

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

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

FROM: Erica Major, Assistant Committee Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: June 14, 2015

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Government Audit and Oversight Committee

The Board of Supervisors' Government Audit and Oversight 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. 170703

Ordinance amending the Business and Tax Regulations Code to specify processes for the auditing, determination, and collection of real property transfer taxes, including among other things, taxpayer reporting requirements, authority to reject a document for recordation, authority to issue subpoenas for information, audit procedures, issuance of deficiency and jeopardy determinations, additional penalties for fraud or intent to evade taxes, collection of delinquent taxes by the Tax Collector and by liens on the property, and confidentiality of taxpayer information.

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 [Business and Tax Regulations Code - Administration of Real Property Transfer Tax]

2
3 **Ordinance amending the Business and Tax Regulations Code to specify processes for**
4 **the auditing, determination, and collection of real property transfer taxes, including**
5 **among other things, taxpayer reporting requirements, authority to reject a document**
6 **for recordation, authority to issue subpoenas for information, audit procedures,**
7 **issuance of deficiency and jeopardy determinations, additional penalties for fraud or**
8 **intent to evade taxes, collection of delinquent taxes by the Tax Collector and by liens**
9 **on the property, and confidentiality of taxpayer information.**

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

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

18 Section 1. The Business and Tax Regulations Code is hereby amended by adding
19 Sections 1101.1, 1115.2, 1115.5, 1115.6, 1117, and 1118; deleting existing Section 1111.1
20 and adding a new Section 1111.1; and revising Sections 1103, 1111, 1113.1, 1115, 1115.1,
21 1115.3, 1115.4, and 1116, to read as follows:

22 **SEC. 1101.1. DEFINITIONS.**

23 *Except where the context otherwise requires, the terms used in this Article 12-C shall have the*
24 *meanings given to them in Sections 6.2-2 et seq. of the Business and Tax Regulations Code.*

1 **SEC. 1103. PAYMENT OF TAX; DUE DATES AND DELINQUENCY DATES.**

2 (a) Any tax imposed pursuant to *Section 1102 hereof this Article 12-C* shall be paid by
3 any person who makes, signs, or issues any document or instrument subject to the tax, or for
4 whose use or benefit the same is made, signed, or issued.

5 (b) *The tax imposed by this Article 12-C is due and payable at the time the deed, instrument or*
6 *writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid 30 days later.*

7 (c) *The County Recorder may accept partial payments of taxes due. The difference between the*
8 *amount paid by the person liable for the tax and the total amount due shall be treated as a delinquent*
9 *tax and shall be subject to penalties and interest on the unpaid balance under Section 1115.2. Partial*
10 *payments shall be applied first to administrative collection costs, interest, penalties, and other costs*
11 *and charges, in that order, and the balance, if any, shall be applied to the taxes due.*

12
13 **SEC. 1111. RECORDING PAYMENT OF TAX.**

14 (a) The County Recorder shall collect the tax hereby imposed and deposit the same to
15 the General Fund. The County Recorder shall not record any deed, instrument or writing
16 subject to the tax imposed by this Article 12-C ordinance unless the tax is paid.

17 (b) A declaration of the amount of the tax due, signed by the party determining the tax
18 or his or her agent, shall appear on the face of every document subject to tax hereunder which
19 is submitted for recordation. The declaration shall include a statement that the consideration
20 or value on which the tax due was computed was not exclusive of the value of liens or
21 encumbrances remaining on the interest or property conveyed at the time of sale.

22 (c) With every document subject to tax hereunder which is submitted for recordation,
23 there shall also be submitted a separate affidavit stating all relevant information that is
24 necessary for the determination of the proper transfer tax. A form for such affidavit shall be
25 prepared by the County Recorder. The affidavit form shall include the following notice:

1 "NOTICE: Any material misrepresentation of fact in this affidavit is a misdemeanor under
2 Section 1116 of the Real Property Transfer Tax Ordinance. Any person who makes such a
3 misrepresentation is subject to prosecution for such offense."

4 (d) If the deed, instrument or writing by which any lands, tenements, or other realty sold within
5 the City and County of San Francisco is granted, assigned, transferred, or otherwise conveyed is not
6 recorded with the County Recorder's Office, the person who makes, signs, or issues such document or
7 for whose benefit such document was made, signed, or issued, shall submit to the County Recorder an
8 affidavit stating all relevant information that is necessary for the determination of the proper transfer
9 tax, on the form described in Section 1111(c). Such affidavit must be filed within 30 days from the date
10 the document effecting the transfer is delivered. Such affidavit must be filed regardless of whether any
11 transfer tax is due or paid. Filing an affidavit that the County Recorder determines to be incomplete in
12 any material aspect may be deemed to be a failure to file this affidavit for purposes of the statute of
13 limitations in Section 1115.

14 (e) In accepting a document for recordation, the County Recorder shall~~may~~ rely upon
15 the declaration of the amount of tax due and upon the affidavit of relevant information
16 accompanying the document if the County Recorder has no reason to believe that the full amount of
17 the tax due has not been paid.

18 (f) Every document subject to tax hereunder which is submitted for recordation shall
19 show on the face of the document, or in a separate document, the location of the lands,
20 tenements, or other realty described in the document.

