

BOARD of SUPERVISORS



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MEMORANDUM

TO: Tom Hui, Director, Department of Building Inspection
Sonya Harris, Secretary, Building Inspection Commission

FROM:  Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: November 18, 2019

SUBJECT: AMENDED LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following amended legislation, introduced by Supervisor Peskin on November 18, 2019:

File No. 191005-3

Motion ordering submitted to the voters at an election to be held on March 3, 2020, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an excise tax on persons keeping ground floor commercial space in certain neighborhood commercial districts and certain neighborhood commercial transit districts vacant, to fund assistance to small businesses; increasing the City's appropriations limit by the amount collected under the tax for four years from March 3, 2020; and affirming the Planning Department's determination under the California Environmental Quality Act.

The proposed amended ordinance is being transmitted pursuant to Charter, Section D3.750-5, for public hearing and recommendation. It is pending before the Budget and Finance Committee and will be scheduled for hearing upon receipt of your response.

Please forward me the Commission's recommendation and reports at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: William Strawn, Department of Building Inspection
Patty Lee, Department of Building Inspection

1 [Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Excise Tax on
2 Keeping Commercial Property Vacant]

3 **Motion ordering submitted to the voters at an election to be held on March 3, 2020, an**
4 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
5 **to impose an excise tax on persons keeping ground floor commercial space in certain**
6 **neighborhood commercial districts and certain neighborhood commercial transit**
7 **districts vacant, to fund assistance to small businesses; increasing the City’s**
8 **appropriations limit by the amount collected under the tax for four years from March 3,**
9 **2020; and affirming the Planning Department’s determination under the California**
10 **Environmental Quality Act.**

11
12 MOVED, That the Planning Department has determined that the actions contemplated
13 in this ordinance comply with the California Environmental Quality Act (California Public
14 Resources Code Sections 2100 *et seq.*). Said determination is on file with the Clerk of the
15 Board of Supervisors in File No. 191005 and is incorporated herein by reference. The Board
16 affirms this determination; and be it further

17
18 MOVED, That the Board of Supervisors hereby submits the following ordinance to the
19 voters of the City and County of San Francisco, at an election to be held on March 3, 2020.

20
21 **Ordinance amending the Business and Tax Regulations Code and Administrative Code**
22 **to impose an excise tax on persons keeping ground floor commercial space in certain**
23 **neighborhood commercial districts and certain neighborhood commercial transit**
24 **districts vacant, to fund assistance to small businesses; increasing the City’s**
25 **appropriations limit by the amount collected under the tax for four years from March 3,**

1 **2020; and affirming the Planning Department’s determination under the California**
2 **Environmental Quality Act.**

3
4 NOTE: **Unchanged Code text and uncodified text** are in plain font.
5 **Additions to Codes** are in *single-underline italics Times New Roman font*.
6 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
7 **Asterisks (* * * *)** indicate the omission of unchanged Code subsections or
8 parts of tables.

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

10 Section 1. Pursuant to Articles XIII A and XIII C of the Constitution of the State of
11 California, this ordinance shall be submitted to the qualified electors of the City and County of
12 San Francisco at the March 3, 2020, municipal election.

13 Section 2. The Business and Tax Regulations Code is hereby amended by adding
14 Article 29, consisting of Sections 2901 through 2911, to read as follows:

15
16 **ARTICLE 29: VACANCY TAX ORDINANCE**

17
18 **SEC. 2901. SHORT TITLE.**

19 *This Article 29 shall be known as the “Vacancy Tax Ordinance,” and the tax it imposes shall be*
20 *known as the “Vacancy Tax.”*

21
22 **SEC. 2902. FINDINGS AND PURPOSE.**

23 *(a) San Francisco’s neighborhood commercial districts prioritize street-level, customer-facing*
24 *businesses as a means of stimulating a bustling, pedestrian-friendly urban environment. Retail*

1 storefronts are the building blocks of neighborhood vitality, encouraging people to stroll through San
2 Francisco's streets, sidewalks, parks, and other open spaces, and inviting them in.

