

1 [Real Property Transfer Tax - Change of delinquency date; substitution of references to
2 current laws; conform partnership rule to state law changes; elimination of tax stamp provision
3 and Transfer Tax Review Board]

4
5 **Ordinance amending Sections 1106, 1108, 1108.4, 1115, 1115.1 and 1115.3 and deleting**
6 **Sections 1109, and 1115.2 of Article 12-C of the Business and Tax Regulations Code to**
7 **(1) change delinquency date; (2) replace references to prior bankruptcy, income tax,**
8 **and local laws with references to current laws; (3) conform rule for partnership interest**
9 **transfers to state law changes; (4) eliminate obsolete provision regarding documentary**
10 **tax stamps; and (5) eliminate Transfer Tax Board of Review and references to that**
11 **Board.**

12 Note: Additions are single-underline italics Times New Roman;
13 deletions are ~~strikethrough italics Times New Roman~~.
14 Board amendment additions are double underlined.
15 Board amendment deletions are ~~strikethrough normal~~.

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

17 Section 1. Article 12-C of the San Francisco Business and Tax Regulations Code is
18 hereby amended by amending Sections 1106, 1108, 1108.4, 1113, 1115, 1115.1, and 1115.3,
19 to read as follows:

20 SEC. 1106. EXCEPTIONS.

21 Any tax imposed pursuant to this ordinance shall not apply to the making,
22 delivering or filing of conveyances to make effective any plan of reorganization or adjustment:

23 (a) Confirmed under ~~the Federal Bankruptcy Act, as amended~~ Title 11 of the United
24 States Code;

1 ~~(b)~~ *Approved in an equity receivership proceeding in a court involving a railroad*
2 *corporation, as defined in Subdivision (m) of Section 205 of Title 11 of the United States Code, as*
3 *amended;*

4 ~~(c)~~ *Approved in any equity receivership proceeding in a court involving a*
5 *corporation, as defined in Subdivision (3) of Section 506 of Title 11 of the United States Code, as*
6 *amended; or*

7 ~~(d)~~(b) Whereby a mere change in identity, form or place or organization is
8 effected.

9 Subdivisions (a) ~~to (d)~~ and (b), inclusive, of this Section shall only apply if the
10 making, delivery or filing of instruments of transfer or conveyances occurs within five years
11 from the date of such confirmation approval or change.

12 SEC. 1108. APPLICATION TO PARTNERSHIPS; TITLE CHANGES NOT AFFECTING
13 OWNERSHIP.

14 (a) In the case of any realty held by a partnership or other entity treated as a
15 partnership for federal income tax purposes, no levy shall be imposed pursuant to this Article
16 ~~ordinance~~ by reason of any transfer of an interest in a partnership or other entity treated as a
17 partnership for federal income tax purposes or otherwise, if:

18 (1) Such partnership or other entity treated as a partnership (or another
19 partnership or other entity treated as a partnership) is considered a continuing partnership within
20 the meaning of Section 708 of the Internal Revenue Code of ~~1954~~ 1986, as amended; and

21 (2) Such continuing partnership or other entity treated as a partnership
22 continues to hold the realty concerned.

23 (b) If there is a termination of any partnership or other entity treated as a
24 partnership for federal income tax purposes within the meaning of Section 708 of the Internal
25 Revenue Code of ~~1954~~ 1986, as amended, for purposes of this ~~ordinance~~ Article, such

1 partnership or other entity shall be treated as having executed an instrument whereby there
2 was conveyed, for fair market value, all realty held by such partnership or other entity at the
3 time of such termination.

4 (c) Not more than one tax shall be imposed pursuant to this ~~ordinance~~ Article
5 by reason of a termination described in Subdivision (b), and any transfer pursuant thereto,
6 with respect to the realty held by such partnership or other entity treated as a partnership for
7 federal income tax purposes at the time of such termination.

8 (d) The tax imposed under this Article shall not apply where the deed, instrument, or
9 other writing transferring title to real property between an individual or individuals and a legal entity
10 or between legal entities that results solely in a change in the method of holding title and in which the
11 proportional ownership interests in the real property, whether represented by stock, membership
12 interest, partnership interest, cotenancy interest, or otherwise, directly or indirectly, remains exactly
13 the same before and after the transfer.