1 **SEC. 1111.1. ~~PROOF OF EXEMPTION, CONSIDERATION AND VALUE~~RECORDS;**
2 **INVESTIGATION; SUBPOENAS.**

3 ~~The recorder may require the person submitting any deed, instrument or writing for~~
4 ~~recordation, or the person for whom said person is acting as agent, to furnish affidavits, true copies of~~
5 ~~relevant records or other documentary proof in order to:~~

6 ~~(a) Substantiate any claim that the deed, instrument or writing submitted for recordation is not~~
7 ~~subject to the tax imposed by this ordinance or is exempt therefrom; and~~

8 ~~(b) Establish the consideration or value of the interest or property conveyed and the amount of~~
9 ~~any lien or encumbrance remaining thereon at the time of sale.~~

10 (a) Every person liable for the tax imposed by this Article 12-C shall keep and preserve records
11 as may be necessary to determine the amount of tax for which the person may be liable, or whether the
12 person is exempt from the tax. Upon request of the County Recorder, a person liable for the tax
13 imposed by this Article 12-C shall produce such records to the County Recorder. Additionally, the
14 County Recorder may order any person or persons, whether liable for the tax imposed by this Article
15 12-C or not, to furnish affidavits and produce all books, papers, documents, or any other records that
16 the County Recorder believes may have relevance to enforcing compliance with this Article 12-C.

17 (b) The County Recorder may order the attendance before the County Recorder of any person
18 or persons, whether liable for the tax imposed by this Article 12-C or not, whom the County Recorder
19 believes may have information relevant to enforcing compliance with this Article 12-C.

20 (c) If the taxpayer does not maintain records that are adequate to determine liability under this
21 Article 12-C, or following a request by the County Recorder fails to produce such records in a timely
22 fashion, the County Recorder may determine the person's liability based upon any information in the
23 County Recorder's possession, or that may come into the County Recorder's possession. Such
24 determination shall be prima facie evidence of the person's liability in any subsequent administrative
25 or judicial proceeding.

1 (d) The County Recorder may issue and serve subpoenas to carry out these provisions, and may
2 adopt and implement necessary and appropriate audit procedures.

3
4 **SEC. 1113.1. REFUNDS PERMISSIBLE WITHOUT A CLAIM.**

5 The County Recorder may authorize the Controller to refund transfer tax payments,
6 without the need for a refund claim, if the County Recorder determines:

7 (a) the tax was paid more than once;

8 (b) the amount paid exceeds the amount due as a result of an arithmetic or clerical
9 error; or

10 (c) the tax was paid on a type of transaction that is exempt from the tax.

11 The County Recorder may authorize such a refund no later than one year after payment
12 of the tax. The statute of limitations for filing a claim for refund under Section 1113(a) shall not be
13 tolled and shall continue to run while a person's request for refund under this Section 1113.1 is
14 pending.

15
16 **SEC. 1115. DELINQUENCY TAXES, DEFICIENCY DETERMINATIONS; JEOPARDY**
17 **DETERMINATIONS.**

18 (a) ~~**Delinquency Penalties.** The tax imposed by this ordinance is due and payable at the time~~
19 ~~the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if~~
20 ~~unpaid thirty days later. In the event that tax is not paid prior to becoming delinquent, a delinquency~~
21 ~~penalty of 25 percent of the amount of tax due shall accrue. In the event only a portion of the tax is~~
22 ~~unpaid prior to becoming delinquent, the penalty shall accrue only as to the portion remaining unpaid.~~
23 ~~An additional penalty of 10 percent shall accrue if the tax remains unpaid on the ninetieth day~~
24 ~~following the date of the original delinquency. Interest shall accrue at the rate of one percent a month;~~
25

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

3 ~~(b) Audits. The County Recorder may audit any documents transferring an interest in real~~
4 ~~property before or after any transfer, to determine if the transfer is exempt from the tax under this~~
5 ~~Article or is unpaid or underpaid. The County Recorder may adopt and implement necessary and~~
6 ~~appropriate audit procedures.~~

7 ~~(c) **Delinquency Determination. Deficiency Determinations.** Whenever the County~~
8 ~~Recorder has reason to believe that a person has failed to pay or has underpaid the tax imposed by~~
9 ~~this Article 12-C, the County Recorder may compute and determine any tax, penalty, or interest~~
10 ~~deficiency upon the basis of any information within the County Recorder's possession or that may come~~
11 ~~into the County Recorder's possession. The County Recorder may make one or more deficiency~~
12 ~~determinations for the same deed, instrument or writing by which any lands, tenements, or other realty~~
13 ~~sold within the City and County of San Francisco is granted, assigned, transferred, or otherwise~~
14 ~~conveyed. the full amount of tax due under this ordinance was not paid, the County Recorder may, by~~
15 ~~notice served upon any person liable therefor, require him to furnish affidavits, true copies of relevant~~
16 ~~records or other documentary proof sufficient to establish the amount of the consideration or value of~~
17 ~~the interest or property conveyed including the amount of any lien or encumbrance remaining thereon~~
18 ~~at the time of sale; and, if it was claimed that the deed, instrument or other writing was not subject to~~
19 ~~this tax or was exempt therefrom, the County Recorder may, by such notice, require any person liable~~
20 ~~for the tax to furnish affidavits, true copies of relevant records or other documentary proof to~~
21 ~~substantiate such claim. On the basis of the proof so submitted and any other available evidence, the~~
22 ~~County Recorder shall determine whether the full amount of tax due under this ordinance was paid~~
23 ~~before recordation and, if it was not, the County Recorder shall determine the amount of tax which was~~
24 ~~not paid and is delinquent.~~