3 (b) San Francisco residents and visitors have an interest in preserving the vitality of
4 commercial corridors in these districts. Vacant storefronts in otherwise vibrant neighborhood
5 commercial districts degrade the urban environment and reduce the quality of life in those
6 neighborhoods, leading to blight and crime, particularly when storefronts stay empty for extended
7 periods of time. Further, the resulting blight negatively impacts other small businesses in the area by
8 discouraging foot traffic and eroding the character and uniqueness of San Francisco's diverse
9 neighborhoods and communities.

10 (c) Retail vacancies may occur when property owners are performing tenant improvements for
11 prospective tenants, while actively seeking a new commercial tenant, or following a disaster requiring
12 wholesale rehabilitation of a structure. These temporary vacancies reflect a property owner's desire
13 to maintain the active retail storefront environment of San Francisco's neighborhood commercial
14 corridors and to continue contributing to the surrounding community.

15 (d) But in other instances, retail vacancies occur when a property owner or landlord fails to
16 actively market a vacant retail storefront to viable commercial tenants and/or fails to offer the property
17 at a reasonable rate. Retail vacancies may persist as property owners and landlords hold storefronts
18 off of the market for extended periods of time or refuse to offer the space for a reasonable market rate.

19 (e) The purpose of the Vacancy Tax is to stimulate the rehabilitation of long-term retail
20 vacancies, and, in turn, to reinvigorate commercial corridors and stabilize commercial rents, thereby
21 allowing new small businesses to open and existing small businesses to thrive.

22 (f) By dedicating proceeds from the Vacancy Tax to the Small Business Assistance Fund, the
23 Vacancy Tax will also assist small businesses and provide relief to those small businesses adversely
24 affected by blight, crime, and other negative impacts caused by vacant storefronts in San Francisco.

1 **SEC. 2903. DEFINITIONS.**

2 Unless otherwise defined in this Article 29, the terms used in this Article shall have the
3 meanings given to them in Article 6 of the Business and Tax Regulations Code, as amended from time
4 to time. For purposes of this Article, the following definitions shall apply:

5 “Affiliate” means a person under common majority ownership or common control with any
6 other person, whether that ownership or control is direct or indirect. An Affiliate includes but is not
7 limited to a person that majority owns or controls any other person or a person that is majority owned
8 or controlled by any other person.

9 “Building Permit Application Period” means the period following the date that an application
10 for a building permit for repair, rehabilitation, or construction with respect to Taxable Commercial
11 Space in a building or structure is filed with the City through the date the Department of Building
12 Inspection or its successor agency grants or denies that application, but not to exceed one year.
13 Notwithstanding the preceding sentence, if more than one building permit application is filed by or on
14 behalf of one or more persons in the Taxpayer’s Group for the same Taxable Commercial Space, the
15 Building Permit Application Period shall mean only the applicable period following the date the first
16 application is filed with the City by or on behalf of anyone in the Taxpayer’s Group.

17 “Conditional Use Application Period” means the 183-day period following the date that a
18 complete application for a conditional use permit for use of Taxable Commercial Space is filed with the
19 City, but if the Planning Commission or its successor agency does not grant or deny that application
20 within 183 days, the Conditional Use Application Period means the period following the date that the
21 application is filed through December 31 of the year in which the date 183 days from the application
22 filing date falls. Notwithstanding the preceding sentence, if more than one complete conditional use
23 permit application is filed by or on behalf of one or more persons in the Taxpayer’s Group for the same
24 Taxable Commercial Space, the Conditional Use Application Period shall mean only the applicable
25

1 period following the date the first complete application is filed with the City by or on behalf of anyone
2 in the Taxpayer's Group.

3 "Construction Period" means the one-year period following the date that the City issues a
4 building permit for repair, rehabilitation, or construction with respect to Taxable Commercial Space in
5 a building or structure, provided that if the City issues multiple building permits to or for the benefit of
6 one or more persons in the Taxpayer's Group for the same Taxable Commercial Space, the One-Year
7 Construction Period shall mean only the one-year period following the issuance of the first building
8 permit to or for the benefit of anyone in the Taxpayer's Group.