14 SEC. 1108.4. EXEMPTION; CERTAIN CONVERSIONS OF STOCK COOPERATIVES
15 TO CONDOMINIUM UNITS.

16 Any tax imposed pursuant to this ~~ordinance~~ Article shall not apply with respect to
17 any deed, instrument, or writing in connection with the conversion to condominium units of the
18 following kind of stock cooperative project: a stock cooperative project (a) which is entitled to
19 an exemption from the annual limitation imposed on the number of conversions and the
20 annual condominium conversion lottery pursuant to Section 1396 of the San Francisco
21 Subdivision Code; and (b) ~~where-in~~ wherein 80 percent or more of the condominium units serve
22 as security for loans in favor of the City and County of San Francisco, pursuant to the
23 Homeownership Assistance Loan Fund (under San Francisco Administrative Code Section
24 ~~10.117-76~~ 10.100-108) or its predecessor program, as identified by the Mayor's Office of
25 Housing, prior to the conversion.

1 **SEC. 1113. CLAIMS FOR REFUNDS.**

2 Claims for refunds of taxes imposed pursuant to this ordinance shall be governed by the
3 provisions of Sections 6.15-1, 6.15-3, and 6.15-4 of the San Francisco Business and Tax Regulations
4 Code. The references in those sections to a "return" shall mean the transfer tax affidavit and the
5 references to "tax period" shall mean date of transfer. Chapter 5 (commencing with Section 5096) of
6 Part 9 of Division 1 of the Revenue and Taxation Code, except that in the event of any conflict with the
7 provisions of this ordinance, the ordinance provisions shall control. Claims for refunds shall be
8 presented in writing to the County Recorder within one year from and after the date of making the
9 payment that is sought to be refunded and any claim not presented within said one year period shall be
10 forever barred. The County Recorder shall investigate each claim and determine whether the claim
11 should be approved or denied. The County Recorder shall serve notice of his determination, personally
12 or by mail, on the person or persons who filed the claim for refund. Forms for refund claims shall be
13 provided by the County Recorder.

14 **SEC. 1115. DELINQUENCY TAXES.**

15 (a) Delinquency Penalties. The tax imposed by this ordinance is due and
16 payable at the time the deed, instrument or writing effecting a transfer subject to the tax is
17 delivered, and is delinquent if unpaid ~~at the time of recordation thereof.~~ thirty days later. In the
18 event that tax is not paid prior to becoming delinquent, a delinquency penalty of 25 percent of
19 the amount of tax due shall accrue. In the event only a portion of the tax is unpaid prior to
20 becoming delinquent, the penalty shall accrue only as to the portion remaining unpaid. An
21 additional penalty of 10 percent shall accrue if the tax remains unpaid in the ninetieth day
22 following the date of the original delinquency ~~except that the additional penalty shall not accrue~~
23 ~~during the pendency of a taxpayer's appeal before the Transfer Tax Review Board and, in such event,~~
24 ~~the additional penalty shall accrue if the tax remains unpaid on the ninetieth day following service or~~
25 ~~mailing of notice of the ruling of the Review Board.~~ Interest shall accrue at the rate of one percent

1 a month, or fraction thereof, on the amount of delinquent tax, exclusive of penalties, from the
2 date the tax becomes delinquent to the date of payment. Interest and penalties accrued shall
3 become part of the tax.

4 (b) ~~Post-Recording Audits.~~ The County Recorder ~~shall adopt and implement a~~
5 ~~post-recording may~~ audit ~~any procedure which shall provide for a review of at least five percent of~~
6 ~~those documents recorded each month transferring an interest in real property, the said documents~~
7 ~~to be selected at random, and, in addition, for a review of any other documents which the County~~
8 ~~Recorder has reason to believe may have been recorded without full payment of the tax and for a~~
9 ~~review of those documents where the tax is likely to be before or after recording any deed, instrument~~
10 ~~or other writing effecting the transfer, to determine if the transfer is exempt from the tax under this~~
11 ~~Article or is~~ unpaid or underpaid. ~~The rules, procedures and criteria for conducting such audits shall~~
12 ~~be prepared by the County Recorder within 90 days of the effective date of this ordinance and promptly~~
13 ~~thereafter submitted to the Transfer Tax Review Board for review and approval.~~ ~~The County Recorder~~
14 ~~may adopt and implement necessary and appropriate audit procedures.~~

