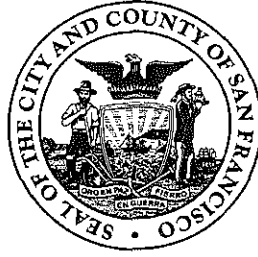


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
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MEMORANDUM

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

FROM: Linda Wong, Assistant Clerk
Board of Supervisors

DATE: November 16, 2017

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance 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. 171155

Ordinance amending the Business and Tax Regulations Code to administer the Sugary Drinks Distributor Tax.

Please return this cover sheet with the Commission's response to Linda Wong, Assistant Clerk, Budget and Finance Committee, 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

c: Menaka Mahajan, Small Business Commission

1 [Business and Tax Regulations Code - Sugary Drinks Distributor Tax Administration]

2
3 **Ordinance amending the Business and Tax Regulations Code to administer the Sugary**
4 **Drinks Distributor Tax.**

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

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

13 Section 1. The Business and Tax Regulations Code is hereby amended by revising
14 Sections 6.1-1, 6.2-17, 6.8-1, 6.9-1, 6.9-5, 6.15-1, and 6.15-2, to read as follows:

15 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

16 (a) These common administrative provisions shall apply to Articles 6, 7, 8, 9, 10, 10B,
17 11, 12, 12-A, 12-A-1, and 12-B of this Code and to Chapter 105 of the *San Francisco*
18 Administrative Code, unless the specific language of either Code otherwise requires. Any
19 provision of this Article 6 that references or applies to Article 10 shall be deemed to reference
20 or apply to Article 10B. Any provision of this Article 6 that references or applies to a tax shall
21 be deemed to also reference or apply to a fee administered pursuant to this Article, and shall
22 be deemed to also reference or apply to an assessment levied pursuant to the Property and
23 Business Improvement District Law of 1994 (California Streets and Highways Code sections
24 36600 *et seq.*) or Article 15 of this Code. A fee administered pursuant to Article 6 or an
25 assessment levied pursuant to the Property and Business Improvement District Law of 1994

1 or Article 15 of this Code shall for purposes of this Article be deemed to be imposed pursuant
2 to the provisions of the Business and Tax Regulations Code.

3 (b) Unless expressly provided otherwise, all statutory references in this Article 6 and
4 the Articles set forth in subsection (a) shall refer to such statutes as amended from time to
5 time and shall include successor provisions.

6 (c) For purposes of this Article 6, a domestic partnership established pursuant to
7 Chapter 62 of the *San Francisco* Administrative Code shall be treated the same as a married
8 couple.

9
10 **SEC. 6.2-17. RETURN.**

11 The term "return" means any written statement required to be filed ~~pursuant to~~
12 Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, or 12-A-1, or ~~pursuant to~~ laws applicable to a fee
13 administered pursuant to Article 6, or ~~pursuant to~~ laws applicable to an assessment levied
14 pursuant to the Property and Business Improvement District Law of 1994 (California Streets
15 and Highways Code sections 36600 *et seq.*) or Article 15 of this Code.

16
17 **SEC. 6.8-1. CITY, PUBLIC ENTITY AND CONSTITUTIONAL EXEMPTIONS.**

18 (a) Nothing in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, or 12-A-1 shall be construed as
19 imposing a tax upon:

20 (1) The City;

21 (2) The State of California, or any county, municipal corporation, district or other
22 political subdivision of the State, except where any constitutional or statutory immunity from
23 taxation is waived or is not applicable;

24 (3) The United States of America, or any of its agencies or subdivisions, except
25 where any constitutional or statutory immunity from taxation is waived or is not applicable; or

1 (4) Any person exempted from the particular tax by the Constitution or statutes
2 of the United States or the Constitution or statutes of the State of California.

3 (b) The foregoing exemption from taxation does not relieve an exempt party from its
4 duty to collect, report, and remit third-party taxes.

5
6 **SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF TAXES.**

7 Except for jeopardy determinations under Section 6.12-2, and subject to remittances
8 required under Sections 6.9-2 and 6.9-3, all amounts of taxes and fees imposed by Articles 6,
9 7, 8, 9, 10, 10B, 11, 12, 12-A, and 12-A-1 are due and payable, and shall be delinquent if not
10 paid to the Tax Collector on or before the following dates:

11 (a) For the hotel tax (Article 7) and the parking tax (Article 9), for each month, on or
12 before the last day of the following month;

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

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

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

20 (e) For the business registration certificate (Article 12), on or before the last day of
21 May preceding the registration year commencing July 1 of that year; *and*

22 (f) For the sugary drinks distributor tax (Article 8), for each quarterly period, on or before the
23 last day of the month immediately following each calendar quarter.