9 "Disaster Period" means the two-year period following the date that Taxable Commercial
10 Space was severely damaged and made uninhabitable or unusable due to fire, natural disaster, or other
11 catastrophic event.

12 "Frontage" means the number of linear feet of Taxable Commercial Space that is adjacent or
13 tangent to a Public Right of Way, rounded to the nearest foot.

14 "Public Right of Way" means the dedicated public alleys, boulevards, courts, lanes, roads,
15 sidewalks, spaces, streets, and ways within the City, which are under the permitting jurisdiction of the
16 Department of Public Works.

17 "Related Person" means a spouse or domestic partner, child, parent, or sibling (these latter
18 three relationships including biological, adoptive, and "step" relationships; and the sibling
19 relationship also including half-siblings).

20 "Residential Real Estate" means real property where the primary use of or right to use the
21 property is for the purpose of dwelling, sleeping or lodging other than as part of the business activity of
22 accommodations. For purposes of this Article 29, "accommodations" means the activity of providing
23 lodging or short-term accommodations for travelers, vacationers, or others, including the business
24 activity described in code 721 of the North American Industry Classification System as of November 6,
25 2012.

1 “Taxable Commercial Space” means the ground floor of any building or structure, or the
2 ground floor of any portion of a building or structure, where such ground floor (1) is adjacent or
3 tangent to a Public Right of Way, (2) is located in one of the “Named Neighborhood Commercial
4 Districts” or “Named Neighborhood Commercial Transit Districts” listed in Section 201 of the
5 Planning Code, as those districts exist on March 3, 2020, and irrespective of whether those districts are
6 expanded, narrowed, eliminated, or otherwise modified subsequent to that date, and (3) is not
7 Residential Real Estate.

8 “Taxpayer’s Group” means for each taxpayer, with respect to each Taxable Commercial
9 Space, the taxpayer, any current or former co-owner or co-tenant of the taxpayer, and any Related
10 Person or Affiliate of the taxpayer or the taxpayer’s current or former co-owner or co-tenant.

11 “Vacant” means unoccupied, uninhabited, or unused for more than 182 days, whether
12 consecutive or nonconsecutive, in a tax year. Notwithstanding the previous sentence, a person shall
13 not be considered to have kept a building or structure Vacant during the Building Permit Application
14 Period, Construction Period, Disaster Period, and/or Conditional Use Application Period if that
15 Building Permit Application Period, Construction Period, Disaster Period, and/or Conditional Use
16 Application Period applies to that person for that Taxable Commercial Space. In determining whether
17 a person has kept Taxable Commercial Space Vacant, days within the Building Permit Application
18 Period, Construction Period, Disaster Period, and Conditional Use Application Period shall be
19 disregarded if that Building Permit Application Period, Construction Period, Disaster Period, and/or
20 Conditional Use Application Period applies to that person for that Taxable Commercial Space.

21
22 **SEC. 2904. IMPOSITION OF TAX.**

23 (a) Except as otherwise provided in this Article 29, for the purposes described in Section 2907,
24 the City imposes an annual Vacancy Tax on keeping Taxable Commercial Space Vacant.

25 (b) The tax on keeping Taxable Commercial Space Vacant in a tax year shall be as follows:

1 (1) For the 2021 tax year, \$250 per linear foot of Frontage.

2 (2) For the 2022 tax year, \$250 per linear foot of Frontage for Taxable Commercial
3 Space that has not been kept Vacant by any person in the 2021 tax year and \$500 per linear foot of
4 Frontage for Taxable Commercial Space that has been kept Vacant by any person in the 2021 tax year.

5 (3) For the 2023 tax year and subsequent tax years:

6 (A) \$250 per linear foot of Frontage for Taxable Commercial Space that has not
7 been kept Vacant by any person in the immediately preceding tax year;

8 (B) \$500 per linear foot of Frontage for Taxable Commercial Space that has
9 been kept Vacant by any person in the immediately preceding tax year but not kept Vacant by any
10 person in the tax year immediately preceding that tax year; and

11 (C) \$1,000 per linear foot of Frontage for all situations in which neither
12 subsection (3)(A) nor subsection (3)(B) of this Section 2904 applies.