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

3 ~~(1) The amount of delinquent tax;~~

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

5 ~~(3) The delinquency penalty then due;~~

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

7 ~~(5) A description of the real property that was transferred by the document recorder~~
8 ~~without full payment of tax; and~~

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

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

16 (b) **Deficiency Determinations; Notice.** Upon making a determination pursuant to this Section
17 1115, the County Recorder shall record the notice of deficiency determination, and shall give to the
18 person or persons liable for the tax, and to the owner or owners of the real property described in the
19 notice, as said owners are shown on the records of the County Assessor, written notice of the County
20 Recorder's determination. Except in the case of fraud, intent to evade the tax imposed by this Article
21 12-C, or the failure to either record the deed, instrument or writing effecting a transfer subject to the
22 tax or file the affidavit required under Section 1111(d), in which case there is no statute of limitations,
23 and unless the person liable for the tax has agreed in writing to extend the period for service of a notice
24 of deficiency determination prior to such period expiring, every notice of a deficiency determination
25 shall be served, in the manner provided by Section 1115.3, within three years after the later of:

1 (1) The date the tax became delinquent;

2 (2) The date the person liable for the tax recorded the deed, instrument or writing
3 effecting a transfer subject to the tax with the County Recorder's Office, if such document was
4 recorded; or

5 (3) The date the person liable for the tax furnished to the County Recorder the affidavit
6 required under Section 1111(d), if the deed, instrument or writing effecting a transfer subject to the tax
7 was not recorded with the County Recorder's Office.

8 (c) **Deficiency Determinations; Content.** The County Recorder's notice of deficiency
9 determination shall include the following information:

10 (1) The amount of delinquent tax;

11 (2) The interest that has accrued and shall continue to accrue on the delinquent tax;

12 (3) The delinquency penalty then due;

13 (4) The additional penalty that shall accrue if the tax is not paid by the date the
14 deficiency determination is due and payable;

15 (5) A description of the lands, property, or other realty sold that was transferred
16 without full payment of tax; and

17 (6) A notice that if the tax, penalties, and interest are not paid within 30 days after
18 service of the notice of deficiency determination upon the person liable for the tax, the County Recorder
19 may commence collection actions for the tax, including, but not limited to, the lien proceedings under
20 Section 1115.1.

21 (d) **Deficiency Determinations; Due and Payable.** The County Recorder's deficiency
22 determination shall be due and payable 30 days after service of the notice of deficiency determination
23 upon the person liable for the tax.

1 (e) Jeopardy Determinations.

2 (1) Duty of County Recorder. If the County Recorder believes that the collection of any
3 tax imposed by this Article 12-C will be jeopardized, in whole or in part, by delay, the County Recorder
4 shall serve notice upon the person determined to be liable therefor of his or her determination of
5 jeopardy and of the tax required to be paid to the City, and demanding immediate payment thereof,
6 together with any interest and penalty determined to be due. The County Recorder may consider all
7 facts and circumstances relevant to determining whether the collection of any tax will be jeopardized
8 by delay, including but not limited to indications that the person liable for the tax intends or is taking
9 action to discontinue business activities in the City, dissipate or otherwise remove assets from the City,
10 or sell, exchange, assign, or otherwise dispose of personal or business income or property. The County
11 Recorder also may consider whether the person liable for the tax is insolvent or likely to become
12 insolvent after the taxes at issue are assessed or collected; and whether the person liable for the tax is
13 or has been uncooperative or unresponsive in connection with any investigation, examination, audit,
14 deficiency determination, assessment, or collection action or procedure undertaken by the County
15 Recorder or Tax Collector.

16 (2) When Due and Payable. A jeopardy determination of tax, interest, or penalty is
17 immediately due and payable upon the service of the notice of jeopardy determination on the person
18 determined to be liable therefor. Prior to service of such notice, the County Recorder or Tax Collector
19 may, notwithstanding the provisions of Section 1115.4, record a lien in the amount due as set forth in
20 the notice of jeopardy determination. Immediately upon service of such notice, the Tax Collector may,
21 notwithstanding the provisions of Section 1115.4, commence lien proceedings under Section 1115.1,
22 seek summary judgment pursuant to Section 1115.5, and/or may commence a collection action in any
23 court having jurisdiction over the matter.

24 (3) Service of Notice. Service of notice of a jeopardy determination shall be provided in
25 the manner set forth in Section 1115.3.

1 (4) Effect of Non-Payment. If the amount specified in the jeopardy determination is not
2 paid within 15 days after service of notice thereof upon the person against whom the determination is
3 made, the additional 10% penalty provided in 1115.2(a)(1) shall attach to the tax or the amount of the
4 tax required to be collected, regardless of the number of days that have passed since the date of the
5 original delinquency.

