

FILE NO. 190092

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Credits For Waiver of Homelessness Gross Receipts Tax Refund and Certain Gifts]

Ordinance amending the Business and Tax Regulations Code to add a credit against a person or combined group's Homelessness Gross Receipts Tax ("Tax") equal to 10% of the portion of a person or combined group's Tax liability for a tax year with respect to which the person or combined group enters into an agreement waiving its right to a refund of its Tax payments associated with any claim that the Homelessness Gross Receipts Tax Ordinance is invalid because it required a two-thirds vote rather than a majority of the electorate to pass; to add a credit against a person's Tax equal to 110% of a person's gift to support the Our City, Our Home Fund; and to authorize the Office of the Treasurer and Tax Collector to accept gifts from persons to support the Our City, Our Home Fund.

Background and Existing Law

In November 2018, the San Francisco electorate approved Proposition C with approximately 61% of the vote. Proposition C imposes the Homelessness Gross Receipts Tax, which is an additional tax on certain businesses to fund services for the City's homeless population. In doing so, Proposition C amended the San Francisco Business and Tax Regulations Code to add Article 28 – the Homelessness Gross Receipts Tax Ordinance.

A question has been raised as to the validity of the Homelessness Gross Receipts Tax Ordinance because of a legal issue about whether the tax, adopted through a voter initiative, required a simple majority or a two-thirds vote of the electorate to pass. Pending resolution of the legal issue, the Controller plans to impound the revenues from the Homelessness Gross Receipts Tax.

This digest reflects a substitute ordinance introduced on March 5, 2019. The substitute ordinance clarified the timing of the waiver agreement, irrevocable gift, and tax credits described below. This digest also reflects amendments made in committee on April 3, 2019. The committee amendments extended the final tax year to which the credits for making an

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irrevocable gift may be carried forward from 2023 to 2025, and made other non-substantive changes.

Amendments to Current Law

To permit the City to appropriate and spend the revenues from the Homelessness Gross Receipts Tax before the legal issue described above is resolved, this ordinance grants taxpayers a credit against their Homelessness Gross Receipts Tax liability if they irrevocably waive any right to a refund of a specified amount of their Homelessness Gross Receipts Tax payments based on any argument that the Homelessness Gross Receipts Tax Ordinance required at least a two-thirds vote of the electorate to pass, or based on any lawsuit challenging the Homelessness Gross Receipts Tax Ordinance or any other initiative tax measure in San Francisco or elsewhere in California that invalidates the Homelessness Gross Receipts Tax Ordinance or similar initiative tax measure because it was not passed by at least a two-thirds vote of the electorate. The credit would equal 10% of amount waived. Taxpayers must enter into a form waiver agreement with the Office of the Treasurer and Tax Collector to obtain the credit.

Similarly, if a taxpayer is willing to make an irrevocable gift to the City for the City to use for the same purposes as the Homelessness Gross Receipts Tax, this ordinance would grant such taxpayers a credit against their Homelessness Gross Receipts Tax liability equal to 110% of their gift amount.

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