13 (c) The Vacancy Tax shall be payable by: (1) the owner or owners of the Taxable Commercial
14 Space kept Vacant, provided that the Taxable Commercial Space is not leased; (2) the lessee or lessees,
15 and not the owner, of the Taxable Commercial Space kept Vacant, if that Taxable Commercial Space is
16 leased but not subleased; and (3) the sublessee or sublessees, and not the owner or sublessor, of the
17 Taxable Commercial Space kept Vacant, if that Taxable Commercial Space is subleased. Not more
18 than one tax shall be imposed under this Section 2904 by reason of multiple liable owners, lessees, or
19 sublessees. If there are multiple liable owners, lessees, or sublessees, each such person shall be jointly
20 and severally liable for the Vacancy Tax.

21 (d) A person shall be liable for the Vacancy Tax only if that person has kept Taxable
22 Commercial Space Vacant in a tax year. A person shall be deemed to have kept Taxable Commercial
23 Space Vacant in a tax year if that person and all Related Persons and Affiliates of that person,
24 individually or collectively, have kept that Taxable Commercial Space Vacant for more than 182 days
25 in that tax year.

1 **SEC. 2905. EXEMPTIONS AND EXCLUSIONS.**

2 (a) For only so long as and to the extent that the City is prohibited from imposing the Vacancy
3 Tax, any person upon whom the City is prohibited under the Constitution or laws of the State of
4 California or the Constitution or laws of the United States from imposing the Vacancy Tax shall be
5 exempt from the Vacancy Tax.

6 (b) Any organization that is exempt from income taxation under Section 501(c)(3) of the
7 Internal Revenue Code of 1986, as amended, shall be exempt from the Vacancy Tax.

8 (c) The City shall not be exempt from the Vacancy Tax.

9 (d) If a lessee or sublessee has operated a business in Taxable Commercial Space for more
10 than 182 consecutive days during a lease or sublease of at least two years, such lessee or sublessee
11 shall not be liable for the Vacancy Tax for the remainder of that lease or sublease, regardless of
12 whether that lessee or sublessee keeps the Taxable Commercial Space Vacant.

13
14 **SEC. 2906. ADMINISTRATION.**

15 Except as otherwise provided under this Article 29, the Vacancy Tax shall be administered
16 pursuant to Article 6 of the Business and Tax Regulations Code.

17
18 **SEC. 2907. DEPOSIT OF PROCEEDS; EXPENDITURE OF PROCEEDS.**

19 (a) All monies collected under the Vacancy Tax Ordinance shall be deposited to the credit of
20 the Small Business Assistance Fund ("Fund"), established in Administrative Code Section 10.100-334.
21 The Fund shall be maintained separate and apart from all other City funds and shall be subject to
22 appropriation. Any balance remaining in the Fund at the close of any fiscal year shall be deemed to
23 have been provided for a special purpose within the meaning of Charter Section 9.113(a) and shall be
24 carried forward and accumulated in the Fund for the purposes described in subsection (b).
25

1 (b) Subject to the budgetary and fiscal provisions of the Charter, monies in the Small Business
2 Assistance Fund shall be appropriated on an annual or supplemental basis and used exclusively for the
3 following purposes:

4 (1) To the Tax Collector and other City Departments, for administration of the Vacancy
5 Tax and administration of the Fund.

6 (2) Refunds of any overpayments of the Vacancy Tax, including any related penalties,
7 interest, and fees.

8 (3) All remaining amounts to provide funding to assist the maintenance and operation
9 of small businesses in the City.

10 (c) Commencing with a report filed no later than February 15, 2023, covering the fiscal year
11 ending on June 30, 2022, the Controller shall file annually with the Board of Supervisors, by
12 February 15 of each year, a report containing the amount of monies collected in and expended from the
13 Small Business Assistance Fund during the prior fiscal year, the status of any project required or
14 authorized to be funded by this Section 2907, and such other information as the Controller, in the
15 Controller's sole discretion, shall deem relevant to the operation of this Article 29.