6 (f) Effect of County Recorder's Determination. The County Recorder's issuance of a notice of
7 deficiency determination or a notice of jeopardy determination with respect to any document or
8 transaction, or the County Recorder's failure to issue such a notice, may not be treated as precedent
9 for the treatment of any future document or transaction. The County Recorder's issuance of a
10 deficiency determination or a jeopardy determination to a person for a document or transaction shall
11 not bar the County Recorder from making further determinations regarding the liability of the person
12 for that document or transaction.

13
14 **SEC. 1115.1. LIEN PROCEEDINGS.**

15 **(a) Initiating Lien Proceedings.** If the full amount of the delinquent tax, penalties,
16 and interest is not paid within 30 days ~~following mailing~~after service of the notice of deficiency
17 determination,~~delinquency notice~~ the County Recorder, within one year of the deficiency
18 determination becoming due and payable~~when the tax became delinquent,~~ shall~~may~~ report the
19 delinquency to the Board of Supervisors ("the Board") and request the Board to initiate
20 proceedings to impose a lien for the total unpaid balance against the real property that was
21 transferred by the document delivered without full payment of tax. Said report shall, for each
22 delinquent account, contain the names of the persons liable for the tax, the total amount due,
23 including delinquent taxes, penalties, and interest, ~~and~~ a description of the lands, tenements, or
24 other realty sold~~real property~~ that was transferred by the document delivered without full
25 payment of tax, and the date on which the County Recorder served its notice of deficiency

1 determination. Upon receipt of such report the Board shall fix a time and place for hearing the
2 report and any protests or objections thereto and shall cause notice of the hearing to be
3 mailed not less than 10 days prior to the date of hearing to each person liable for the tax and
4 to the owner or owners of the real property described in the recorded notice of deficiency
5 determinationdelinquent tax.

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

15 (c) **Special Assessment Lien.** Upon confirmation of the report by the Board, the
16 unpaid balance reported therein, including tax, penalties, and interest, shall constitute a
17 special assessment against the real property that was transferred by the document delivered
18 without full payment of tax; provided, however, that the special assessment, and the lien
19 created thereby, shall attach only to interests in the property that were held, on the date the
20 notice of deficiency determinationdelinquent tax was recorded, by persons liable for the tax.
21 Each such assessment shall be subordinate to all existing special assessment liens
22 previously imposed upon such parcels and paramount to all other liens except those for State,
23 County, and municipal taxes with which it shall be in parity. The lien shall continue until the
24 assessment and all interest and penalties due and payable thereon are paid. All laws
25 applicable to the levy, collection, and enforcement of municipal taxes shall be applicable to

1 said special assessment. The Clerk of the Board shall give notice of the confirmation of the
2 report to each person liable for the tax and to the owner or owners of the real property
3 described in the recorded notice of deficiency determination~~delinquent tax~~ and shall cause the
4 confirmed and verified report to be recorded in the County Recorder's office and the special
5 assessment lien on each parcel of property described in the report shall thereupon secure an
6 additional charge for administrative expenses of \$50 or 10% ~~percent~~ of the unpaid balance,
7 whichever is higher. An action to set aside the special assessment and the lien created
8 thereby shall be commenced within one year from and after the date that notice of the
9 confirmation of the report was given to the persons liable for the tax and to the property
10 owners.

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

16 (e) **Payment of Special Assessment.** On payment to the Tax Collector of the special
17 assessment, including delinquent taxes, accrued penalties, interest, and the administrative
18 expense charge authorized by ~~Subdivision~~ Section 1115.1(c) above, the Tax Collector shall
19 cause a Release of Lien to be recorded with the County Recorder and shall pay the statutory
20 recording fee from the administrative expense charge. Except for the fee paid to record the
21 Release of Lien, all sums collected by the Tax Collector pursuant to this Article 12-Ordinance
22 shall be deposited to the General Fund.

1 **SEC. 1115.2. PENALTIES AND INTEREST.**

2 **(a) Penalties.**

3 (1) Delinquency Penalties. If any tax is not paid prior to becoming delinquent, a
4 delinquency penalty of 25% of the amount of tax due shall accrue. In the event only a portion of the tax
5 is unpaid prior to becoming delinquent, the penalty shall accrue only as to the portion remaining
6 unpaid. An additional penalty of 10% shall accrue if the tax remains unpaid on the ninetieth day
7 following the date of the original delinquency.

8 (2) Penalties for Fraud or Intent to Evade Tax. When the County Recorder determines
9 that the failure of any person to timely pay any tax due under this Article 12-C was attributable to fraud
10 or an intent to evade this Article 12-C, the County Recorder shall impose a penalty in the amount of
11 50% of the amount of the unpaid tax. This penalty shall be in addition to the penalty imposed under
12 Section 1115.2(a)(1) and any other fines, penalties, or other charges imposed by law.

13 (b) Interest. Interest shall accrue at the rate of 1% a month, or fraction thereof, on the amount
14 of delinquent tax, exclusive of penalties and interest, from the date the tax becomes delinquent to the
15 date of payment.

