

File No. 131031

Committee Item No. 7

Board Item No. 4

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date: 11/06/2013

Board of Supervisors Meeting

Date: NOVEMBER 26, 2013

Cmte Board

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Completed by: Victor Young Date November 1, 2013

Completed by: Victor Young Date 11/14/13

[Business and Tax Regulations Code - Business Tax Installment Payments; Combined Reporting; Special Assessments]

Ordinance amending the Business and Tax Regulations Code to provide additional penalty relief for payroll expense tax and gross receipts tax payments; to require combined reporting of the payroll expense tax by related taxpayers; and to clarify that fees and special assessments are administered according to the common administrative provisions applicable to other business taxes.

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

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

Section 1. Clarification regarding Proposition E (November 6, 2012) and Sections 6.1-1, 6.2-17, and 6.9-3. Article 6, Sections 6.1-1, 6.2-17, and 6.9-3 of the Business and Tax Regulations Code were amended by Proposition E, adopted by the voters at the election of November 6, 2012. Proposition E amendments become operative on January 1, 2014. Because these Proposition E amendments are not yet operative, they are not included in the currently codified version of the Business and Tax Regulations Code. This ordinance, however, treats Sections 6.1-1, 6.2-17, and 6.9-3 as if the changes are already in the Business and Tax Regulations Code as amended by Proposition E. Accordingly, the amendments in this ordinance shown in Sections 6.1-1, 6.2-17, and 6.9-3 as additions and deletions are amendments of the text of Proposition E as amended by the voters, not the text of these Sections as they now appear in the Business and Tax Regulations Code.

1
2 Section 2. The Business and Tax Regulations Code is hereby amended by revising
3 Article 6, Sections 6.1-1, 6.2-17, 6.6-1, 6.9-3, 6.9-5, 6.17-1, 6.17-2, 6.17-3, and 6.21-1 to read
4 as follows:

5
6 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

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

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

22
23 (c) For purposes of this Article, a domestic partnership established pursuant to
24 Chapter 62 of the San Francisco Administrative Code shall be treated the same as a married
25 couple.

1
2 **SEC. 6.2-17. RETURN.**

3 The term "return" means any written statement required to be filed pursuant to Articles
4 6, 7, 9, 10, 10A, 11, 12, 12-A or 12-A-1, or pursuant to laws applicable to a fee administered
5 pursuant to Article 6, or pursuant to laws applicable to an assessment levied pursuant to the Property
6 and Business Improvement District Law of 1994 (California Streets and Highways Code sections 36600
7 et seq.) or Article 15 of this Code.

8
9 **SEC. 6.6-1. CERTIFICATE OF AUTHORITY FOR THIRD-PARTY TAXES.**

10 * * * *

11 (f) (1) The Tax Collector may refuse to issue the certificate where, within the 45-
12 day period referred to in subsection (d) above, the Tax Collector determines that the operator,
13 or any signatory to the application, or any person holding a 10 percent or greater legal or
14 beneficial interest in said operator ("10% owner") is not in compliance with any provision of
15 Articles 6, 7, 9, 10, 10B, 12, 12-A, 12-A-1, or 22the Business and Tax Regulations Code, including but
16 not limited to any failure to timely collect, report, pay, or remit any tax imposed by this Code,
17 or where any such person is not in compliance with any provision of Sections 1215 through
18 1223 inclusive of Article 17 of the Police Code.

19 (2) Solely for purposes of determining under this Section whether any such
20 operator, signatory or 10% owner is not in compliance with such Articles, the Tax Collector
21 may disregard any corporation or association owned or controlled, directly or indirectly, by any
22 such operator, signatory or 10% owner and consider such corporation or association's
23 operations and liabilities as conducted by or as owned by any one or more of such corporation
24 or association's officers, directors, partners, members or owners. For purposes of this
25 Section, (A) the term "owned" means ownership of 50 percent or more of the outstanding

1 ownership interests in such corporation or association, and (B) the term "controlled" includes
2 any kind of control, whether direct or indirect, whether legally enforceable, and however
3 exercisable or exercised over such corporation or association. A presumption of control
4 arises if the operator, signatory or 10% owner is (or was) an officer, director, partner or
5 member of such corporation or association.