16
17 **SEC. 2908. TECHNICAL ASSISTANCE TO THE TAX COLLECTOR.**

18 The Department of Public Works, the Department of Building Inspection, and the Office of
19 Economic Workforce Development shall provide technical assistance to the Tax Collector, upon the
20 Tax Collector's request, to administer the Vacancy Tax.

21
22 **SEC. 2909. AMENDMENT OF ORDINANCE.**

23 The Board of Supervisors may amend or repeal this Article 29 by ordinance by a two-thirds
24 vote and without a vote of the people except as limited by Articles XIII A and XIII C of the California
25 Constitution.

1 **SEC. 2910. SEVERABILITY.**

2 (a) Except as provided in Section 2910(b), if any section, subsection, sentence, clause, phrase,
3 or word of this Article 29, or any application thereof to any person or circumstance, is held to be
4 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision shall not
5 affect the validity of the remaining portions or applications of this Article. The People of the City and
6 County of San Francisco hereby declare that, except as provided in Section 2910(b), they would have
7 adopted this Article 29 and each and every section, subsection, sentence, clause, phrase, and word not
8 declared invalid or unconstitutional without regard to whether any other portion of this Article or
9 application thereof would be subsequently declared invalid or unconstitutional.

10 (b) If the imposition of the Vacancy Tax in Section 2904 is held in its entirety to be facially
11 invalid or unconstitutional in a final court determination, the remainder of this Article 29 shall be void
12 and of no force and effect, and the City Attorney shall cause it to be removed from the Business and Tax
13 Regulations Code.

14
15 **SEC. 2911. SAVINGS CLAUSE.**

16 No section, clause, part, or provision of this Article 29 shall be construed as requiring the
17 payment of any tax that would be in violation of the Constitution or laws of the United States or of the
18 Constitution or laws of the State of California.

19
20 Section 3. Chapter 10 of the Administrative Code is hereby amended by adding
21 Section 10.100-334 to Article XIII, to read as follows:

22
23 **SEC. 10.100-334. SMALL BUSINESS ASSISTANCE FUND.**

24 (a) Establishment of Fund. The Small Business Assistance Fund ("Fund") is established as a
25 category four fund as defined in Section 10.100-1 of the Administrative Code, and shall receive all

1 taxes, penalties, interest, and fees collected from the Vacancy Tax imposed under Article 29 of the
2 Business and Tax Regulations Code.

3 (b) Use of Fund. Subject to the budgetary and fiscal provisions of the Charter, monies in the
4 Fund shall be used exclusively for the purposes described in Section 2907(b) of Article 29 of the
5 Business and Tax Regulations Code.

6 (c) Administration of Fund. As stated in Section 2907(c) of Article 29 of the Business and Tax
7 Regulations Code, commencing with a report filed no later than February 15, 2023, covering the fiscal
8 year ending June 30, 2022, the Controller shall file annually with the Board of Supervisors, by
9 February 15 of each year, a report containing the amount of monies collected in and expended from the
10 Fund during the prior fiscal year, the status of any project required or authorized to be funded by
11 Section 2907, and such other information as the Controller, in the Controller's sole discretion, deems
12 relevant to the operation of Article 29.

13
14 Section 4. Appropriations Limit Increase. Pursuant to California Constitution
15 Article XIII B and applicable laws, for four years from March 3, 2020, the appropriations limit
16 for the City shall be increased by the aggregate sum collected by the levy of the tax imposed
17 under this ordinance.

1 Section 5. Effective and Operative Dates. The effective date of this ordinance shall be
2 ten days after the date the official vote count is declared by the Board of Supervisors. This
3 ordinance shall become operative on January 1, 2021.
4

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

7 By:



8 KERNE H. O. MATSUBARA
9 Deputy City Attorney

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REVISED LEGISLATIVE DIGEST

(11/18/2019, Amended in Committee)

[Initiative Ordinance - Business and Tax Regulations, Administrative Codes - Excise Tax on Keeping Commercial Property Vacant]

Motion ordering submitted to the voters at an election to be held on March 3, 2020, an Ordinance amending the Business and Tax Regulations Code and Administrative Code to impose an excise tax on persons keeping ground floor commercial space in certain neighborhood commercial districts and certain neighborhood commercial transit districts vacant, to fund assistance to small businesses; increasing the City's appropriations limit by the amount collected under the tax for four years from March 3, 2020; and affirming the Planning Department's determination under the California Environmental Quality Act.