16 (c) Penalties and Interest Part of Tax. Interest and penalties accrued shall become part of the
17 tax.

18
19 **SEC. 1115.3. MANNER OF GIVING NOTICE.**

20 Any notice required to be given under this Article 12-C by the County Recorder or the
21 Board of Supervisors to any person shall be sufficiently given or served if it is personally
22 served upon such person or if it is deposited, postage prepaid, in a post office letter box
23 addressed to the person at the address for such person given on an affidavit described in
24 Sections 1111(c) or (d), a deed, instrument or writing subject to the tax, a refund claim form, or
25 written protests or objections to a report of delinquency filed for or on behalf of the person or,

1 if no such address is available, to the person at the official address maintained by the County
2 AssessorTax Collector for mailing of tax bills levied against the real property that was
3 transferred ~~by document recorded~~ without full payment of tax or, if no such address is available,
4 to the person at the address of said real property. In the case of service by mail, the service is
5 complete at the time of deposit with the United States Postal Service.

6
7 **SEC. 1115.4. TAX AS DEBT.**

8 (a) The amount of any tax, penalty, or interest imposed by this Article 12-Cordinance
9 shall be deemed a debt owed to the City and County of San Francisco. Any person owing the
10 tax shall be liable in an action brought in the name of the City and County of San Francisco for
11 the recovery of such debt. In such action a reasonable attorney's fee shall be awarded the
12 plaintiff. The provisions of this ~~s~~Section 1115.4 shall not be deemed a limitation upon the right
13 of the City and County of San Francisco to bring any other action, whether criminal, legal, or
14 equitable, based upon the failure to pay the tax, penalty, or interest imposed by this Article 12-
15 Cordinance or the failure to comply with any of the provisions hereof.

16 (b) (1) If a deficiency determination made against any person remains unpaid, and the
17 delinquent taxes, penalties, interest, and fees have been referred to the Tax Collector's Bureau of
18 Delinquent Revenue under Section 10.38 of the Administrative Code, the Tax Collector may bring an
19 action in the courts of this State, or any other state, or of the District of Columbia, or of the United
20 States and its territories or possessions, or any other forum where permitted by law to recover in the
21 name of the City any amount of the unpaid taxes, together with penalties, interest, and costs, including
22 reasonable attorneys' fees.

23 (2) In any action filed pursuant to this Section 1115.4(b), the complaint shall attach a
24 certificate executed by the Tax Collector or his or her representative that contains the following
25 information:

1 (A) the name of the person liable for the tax;

2 (B) a description of the lands, property, or other realty sold that was transferred
3 without full payment of tax;

4 (C) the amount of the tax, penalty, and interest remaining unpaid as of the last
5 day of the month prior to the month in which the complaint is filed; and

6 (D) the fact that the City has complied with all provisions of this Article 12-C in
7 the computation and the levy of the tax, penalty, or interest.

8 (3) In prosecuting such actions, the Tax Collector shall be entitled to all of the
9 provisional remedies provided by law. Any such action shall be commenced within 3 years from the
10 date the deficiency determination issued under Section 1115 became due and payable.

11 (c) If a deficiency determination made against any person remains unpaid, and the delinquent
12 taxes, penalties, interest, and fees have been referred to the Tax Collector's Bureau of Delinquent
13 Revenue under Section 10.38 of the Administrative Code, the Tax Collector may record a tax lien with
14 the County Recorder, thereby creating a tax lien on all of the assessee's property and rights to
15 property, including realty, personalty, and intangibles. The Tax Collector may record or file such tax
16 lien in the office of the Recorder of any California county, with the California Secretary of State, and
17 with any other California public entity that is otherwise authorized by law to record liens. The Tax
18 Collector may record or file such tax liens in any other office of any other jurisdiction as permitted by
19 law. The tax lien shall identify the Tax Collector as the lienor, and the amount of the lien.
20 Simultaneously with the recording, a copy of the tax lien shall be mailed to or personally served upon
21 the person determined to be liable for the tax at said person's last known address based upon the
22 information contained in the County Assessor records. The tax lien after recordation has the force,
23 effect, and priority of a judgment lien and continues for 10 years from the date of recording, unless
24 sooner released or otherwise discharged.

1 **SEC. 1115.5. SUMMARY JUDGMENT.**

2 (a) Notice; Certificate. If a deficiency determination made against any person remains unpaid,
3 and the delinquent taxes, penalties, interest, and fees have been referred to the Tax Collector's Bureau
4 of Delinquent Revenue under Section 10.38 of the Administrative Code, the Tax Collector may file, no
5 sooner than 20 days after the mailing of the notice required in Section 1115.5(a)(1), in the office of the
6 Clerk of the Court, without fee, a certificate specifying as follows:

7 (1) That a notice of intent to file the certificate has been sent, by certified mail, to the
8 person determined to be liable for the tax at the person's last known address, not less than 20 days
9 prior to the date of the certificate;

10 (2) That the notice required in subsection (a)(1) set forth the following information:

11 (A) The name and address of the person determined to be liable for the tax;

12 (B) The description of the lands, property, or other realty sold that was
13 transferred without full payment of tax;