6 (g) Further, if any person subject to this Section violates any provision of ~~Articles 6,~~
7 ~~7, 9, 10, 10B, 12, 12 A, 12 A 1, or 22~~ the Business and Tax Regulations Code, or a rule or regulation
8 promulgated by the Tax Collector, including but not limited to any failure to timely collect,
9 report, pay, or remit any tax imposed by this Code, failure to maintain accurate registration
10 information, failure to sign any return or pay any tax when due, or failure to timely respond to
11 any request for information, order for records or subpoena, or for failure to comply with the
12 requirements of Article 22 of the Business and Tax Regulations Code or any provision of
13 Sections 1215 through 1223 inclusive of Article 17 of the Police Code, the Tax Collector may,
14 after serving the person with written notice of his or her determination in the manner provided
15 in Section 6.11-2 and an opportunity to be heard pursuant to the notice and review provisions
16 of Section 6.13-1 et seq., refuse to issue that person a new certificate of authority or may
17 revoke or suspend that person's certificate of authority. The Tax Collector may refuse to
18 issue that person a new certificate of authority or to withdraw the suspension of an existing
19 certificate until the person, signatory to the application for the certificate revoked or
20 suspended, signatory to the application for a new certificate or withdrawal of the suspension,
21 and all 10% owners have complied with the provisions of ~~Articles 6, 7, 9, 10, 10B, 12, 12 A, 12 A~~
22 ~~1, and 22~~ the Business and Tax Regulations Code and corrected the original violation to the
23 satisfaction of the Tax Collector. For any person applying for or holding a certificate of
24 authority to collect parking taxes, the Tax Collector shall promptly notify the Chief of Police in
25 writing that it has revoked a person's certificate of authority, refused to issue a new certificate

1 of authority, suspended an existing certificate of authority or determined that the person is not
2 in compliance with the Business and Tax Regulations Code. The Tax Collector shall in writing
3 request that the Chief of Police refuse to issue a commercial parking permit to the person or
4 suspend or revoke the person's existing commercial parking permit and immediately close the
5 business, pursuant to Sec. 1215.3(b) of the Police Code.

6 * * * *

7
8 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS.**

9 (a) Remittances. Notwithstanding the due dates otherwise provided in
10 Section 6.9-1, taxpayers shall make remittances of taxes and third-party taxes to the Tax
11 Collector as follows:

12 (1) Hotel and Parking Taxes. The Hotel Tax (Article 7) and the Parking Tax
13 (Article 9) returns shall be filed monthly and taxes shall be remitted monthly. Such monthly
14 remittances shall be due and payable to the Tax Collector on or before the last day of the
15 month immediately following the month for which such remittance is due.

16 (2) Payroll Expense Tax and Gross Receipts Tax. The payroll expense tax
17 (Article 12-A) and the gross receipts tax (Article 12-A-1) shall be paid in quarterly installments
18 as follows:

19 (A) Due Dates. Every person liable for payment of payroll expense tax
20 or gross receipts tax for any tax year shall pay such tax for ~~the subject~~ that tax year in 4
21 quarterly installments. The first, second, and third quarterly installments shall be due and
22 payable, and shall be delinquent if not paid on or before, April 30, July 31, and October 31~~st~~,
23 respectively, of ~~the subject~~ that tax year. The fourth installment shall be reported and paid on
24 or before the last day of February of the immediately following ~~the subject~~ tax year.

25 (B) ~~Payments-~~ Installment Payments.

1 (i) ~~Installment Payments.~~ The first, second, and third quarterly
 2 installments shall be a credit against the person's total payroll expense tax or gross receipts
 3 tax, as applicable, for the ~~subject~~ tax year in which such first, second, and third quarterly
 4 installments are due. The fourth quarterly installment shall be in an amount equal to the
 5 person's total payroll expense tax or gross receipts tax liability for the ~~subject~~ tax year, as
 6 applicable, less the amount of the payroll expense tax or gross receipts tax first, second, and
 7 third quarterly installments and other tax payments, if any, actually paid.

8 (ii) Payroll Expense Tax Installments. A person's first, second,
 9 and third quarterly installment payments of payroll expense tax for any tax year shall be
 10 computed by using:

11 ~~1. The~~ the person's taxable payroll expense (as defined under
 12 Article 12-A) for each quarter; and

13 ~~2. The~~ the rate of tax applicable to the tax year in which the
 14 first, second, and third quarterly installments are due.

15 ~~3. Notwithstanding the foregoing~~ sentence, and except for
 16 taxpayers under Section 953.8 of Article 12-A-1, for tax years commencing after December
 17 31, 2013, the first, second, and third quarterly installments shall be computed using the rates
 18 set forth in the following table:

19 //
 20 //
 21 //
 22 //

Tax Year	1st, 2nd and 3rd Installments
2014	1.350%
2015	1.125%

2016	0.750%
2017	0.375%
2018	0.000%

The fourth quarterly installment shall be in an amount equal to the person's total payroll expense tax liability for the subject tax year, less the amount of the first, second, and third quarterly installments and other tax payments, if any, actually paid. A person's total payroll expense tax liability shall be computed using the rate for the subject tax year computed, certified, and published by the Controller under Section 903.1 of Article 12-A or as otherwise provided in this Article.