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

3 (a) For good cause, the Tax Collector, in his or her discretion, may extend, for a
4 period not to exceed 60 days, the time for filing any return pursuant to this Article 6 or
5 regulations prescribed by the Tax Collector. For taxes required to be deposited monthly, or
6 for the sugary drinks distributor tax (Article 8), the Tax Collector may only extend the time for
7 filing a return for a period not to exceed 30 days. As a condition of such extension, the person
8 seeking the extension shall make a payment of not less than 90% of such person's liability for
9 such period.

10 (b) Failure to make the required 90% payment will result in the automatic denial of the
11 person's extension and the person being subject to the standard due dates in this Article 6,
12 including any penalties, interest, fees, and other consequences of failing to file and pay by
13 those due dates.

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

18
19 **SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND**
20 **EXEMPTIONS.**

21 The credits and exemptions set forth in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-
22 1, and 12-C, in laws applicable to fees administered pursuant to Article 6, and in laws
23 applicable to assessments levied pursuant to the Property and Business Improvement District
24 Law of 1994 (California Streets and Highways Code sections 36600 *et seq.*) or Article 15 of
25 this Code, are provided on the assumption that the City has the power to offer such credits

1 and exemptions. If a credit or exemption is invalidated by a court of competent jurisdiction,
2 the taxpayer must pay any additional amount that the taxpayer would have owed but for such
3 invalid credit or exemption. Amounts owed as a result of the invalidation of a credit or
4 exemption that are paid within three years after the decision of the court becomes final shall
5 not be subject to interest or penalties.

6
7 **SEC. 6.15-1. REFUNDS.**

8 * * * *

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

1 business registration fee in Article 12, the payroll expense tax in Article 12-A, ~~or~~ the gross
2 receipts tax in Article 12-A-1 (including the tax on administrative office business activities
3 under Section 953.8 of Article 12-A-1), or the sugary drinks distributor tax in Article 8 as a credit
4 against the taxpayer's immediately succeeding payment or payments due of any of these
5 ~~three~~four tax types. Any election to apply an overpayment to the taxpayer's future liability shall
6 be binding and may not later be changed by the taxpayer.

7
8 **SEC. 6.15-2. REFUNDS; INTEREST.**

9 * * * *

10 (c) If a taxpayer elects to apply all or part of an overpayment of the business
11 registration fee in Article 12, the payroll expense tax in Article 12-A, ~~or~~ the gross receipts tax
12 in Article 12-A-1 (including the tax on administrative office business activities under
13 Section 953.8 of Article 12-A-1), or the sugary drinks distributor tax in Article 8 as a credit against
14 the taxpayer's immediately succeeding payment or payments due of any of these ~~three~~four tax
15 types, the taxpayer will not be credited with interest on the amount so applied.

16
17 Section 2. No Conflict with Federal or State Law. Nothing in this ordinance shall be
18 interpreted or applied so as to create any requirement, power, or duty in conflict with any
19 federal or state law.

20
21 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
22 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
23 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
24 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
25

1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

3
4 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word of
5 this ordinance, or any application thereof to any person or circumstance, is held to be invalid
6 or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
7 affect the validity of the remaining portions or applications of the ordinance. The Board of
8 Supervisors hereby declares that it would have passed this ordinance and each and every
9 section, subsection, sentence, clause, phrase, and word not declared invalid or
10 unconstitutional without regard to whether any other portion of this ordinance or application
11 thereof would be subsequently declared invalid or unconstitutional.

12
13 Section 5. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

17
18 APPROVED AS TO FORM:
19 DENNIS J. HERRERA, City Attorney

20 By:


21 CAROLE F. RUWART
22 Deputy City Attorney

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24
25

LEGISLATIVE DIGEST

Business and Tax Regulations Code - Sugary Drinks Distributor Tax Administration

Ordinance amending the Business and Tax Regulations Code to administer the Sugary Drinks Distributor Tax.

Existing Law

The Sugary Drinks Distributor Tax (Tax) was enacted by the San Francisco voters as Proposition V on November 8, 2016 and codified in Article 8 of the Business and Tax Regulations (BTR) Code.

The Tax is one cent per ounce of bottled sugar-sweetened beverages, or per ounce of beverages made from powders and syrups. The Tax is paid by the first “distributor” of the beverage, powder or syrup in the City. The Tax is a general tax, and the proceeds are deposited to the General Fund. The Tax takes effect on January 1, 2018.

Existing provisions of the Tax direct the Tax Collector to register distributors and administer the Tax consistently with Article 6, Common Administrative Provisions, of the BTR Code. Article 6 defines tax-related terms and specifies tax due dates and details of reporting requirements that apply to most of the City’s business taxes (e.g., gross receipts, payroll expense, hotel, parking, stadium operator, and utility users).

Amendments to Current Law

This ordinance amends BTR Article 6 to include the Tax. The amendments specify that the Tax is due quarterly, provide for a discretionary extension of 30 days to file each quarterly return, and apply relevant definitions and administrative provisions (e.g., for credits and refunds).

Background Information

These amendments implement specific provisions of Proposition V as codified in BTR Article 8. They allow the Tax Collector to administer the Tax consistently with other City business taxes.