15 (c) Delinquency Determination. Whenever the County Recorder, as the result
16 of a post-recording audit or otherwise, has reason to believe that the full amount of tax due
17 under this ordinance was not paid ~~before recordation~~, the County Recorder may, by notice
18 served upon any person liable therefor, require him to furnish affidavits, true copies of relevant
19 records or other documentary proof sufficient to establish the amount of the consideration or
20 value of the interest or property conveyed and the amount of any lien or encumbrance
21 remaining thereon at the time of sale; and, if it was claimed that the ~~previously recorded~~ deed,
22 instrument or other writing was not subject to this tax or was exempt therefrom, the County
23 Recorder may, by such notice, require any person liable for the tax to furnish affidavits, true
24 copies of relevant records or other documentary proof to substantiate such claim. On the
25 basis of the proof so submitted and any other available evidence, the County Recorder shall

1 determine whether the full amount of tax due under this ordinance was paid before
2 recordation and, if it was not, the County Recorder shall determine the amount of tax which
3 was not paid and is delinquent.

4 (d) Delinquency Notices. Promptly after making his or her delinquent tax
5 determination, the County Recorder shall record a notice of delinquent tax which shall include:

6 (1) The amount of delinquent tax;

7 (2) The interest that shall accrue on the delinquent tax;

8 (3) The delinquency penalty then due;

9 (4) The additional penalty that shall accrue if the tax is not promptly paid;

10 (5) A description of the real property that was transferred by the document
11 recorder without full payment of tax; *and*

12 (6) A notice that if the tax, penalties and interest are not paid within 30 days,
13 proceeding will be taken at a noticed hearing before the Board of Supervisors to impose a lien
14 for the unpaid tax, together with penalties and interest, against the real property described in
15 the delinquency notice; *and*

16 ~~———— (7) ——— A notice of the taxpayer's right to appeal the delinquency tax determination to~~
17 ~~the Transfer Tax Review Board.~~

18 The County Recorder shall also serve or mail copies of the notice of delinquent
19 tax to the person liable for the tax and to the owner or owners of the real property described in
20 the notice, as said owners are shown on the records of the County Tax Collector.

21 SEC. 1115.1. LIEN PROCEEDINGS.

22 (a) Initiating Lien Proceedings. If the full amount of the delinquent tax, penalties and
23 interest is not paid within 30 days following mailing of the delinquency notice ~~or, in the event of~~
24 ~~an appeal to the Transfer Tax Review Board, within 10 days following service or mailing of the Review~~
25

1 ~~Board's ruling~~, the County Recorder, within one year ~~after recordation of the document that was~~
2 ~~recorded without full payment of when the tax became delinquent~~, shall report the delinquency to
3 the Board of Supervisors ("the Board") and request the Board to initiate proceedings to
4 impose a lien for the total unpaid balance against the real property that was transferred by the
5 document ~~delivered recorded~~ without full payment of tax. Said report shall, for each delinquent
6 account, contain the names of the persons liable for the tax, the total amount due, including
7 delinquent taxes, penalties and interest, and a description of the real property that was
8 transferred by the document ~~recorded delivered~~ without full payment of tax. Upon receipt of
9 such report the Board shall fix a time and place for hearing the report and any protests or
10 objections thereto and shall cause notice of the hearing to be mailed not less than 10 days
11 prior to the date of hearing to each person liable for the tax and to the owner or owners of the
12 real property described in the recorded notice of delinquent tax.

13 (b) Hearing. At the time so fixed, the Board shall meet to hear the report and any
14 protests or objections thereto. The Board may make such revisions, corrections or
15 modifications of the report as it may deem just; and in the event that the Board is satisfied with
16 the correctness of the report (as submitted or as revised, corrected or modified), it shall be
17 confirmed. The decision of the Board on the report and on all protests or objections thereto
18 shall be final and conclusive; provided, however, any delinquent account may be removed
19 from the report by payment in full at any time prior to confirmation of the report. The Clerk of
20 the Board shall cause the confirmed report to be verified in form sufficient to meet recording
21 requirements.

