to read as follows:

11
12 **SEC. 906.3. CENTRAL MARKET STREET AND TENDERLOIN AREA PAYROLL**
13 **EXPENSE TAX EXCLUSION.**

14 * * * *

15 (g) The Central Market Street and Tenderloin Area exclusion authorized under this
16 Section 906.3 shall expire on December 31, 2018~~the eighth anniversary date of the effective date of~~
17 ~~this Section~~. A person may not use or claim any unused portion of the Central Market Street
18 and Tenderloin Area exclusion after the expiration date of this Section. Unless exempted
19 under Section 906 of this Article 12-A, every person engaging in a business in the Central
20 Market Street and Tenderloin Area in the City shall pay the tax imposed under this Article on
21 the full amount of the person's payroll expense attributable to the City from and after the
22 expiration of this Section.

23 * * * *

1 Section 5. Appropriations Limit Increase. Pursuant to California Constitution
2 Article XIII B and applicable laws, for four years from November 6, 2018, the appropriations
3 limit for the City shall be increased by the aggregate sum collected by the levy of the tax
4 imposed under this ordinance.

5
6 Section 6. 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 People of the City and County of San Francisco hereby declare that they would have passed
11 this ordinance and each and every section, subsection, sentence, clause, phrase, and word
12 not declared invalid or unconstitutional without regard to whether any other portion of this
13 ordinance or application thereof would be subsequently declared invalid or unconstitutional.

14
15 Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be
16 interpreted or applied so as to create any requirement, power, or duty in conflict with any
17 federal or state law.

18
19 Section 8. Scope of Ordinance. In enacting this ordinance, the People of the City and
20 County of San Francisco intend to amend only those words, phrases, paragraphs,
21 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
22 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
23 or deletions, in accordance with the "Note" that appears under the official title of the
24 ordinance.

1 Section 9. Effective and Operative Date. The effective date of this ordinance shall be
2 ten days after the date the official vote count is declared by the Board of Supervisors. This
3 ordinance shall become operative on January 1, 2019.
4

5 APPROVED AS TO FORM:

6 DENNIS J. HERRERA, City Attorney

7
8 By: 
9 KERNE H. O. MATSUBARA
Deputy City Attorney

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LEGISLATIVE DIGEST

[Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on Transportation Network Company Services and Private Transit Vehicle Services]

Motion ordering submitted to the voters at an election to be held on November 6, 2018, an Ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services and private transit vehicle services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

Existing Law

Persons engaged in business in the City, including transportation network companies ("TNCs") and companies providing private transit vehicle ("PTV") services, currently pay a gross receipts tax to the City. Rates vary by line of business and the amount of the person's taxable gross receipts, and range from 0.075% to 0.65%. If a business conducts multiple lines of business that cross multiple rate schedules, special rules apply depending on whether a business activity accounts for more than 80% of the business's total gross receipts (the "80-20 Rule"), and whether a business activity accounts for less than 20% of the business's total gross receipts (the "20% Rule").

Persons engaged in business in the City also currently pay a payroll expense tax to the City. Certain businesses in the Central Market Street and Tenderloin Area are eligible for an exclusion from the payroll expense tax as well as a limit on the gross receipts tax. Such exclusion and limit are set to expire on May 20, 2019.

Amendments to Current Law

Effective January 1, 2019, this ordinance would increase the gross receipts tax for TNC services and PTV services by adding a new industry category for such services. The gross receipts tax rates for this industry category would be:

- .625% for taxable gross receipts between \$0 and \$1,000,000;
- .705% for taxable gross receipts between \$1,000,000.01 and \$2,500,000;
- .87% for taxable gross receipts between \$2,500,000.01 and \$25,000,000; and
- .975% for taxable gross receipts above \$25,000,000.

The existing gross receipts tax rules and procedures, as amended by this ordinance, would apply to taxpayers in this new industry category. The gross receipts tax from this new industry category may be used for the City's general purposes.

Also effective January 1, 2019, this ordinance would replace the 80-20 Rule and the 20% Rule with a *de minimis* rule, by which taxpayers may combine the gross receipts from any business activity that generates less than \$10,000 in total gross receipts with the gross receipts that generate the highest amount of the taxpayer's total gross receipts. The Tax Collector would have the authority to raise the \$10,000 threshold prior to the beginning of a tax year, if the Tax Collector determines that doing so would improve filing simplicity without significantly reducing tax revenues.

This ordinance also would change the expiration date of the payroll expense tax exclusion and gross receipts tax limit for certain businesses in the Central Market Street and Tenderloin Area from May 20, 2019 to December 31, 2018.

This ordinance would increase the City's appropriations limit under Article XIII B by the amounts collected from the additional tax from this new industry category, for four years from November 6, 2018.

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