Existing Law

The City currently does not tax the keeping of real property vacant.

Amendments to Current Law

This ordinance would impose an annual tax, effective January 1, 2021, on persons that keep ground floor commercial space in named neighborhood commercial or neighborhood commercial transit districts vacant. The tax would be based on the linear footage of street-facing frontage of vacant ground floor commercial space and the number of consecutive years that space was kept vacant, as follows:

- For keeping space vacant in the 2021 tax year, \$250 per linear foot.
- For keeping space vacant in the 2022 tax year:
 - \$500 per linear foot if that space was kept vacant both in 2022 and by any person 2021; or
 - \$250 per linear foot if that space was kept vacant only in 2022.
- For keeping space vacant in 2023 and subsequent tax years:
 - \$1,000 per linear foot if that space was kept vacant in the tax year and by any person in both of the previous two tax years;
 - \$500 per linear foot if the \$1,000 rate does not apply and if that space was kept vacant both in the tax year and by any person in the immediately preceding tax year; or
 - \$250 per linear foot if that space was kept vacant only in the tax year.

Commercial space would be considered vacant if it is unoccupied, uninhabited, or unused for more than 182 days, whether consecutive or nonconsecutive, in a calendar year. Days during the following periods would not count as vacant days: (1) the period following the date that an initial building permit application for repair, rehabilitation, or construction of commercial space

is filed through the date that application is granted or denied, without regard to any appeals, such period not to exceed one year, (2) the one-year period following the date that the City issues an initial building permit for repair, rehabilitation, or construction of commercial space, (3) the two-year period following the date that commercial space was severely damaged and made uninhabitable or unusable due to fire or natural disaster, and/or (4) the 183-day period following the date that an initial complete application for a conditional use permit is filed with the City, but if that application is not granted or denied within 183 days, without regard to any appeals, the period shall be extended to December 31 of the year in which the date 183 days from the filing date of the complete application falls.

A person would be liable for the tax only if that person has kept commercial space vacant for more than 182 days in a year. A person would be deemed to have kept commercial space vacant for more than 182 days in a year if that person and all related persons or affiliates of that person, individually or collectively, keep that space vacant for more than 182 days in that year. A related person means a spouse, domestic partner, child, parent, or sibling. An affiliate means a person under common majority ownership or common control with another person, including persons in a parent-subsidiary relationship. Internal Revenue Code Section 501(c)(3) organizations would be exempted from the tax. The City would not be exempted from the tax.

The tax would be imposed on the owner of the vacant commercial space. If the vacant commercial space is leased, the tax would be imposed on the lessee and not the owner. If the vacant commercial space is subleased, the tax would be imposed on the sublessee and not the owner or sublessor. Not more than one annual tax would be imposed with respect to a particular commercial space. If there are multiple liable owners, lessees, or sublessees, each such person would be jointly and severally liable for the tax.

If a lessee or sublessee has operated a business in commercial space for more than 182 consecutive days during a lease or sublease of at least two years, such lessee or sublessee shall not be liable for the tax for the remainder of that lease or sublease, regardless of whether that lessee or sublessee keeps that space vacant.

The tax would be dedicated to funding assistance to small businesses in the City.

This ordinance would increase the City's appropriations limit under Article XIII B by the amounts collected from this tax, for four years from March 3, 2020.

Background Information

This legislative digest reflects amendments made in committee on November 13, 2019. The amendments changed the tax rates, clarified that the tax applies only to named neighborhood commercial and neighborhood commercial transit districts, added definitions for related persons and affiliates, modified the exclusion periods during which commercial space would not be considered vacant, added an exemption for Section 501(c)(3) organizations, and made

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other, nonsubstantive changes. The amendments also increased the threshold by which the Board of Supervisors may amend this ordinance consistent with the California Constitution from a majority to two-thirds.

This legislative digest also reflects an amendment made in committee on November 18, 2019, which added an exemption for lessees and sublessees in certain circumstances.

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