22 (c) Special Assessment Lien. Upon confirmation of the report by the Board, the
23 unpaid balance reported therein, including tax, penalties and interest, shall constitute a
24 special assessment against the real property that was transferred by the document ~~recorded~~
25 ~~delivered~~ without full payment of tax; provided, however, that the special assessment, and the

1 lien created thereby, shall attach only to interests in the property that were held, on the date
2 the notice of delinquent tax was recorded, by persons liable for the tax. Each such
3 assessment shall be subordinate to all existing special assessment liens previously imposed
4 upon such parcels and paramount to all other liens except those for State, County and
5 municipal taxes with which it shall be in parity. The lien shall continue until the assessment
6 and all interest and penalties due and payable thereon are paid. All laws applicable to the
7 levy, collection and enforcement of municipal taxes shall be applicable to said special
8 assessment. The Clerk of the Board shall give notice of the confirmation of the report to each
9 person liable for the tax and to the owner~~s~~ or owners of the real property described in the
10 recorded notice of delinquent tax and shall cause the confirmed and verified report to be
11 recorded in the County Recorder's office and the special assessment lien on each parcel of
12 property described in the report shall thereupon secure an additional charge for administrative
13 expenses of \$50 or 10 percent of the unpaid balance, whichever is higher. An action to set
14 aside the special assessment and the lien created thereby shall be commenced within one
15 year from and after the date that notice of the confirmation of the report was given to the
16 persons liable for the tax and to the property owners.

17 (d) Filing with Controller and Tax Collector. The Clerk of the Board shall file a
18 certified copy of each confirmed report with the Controller and Tax Collector within 10 days
19 after confirmation of the report, whereupon it shall be the duty of said officers to add the
20 amount of each special assessment to the next regular bill for taxes levied for municipal
21 purposes against the respective parcels of property described in the confirmed report.

22 (e) Payment of Special Assessment. On payment to the Tax Collector of the special
23 assessment, including delinquent taxes, accrued penalties, interest and the administrative
24 expense charge authorized by Subdivision (c) above, the Tax Collector shall cause a Release
25 of Lien to be recorded with the County Recorder and shall pay the statutory recording fee from

1 the administrative expense charge. Except for the fee paid to record the Release of Lien, all
2 sums collected by the Tax Collector pursuant to this ordinance shall be deposited to the
3 General Fund.

4 SEC. 1115.3. MANNER OF GIVING NOTICE.

5 Any notice required to be given hereunder by the County Recorder or the Board of
6 Supervisors, ~~the Transfer Review Board or the Review Board~~ to any person shall be sufficiently
7 given or served if it is personally served upon such person or if it is deposited, postage
8 prepaid, in a post office letter box addressed to the person at the address for such person
9 given on a refund claim form, ~~a Petition for Review~~ or written protests or objections to a report
10 of delinquency filed for or on behalf of the person or, if no such address is available, to the
11 person at the official address maintained by the Tax Collector for mailing of tax bills levied
12 against the real property that was transferred by document recorded without full payment of
13 tax or, if no such address is available, to the person at the address of said real property.

14 Section 2. Article 12-C of the San Francisco Business and Tax Regulations Code is
15 hereby amended by deleting Sections 1109 and 1115.2, to read as follows:

16 ~~SEC. 1109. DOCUMENTARY STAMPS.~~

17 ~~———— The County Recorder shall purchase any unused documentary tax stamps sold by him~~
18 ~~prior to July 1, 1968. The Recorder shall accept in payment of the tax any such stamps affixed to a~~
19 ~~document offered for recordation and shall cancel the stamps so affixed.~~

20 ~~SEC. 1115.2. TRANSFER TAX REVIEW BOARD.~~

21 ~~———— (a) ——— Review Board. A Transfer Tax Review Board (the "Review Board"), consisting of the~~
22 ~~Controller, the Director of Property and the Tax Collector or their designated representatives, is~~
23 ~~hereby created. The Review Board shall select from its members a Chairperson who shall serve at its~~
24 ~~pleasure. A majority of the members of the Review Board shall constitute a quorum. The Review Board~~
25 ~~shall keep a record of its transactions. The Review Board shall be deemed to be situated in the office of~~