14 (C) That judgment will be sought in the amount of the tax, penalty, interest, and
15 fees remaining unpaid at the time of the filing of the certificate, and costs as permitted by law;

16 (D) That, upon issuance and recordation of the judgment, additional interest
17 will continue to accrue at the rate prescribed by the Enforcement of Judgments Law in Title 9 of Part 2
18 of the California Code of Civil Procedure, and that any bond premium posted or other costs to enforce
19 the judgment shall be an added charge; and

20 (E) That a recording fee in the amount set forth in Section 27361.3 of the
21 California Government Code will be required to be paid for the purpose of the recordation of any
22 release of the judgment lien;

23 (3) The name of the person determined to be liable for the tax;

24 (4) The amount for which judgment is to be entered;

1 (5) That the City has complied with all provisions of Article 12-C of the Business and
2 Tax Regulations Code in the computation and the levy of the tax, penalty, interest, and fees; and

3 (6) That a request is therein made for issuance and entry of judgment against the
4 person determined to be liable for the tax.

5 (b) **Filing of Certificate; Entry of Judgment.** The Clerk of the Court, immediately upon the
6 filing of the certificate, shall enter a judgment for the City and County against the person determined to
7 be liable for the tax in the amount of the tax, penalty, interest, and fees set forth in the certificate. The
8 Clerk of the Court may file the judgment in a loose-leaf book entitled "City and County Summary Tax
9 Judgments."

10 (c) **Recording of Judgment; Lien.** An abstract or copy of the judgment shall be recorded,
11 without fee, in the County Recorder's Office, and may be recorded in any other office in which such
12 filing is permitted by law. The summary judgment shall be enforceable pursuant to the Enforcement of
13 Judgments Law, located in Title 9 of Part 2 of the California Code of Civil Procedure.

14 (d) **Additional Penalty.** In addition to any penalty or fee imposed under this Article 12-C of the
15 Business and Tax Regulations Code, a penalty equal to the costs incurred to enforce the judgment
16 entered pursuant to this Section 1115.5, including reasonable attorneys' fees and costs, and the City's
17 cost of salary and benefits for City staff to enforce the judgment, shall be imposed.

18 (e) **Extension of Lien.** Within 10 years from the date of the recording or the date of the last
19 extension of the lien in the manner provided for in this Section 1115.5, the lien may be extended by
20 recording in the County Recorder's Office an abstract or copy of the judgment. From the time of the
21 recording, the lien extends to the property for 10 years unless sooner released or otherwise discharged.

22 (f) **Execution Upon the Judgment.** Execution shall issue upon the judgment upon request of
23 the Tax Collector in the same manner as execution may issue upon other judgments, and sales shall be
24 held under such execution as prescribed by law.

1 **(g) Satisfaction of Judgment; Removal of Lien.**

2 (1) The judgment is satisfied and the lien removed when, but not before, the certificate
3 of release or discharge from the judgment lien is filed with the Clerk of Court and recorded in the
4 County Recorder's Office. In addition to the judgment amount, and any additional penalty, interest,
5 fee, cost or other amount authorized by the Business and Tax Regulations Code, the Tax Collector shall
6 collect the recording fee in the amount required by Section 27361.3 of the California Government
7 Code, and shall transmit the amount of the recording fee to the County Recorder together with the
8 documents for release or discharge.

9 (2) The judgment is also satisfied and the lien removed when, but not before, the tax is
10 legally canceled and a release or discharge from the judgment lien is recorded in the County
11 Recorder's Office. A recording under this Section 1115.5(g)(2) shall be made without fee.

12
13 **SEC. 1115.6. COLLECTION OF TAX FROM THIRD PARTY.**

14 If a deficiency determination made against any person remains unpaid, and the delinquent
15 taxes, penalties, interest, and fees have been referred to the Tax Collector's Bureau of Delinquent
16 Revenue under Section 10.38 of the Administrative Code, the Tax Collector may, not later than three
17 years after the payment became delinquent or the notice of deficiency determination became due and
18 payable, whichever is later, give notice thereof by mail or by personal service to any persons in the
19 State of California having in their possession or under their control any credits or other personal
20 property belonging to the delinquent person, or owing any debts to the delinquent person. After
21 receiving such notice, the persons so notified shall, within five days of the receipt of the notice, advise
22 the Tax Collector by sworn writing of all such credits, personal property, or debts. Further, the
23 persons so notified shall neither transfer nor make any other disposition of the credits, other personal
24 property, or debts in their possession or under their control at the time they receive the notice until the
25 Tax Collector consents to a transfer or disposition or until 30 days elapse after the person has advised

1 the Tax Collector in a sworn writing of all such credits, personal property, or debts. Unless otherwise
2 required by law, if persons so notified transfer such assets in violation of the provisions of this Section
3 1115.6, they shall become indebted to the City for the value of the property transferred, or the amount
4 owed to the City by the delinquent person, whichever is less.

