

1 [Payroll Expense Tax]

2

3 **Ordinance amending the Business and Tax Regulations Code by amending Section**  
4 **902.1 and adding Section 902.2 to clarify the tax liability of "pass through entities"**  
5 **under the Payroll Expense Tax Ordinance, including partnerships, Subchapter S**  
6 **corporations, limited liability companies, limited liability partnerships and other**  
7 **persons or entities not subject to federal income tax or which are allowed a deduction**  
8 **in computing such tax for distributions to the owners or beneficiaries of such persons**  
9 **or entities.**

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

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

15 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this  
16 ordinance shall be submitted to the qualified electors of the City and County of San Francisco,  
17 at the November 4, 2008 general municipal election and shall become operative only if  
18 approved by the qualified electors at such election.

19 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended  
20 by amending Section 902.1 and adding Section 902.2 to read as follows:

21 SEC. 902.1. PAYROLL EXPENSE. (a) The term "Payroll Expense" means the  
22 compensation paid to, on behalf of, or for the benefit of an individual, including shareholders of  
23 a professional corporation or a Limited Liability Company ("LLC"), including salaries, wages,  
24 bonuses, commissions, property issued or transferred in exchange for the performance of  
25 services (including but not limited to stock options), compensation for services to owners of pass-  
through entities, and any other form of compensation, who during any tax year, perform work or

1 render services, in whole or in part in the City; and if more than one individual or shareholders  
2 of a professional corporation or members of an LLC, during any tax year performs work or renders  
3 services in whole or in part in the City, the term "Payroll Expense" means the total  
4 compensation paid including salaries, wages, bonuses, commissions, property issued or  
5 transferred in exchange for the performance of services (including but not limited to stock  
6 options), in addition to any compensation for services to owners of pass-through entities, and any  
7 other form of compensation for services, to all such individuals and shareholders of a professional  
8 corporation or members of an LLC.

9 (b) Any person that grants a service provider a right to acquire an ownership  
10 interest in such person in exchange for the performance of services shall include in its payroll  
11 expense for the tax year in which such right is exercised an amount equal to the excess of  
12 (i) the fair market value of such ownership interest on the date such right is exercised over  
13 (ii) the price paid for such interest.

14 (c) Any individual compensated in his or her capacity as a real estate salesperson  
15 or mortgage processor shall be deemed an employee of the real estate broker or mortgage  
16 broker for or under whom such individual performs services, and any compensation received  
17 by such individual, including compensation by way of commissions, shall be included in the  
18 payroll expense of such broker. For purposes of this Section, "real estate broker" and  
19 "mortgage broker" refer to any individual licensed as such under the laws of the State of  
20 California who engages the services of salespersons or a salesperson, or of mortgage  
21 processors or a mortgage processor, to perform services in the business which such broker  
22 conducts under the authority of his or her license; a "salesperson" is an individual who is  
23 engaged by a real estate broker to perform services, which may be continuous in nature, as a  
24 real estate salesperson under an agreement with a real estate broker, regardless of whether  
25 the individual is licensed as a real estate broker under the laws of the State of California; a

1 “mortgage processor” is an individual who is engaged by a real estate broker or mortgage  
2 broker to perform services, which may be continuous in nature, as a mortgage processor  
3 under an agreement with such real estate broker or mortgage broker, regardless of whether  
4 the mortgage processor is also licensed as a mortgage broker under the laws of the State of  
5 California.

6 (d) All compensation, including all pass-through compensation for services paid to, on  
7 behalf of, or for the benefit of owners of a pass-through entity, shall be included in the calculation of  
8 such entity’s payroll expense tax base for purposes of determining such entity’s tax liability under this  
9 Article. For purposes of this section, the “pass-through compensation for services” of a pass-through  
10 entity shall be the aggregate compensation paid by such entity for personal services rendered by all  
11 such owners, and shall not include any return on capital investment. The taxpayer may calculate the  
12 amount of compensation to owners of the entity subject to the Payroll Expense Tax, or the taxpayer  
13 may presume that, in addition to amounts reported on a W-2 form, the amount subject to the payroll  
14 expense tax is 90% of the amount of net earnings from self-employment derived from the entity for  
15 federal income tax purposes.

16 SEC. 902.2. PASS-THROUGH ENTITY. The term “pass-through entity” includes a trust,  
17 partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended,  
18 limited liability company, limited liability partnership, professional corporation, and any other person  
19 or entity (other than a disregarded entity for federal income tax purposes) which is not subject to the  
20 income tax imposed by Subtitle A, Chapter 1 of the Internal Revenue Code of 1986, as amended, or  
21 which is allowed a deduction in computing such tax for distributions to the owners or beneficiaries of  
22 such person or entity. Any person exempt from payment of the Payroll Expense Tax under Section

23 ///

24 ///

25

1 905-A or 906 of this Article shall not be disqualified from or denied such exemption as a result of  
2 being a “pass-through entity” under this Section.

3

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

6

6 By: \_\_\_\_\_  
7 Michael Slattery  
8 Deputy City Attorney

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25