1 ~~the Controller, shall meet and keep its files in the Controller's office and all filing with the Board~~
2 ~~relating to appeals or otherwise shall be made at such office. Neither the members of the Review Board~~
3 ~~nor their designated representatives shall receive any compensation for their services on the said~~
4 ~~Board.~~

5 ~~———— (b) — Appeals Permitted. Provided a Petition for Review is filed with the Review Board within~~
6 ~~the designated time period, a taxpayer shall have the right to appeal the following actions by the~~
7 ~~Assessor Recorder to the Review Board:~~

8 ~~———— (1) A determination of tax made prior to recording of a document may be appealed if the~~
9 ~~Petition for Review is filed within 10 days following the Assessor Recorder's determination of tax and~~
10 ~~refusal to record without payment of such tax.~~

11 ~~———— (2) — A denial of refund claim may be appealed if the Petition for Review is filed within 10~~
12 ~~days following service or mailing of notice of claim denial to the taxpayer.~~

13 ~~———— (3) — A determination of delinquent taxes may be appealed if the Petition for Review is filed~~
14 ~~within 10 days following service or mailing of the delinquency notice to the taxpayer.~~

15 ~~———— Rulings of the Review Board on determinations of tax made prior to recording of documents or~~
16 ~~on denials of refund claims are final and conclusive. An action to set aside such a ruling of the Review~~
17 ~~Board shall be commenced within one year from and after the date that notice of the Review Board's~~
18 ~~ruling was personally served upon or mailed to the taxpayer. Rulings of the Review Board on~~
19 ~~delinquent tax determinations are subject to review by the Board of Supervisors in connection with the~~
20 ~~Board's hearing of the Assessor Recorder's report of delinquency pursuant to Section 1115.1 of this~~
21 ~~ordinance.~~

22 ~~———— Forms for Petitions for Review shall be provided by the Review Board.~~

23 ~~———— (c) — Powers of Board. The Review Board shall have power, and it shall be its duty:~~

24 ~~———— (1) — To conduct public hearings for the purpose of reviewing and making its ruling upon any~~
25 ~~Petition for Review. As to any question of fact upon which the Assessor Recorder's decision was based,~~

1 ~~including any questions involving taxability or penalties, the Review Board may modify or revoke the~~
2 ~~decision of the Assessor-Recorder, or it may affirm such decision and dismiss the Petition. The Review~~
3 ~~Board shall not make any ruling inconsistent with the requirements of this ordinance, nor is the Review~~
4 ~~Board authorized to relieve any taxpayer by reason of hardship alone from tax properly due under this~~
5 ~~ordinance but it may, upon showing of good cause, relieve a taxpayer by reason of hardship from~~
6 ~~delinquency penalties accrued hereunder. The Review Board shall prescribe such forms, rules and~~
7 ~~regulations relating to appeals as it may deem necessary. In the review of the Assessor-Recorder's~~
8 ~~decision, the Review Board shall not be limited to a review of the evidence upon which the Assessor-~~
9 ~~Recorder made his decision, but may take such evidence and make such investigation as it may be~~
10 ~~deemed necessary. It shall serve notice of its ruling, personally or by mail, on the petitioning taxpayer,~~
11 ~~any other person liable for the tax and the owner or owners of the real property described in the~~
12 ~~recorded notice of delinquent tax and shall file a copy of each such ruling with the Assessor-Recorder~~
13 ~~with certification thereon of the date and service thereof;~~

14 ~~—— (2) —— To approve, modify, or disapprove all forms, rules and regulations prescribed by the~~
15 ~~Assessor-Recorder in the administration and enforcement of this ordinance and such forms, rules and~~
16 ~~regulations shall be subject to, and become effective only on such approval; provided, however, any~~
17 ~~rules and regulations adopted by the Assessor-Recorder shall also be approved by the City Attorney,~~
18 ~~and further provided that any modification determined by the Review Board shall be approved as to~~
19 ~~legal form by the City Attorney before becoming effective;~~

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1 ~~———— (3) ——— To hear and determine in such manner as shall be just, any protest which may~~
2 ~~be made by any person who may be interested to any form, rule or regulation approved or prescribed~~
3 ~~by the Review Board.~~

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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: _____
8 Michael Slattery
9 Deputy City Attorney

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