5
6 **SEC. 1116. PENALTY MISDEMEANORS.**

7 (a) Any person or persons shall be guilty of a misdemeanor who:

8 (a)(1) Makes any oral misrepresentation to any employee of the County
9 Recorder's office of: (1)

10 (A) ~~The~~ consideration for, the value of, or the liens upon the lands,
11 tenements, or other realty sold that is transferred by any deed, instrument or writing that is subject to
12 the tax imposed by this Article 12-C interest or property conveyed by any deed, instrument or writing
13 submitted for recordation; or (2)

14 (B) ~~a~~Any material fact which supports a claim that such any deed,
15 instrument or writing by which any such lands, tenements, or other realty sold is not subject to the
16 tax imposed by this Article 12-C ordinance; or

17 (b)(2) Makes any written misrepresentation of a material fact in any affidavit,
18 declaration, or other writing ~~that~~which is required or may be required by this Article 12-
19 Ordinance; or

20 (e)(3) Furnishes to the County Recorder's office any false record or documentary
21 proof which misrepresents: (1)

22 (A) ~~The~~ consideration for, the value of, or the liens upon the lands,
23 tenements, or other realty sold that is transferred by any deed, instrument or writing that is subject to
24 the tax imposed by this Article 12-C interest or property conveyed by any deed, instrument or writing
25 submitted for recordation; or (2)

1 (B) ~~a~~Any material fact which supports a claim that ~~such any~~ deed,
2 instrument or writing by which any such lands, tenements, or other realty sold is not subject to the
3 tax imposed by this Article 12-C ordinance.

4 (b) No person or persons shall be liable, either civilly or criminally, for any unintentional
5 error made in designating the location of the lands, tenements, or other realty described in a
6 document subject to the tax imposed by this Article 12-C ordinance.

7
8 **SEC. 1117. REMEDIES CUMULATIVE.**

9 *The remedies, procedures, penalties, interest, collection costs, and other costs and charges,*
10 *including reasonable attorneys' fees, provided in this Article 12-C are cumulative, and may be pursued*
11 *alternatively, concurrently, or consecutively as the County Recorder and/or the Tax Collector*
12 *determine.*

13
14 **SEC. 1118. CONFIDENTIALITY.**

15 (a) Unless otherwise required by law, the information in a person's affidavit filed under
16 Sections 1111(c) or (d) is confidential, as is any information the County Recorder learns about a
17 person from the person or in response to the County Recorder's request for information made under
18 Section 1111.1. Information regarding the County Recorder's investigation of a particular person or
19 transaction, including the fact that the County Recorder has sent a request for information to a
20 particular person or is investigating a particular person or transaction, is also confidential. Except as
21 permitted by this Section 1118 or as otherwise required by law, neither the County Recorder nor his or
22 her staff, nor any other of the City's current or former employees or agents may disclose confidential
23 information to any person.

24 (b) At the discretion of the County Recorder or Tax Collector, otherwise confidential
25 information may be disclosed in any judicial proceeding or administrative proceeding pertaining to tax

1 administration, determination, assessment, collection, or enforcement, of any civil or criminal liability
2 arising under this Article 12-C if the information concerns a person who is a party to the proceeding,
3 or the proceeding arose out of, or in connection with determining that person's civil or criminal
4 liability, or the collection of that person's liability with respect to any tax imposed thereunder.

5 (c) At the discretion of the County Recorder or Tax Collector, disclosure of otherwise
6 confidential information may be made to the extent such disclosures are reasonably necessary to
7 obtaining information bearing a direct relationship to the determination, assessment, collection, or
8 enforcement of any civil or criminal liability arising under this Article 12-C.

9 (d) At the discretion of the County Recorder or Tax Collector, the County Recorder or Tax
10 Collector may disclose otherwise confidential information to employees or agents of the County
11 Recorder or Tax Collector or other City employees who are engaged in matters preparatory to any
12 judicial or administrative proceeding pertaining to the administration or enforcement of any civil or
13 criminal liability arising out of this Article 12-C.

14 (e) If the County Recorder or Tax Collector determines that a liability owing from a person
15 may be collected from another person, the County Recorder or Tax Collector may disclose to such
16 other person information relevant to the determination and collection of tax due or owing from the
17 person owing the liability.

18 (f) The taxpayer, the taxpayer's successors, receivers, trustees, executors, administrators,
19 assignees, and guarantors, and their duly authorized legal representatives if directly interested, may be
20 given information regarding the items included in the measure and amount of any unpaid tax or
21 amounts of tax required to be collected, interest, and penalties.

22 (g) Notwithstanding any other provision of the Business and Tax Regulations Code or of any
23 City ordinance, the County Recorder and Tax Collector are authorized to enter into agreements with
24 other public taxing agencies providing for the exchange of information for official purposes of said
25 agencies, and to implement any such agreement through the exchange of information.

1 (h) Notwithstanding any other provision of the Business and Tax Regulations Code or of any
2 City ordinance, the County Recorder and Tax Collector shall provide any and all information to the
3 Assessor and Controller that is needed to fulfill the Assessor's responsibilities under Section 6.101 of
4 the Charter or the Controller's responsibilities under Section 3.105 of the Charter. With regard to all
5 such information provided by the County Recorder or Tax Collector, the Assessor and Controller shall
6 be subject to the confidentiality provisions of subsection (a) of this Section 1118.

7 (i) The County Recorder or Tax Collector may disclose to any City employee or agent for
8 official purposes any information described in Section 1118(a) in aggregate or other form that does not
9 disclose the identity of particular taxpayers.

10 (j) Nothing in this Section 1118 shall impose any liability upon the Tax Collector or the County
11 Recorder, or any employee or agent thereof, for any disclosures of confidential information made in the
12 performance of his or her duties.

13
14 Section 2. Effective and Operative Dates. This ordinance shall become effective 30
15 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
16 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
17 or the Board of Supervisors overrides the Mayor's veto of the ordinance. This ordinance shall
18 be operative for all deeds, instruments, or writings that are delivered on or after the effective
19 date of this ordinance.

20
21 Section 3. Severability. If any section, subsection, sentence, clause, phrase, or word
22 of this ordinance, or any application thereof to any person or circumstances, is held to be
23 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
24 shall not affect the validity of the remaining portions or applications of the ordinance. The
25 Board of Supervisors hereby declares that it would have passed this ordinance and each and

1 every section, subsection, sentence, clause, phrase, and word not declared invalid or
2 unconstitutional without regard to whether any other portion of this ordinance or application
3 thereof would be subsequently declared invalid or unconstitutional.

4
5 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
6 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
7 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
8 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
9 additions, and Board amendment deletions in accordance with the "Note" that appears under
10 the official title of the ordinance.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: 
15 Scott M. Reiber
16 Deputy City Attorney

17 n:\legana\as2017\1700657\01197237.docx

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Administration of Real Property Transfer Tax]

Ordinance amending the Business and Tax Regulations Code to specify processes for the auditing, determination, and collection of real property transfer taxes, including among other things, taxpayer reporting requirements, authority to reject a document for recordation, authority to issue subpoenas for information, audit procedures, issuance of deficiency and jeopardy determinations, additional penalties for fraud or intent to evade taxes, collection of delinquent taxes by the Tax Collector and by liens on the property, and confidentiality of taxpayer information.

Existing Law and Background Information

Existing law does not specify many of the procedures the County Recorder uses in determining and collecting real property transfer taxes ("transfer taxes"). This ordinance would codify and reorganize many existing procedures, and would incorporate many of the determination and collection procedures from Article 6 of the Business and Tax Regulations Code ("Article 6"), which applies to the City's business taxes, into Article 12-C of the Business and Tax Regulations Code ("Article 12-C"), which applies to the City's transfer tax.

Amendments to Current Law

For documents delivered on or after the effective date of this ordinance, this ordinance would:

- Make the definitions in Article 6 expressly apply to Article 12-C;
- Establish a delinquency date for all purposes in Article 12-C of 30 days after delivery of the document effecting a transfer subject to the transfer tax;
- Expressly grant the Recorder the ability to accept partial payments of transfer taxes;
- Codify the requirement that persons subject to the transfer tax with respect to documents that do not need to be recorded must still file a transfer tax affidavit with the County Recorder within 30 days of delivery of the document;
- Permit the County Recorder to reject the recordation of a document where the County Recorder has reason to believe that the full amount of transfer tax due has not been paid;
- Confirm the County Recorder's ability to obtain information with respect to enforcing compliance with Article 12-C, and grant the County Recorder subpoena power to do so;
- Specify the period within which the County Recorder may issue a deficiency determination of unpaid transfer taxes, penalties, or interest;
- Permit the County Recorder to issue jeopardy determinations if the County Recorder believes that the collection of transfer tax would be jeopardized by delay;

- Clarify that the County Recorder can initiate lien proceedings with the Board of Supervisors within 1 year from the County Recorder's deficiency determination becoming due and payable;
- Add an additional penalty of 50% of the amount of unpaid transfer tax applicable to persons whose failure to timely pay any transfer tax was due to fraud or an intent to evade the transfer tax;
- Authorize the Tax Collector to collect unpaid transfer taxes, penalties, and interest using similar methods used to collect unpaid business taxes, penalties, and interest under Article 6;
- Update the provision for misdemeanors to reflect the fact that the transfer tax may be imposed on unrecorded documents and documents that transfer ownership interests in legal entities;
- Specify that, unless otherwise provided by law or as otherwise specified in the ordinance, information provided to the County Recorder with respect to the determination of the transfer tax due shall be confidential in the same manner as information provided to the Tax Collector is confidential under Section 6.22-1 of Article 6; and
- Make other, non-substantive changes.

n:\egana\as2017\1700657\01197269.docx

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2017 JUN -6 PM 4:24

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Question(s) submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

[London Breed]

Subject:

[Business and Tax Regulations Code - Administration of Real Property Transfer Tax]

The text is listed:

Ordinance amending the Business and Tax Regulations Code to specify processes for the auditing, determination, and collection of real property transfer taxes, including among other things, taxpayer reporting requirements, authority to reject a document for recordation, authority to issue subpoenas for information, audit procedures, issuance of deficiency and jeopardy determinations, additional penalties for fraud or intent to evade taxes, collection of delinquent taxes by the Tax Collector and by liens on the property, and confidentiality of taxpayer information.

Signature of Sponsoring Supervisor: [Signature]

For Clerk's Use Only