(iii) Gross Receipts Tax Installments. A person's first, second, and third quarterly installments of gross receipts tax for any tax year shall be computed by using-

1. ~~The~~ the person's taxable gross receipts (as defined under Article 12-A-1) for each quarter; and

2. ~~The~~ the rate of tax applicable to the tax year in which the first, second, and third quarterly installments are due.

3. Notwithstanding the foregoing sentence, and except for taxpayers under Section 953.8 of Article 12-A-1, for tax years commencing after December 31, 2013, the first, second, and third quarterly installments shall be computed using the rates applicable to the person's taxable gross receipts under Sections 953.1 through 953.7 of Article 12-A-1, multiplied by the percentages set forth in the following table:

//

//

Tax Year	1st, 2nd and 3rd Installments
2014	10%
2015	25%

1	2016	50%
2	2017	75%
3	2018	100%

4
5 *The fourth quarterly installment shall be in an amount equal to the person's total gross receipts*
6 *tax liability for the subject tax year, less the amount of the first, second, and third quarterly*
7 *installments and other tax payments, if any, actually paid. A person's total gross receipts tax liability*
8 *shall be computed using the rate for the subject tax year computed, certified, and published by the*
9 *Controller under Section 959 of Article 12-A-1, or as otherwise provided in that Article.*

10 (C) Computation of Liability: Payments.

11 (i) A person's total payroll expense tax liability shall be computed
12 using the rate for that tax year computed, certified, and published by the Controller under Section
13 903.1 of Article 12-A or as otherwise provided in Article 12-A. A person's total gross receipts tax
14 liability shall be computed using the rate for that tax year computed, certified, and published by the
15 Controller under Section 959 of Article 12-A-1, or as otherwise provided in Article 12-A-1.

16 (ii) Any amounts paid on a person's payroll expense tax liability for a
17 tax year that are in excess of that person's actual payroll expense tax liability for that year shall be
18 credited to that person's gross receipts tax liability for that year. Any amounts paid on a person's
19 gross receipts tax liability for a tax year that are in excess of that person's actual gross receipts tax
20 liability for that year shall be credited to that person's payroll expense tax liability for that year.

21 (b) Tax Installment Penalties. Every person who fails to pay any tax installment
22 required under this Section before the relevant delinquency date shall pay a penalty in the
23 amount of 5 percent of the amount of the delinquent tax installment per month, or fraction
24 thereof, up to 20 percent in the aggregate, and shall also pay interest on the amount of the
25

1 delinquent tax installment from the date of delinquency at the rate of 1 percent per month, or
2 fraction thereof, for each month the installment is delinquent, until paid.

3 The penalty and interest provided under this subsection shall not apply if each of the payroll
4 expense tax and gross receipts tax payments are equal to or greater than the actual tax owed for that
5 quarter, or the sum of the payroll expense tax payments and gross receipts tax payments is equal to or
6 greater than 26 percent of the sum of the payroll expense tax and gross receipts tax liability for the
7 immediately preceding tax year. For taxpayers under Section 953.8 of Article 12-A-1, for tax year
8 2014 only, the penalty and interest provided under this subsection shall also not apply if a first, second,
9 or third gross receipts tax quarterly installment payment is in an amount that is at least 26 percent of
10 the payroll expense tax liability for the immediately preceding tax year.

11 (c) Hotel and Parking Taxes. An operator subject to the Hotel Tax (Article 7) or the
12 Parking Tax (Article 9) shall make monthly remittances in the amount of the actual tax owed.

13 (d) Forms and Adjustments. Tax remittances required under this Section shall be
14 accompanied by a tax remittance form prepared by the Tax Collector, but failure of the Tax
15 Collector to furnish the taxpayer with a tax remittance form shall not relieve the taxpayer from
16 any tax payment obligation.

17
18 **SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND**
19 **EXEMPTIONS.**

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

1 pay any additional amount that the taxpayer would have owed but for such invalid credit or
2 exemption. Amounts owed as a result of the invalidation of a credit or exemption that are paid
3 within 3 years after the decision of the court becomes final shall not be subject to interest or
4 penalties.

5
6 **SEC. 6.17-1. PENALTIES AND INTEREST FOR FAILURE TO PAY.**

7 (a) Any person who fails to pay any tax to the City, or any operator or other person
8 who fails to collect and remit any third-party taxes shall pay a penalty of 5 percent of the tax, if
9 the failure is for not more than 1 month after the tax became delinquent, plus an additional 5
10 percent for each following month or fraction of a month during which such failure continues,
11 up to 20 percent in the aggregate, until the date of payment. Any taxes remaining unpaid for
12 a period of 90 days after notification that the tax is delinquent shall be subject to an additional
13 penalty of 20 percent of the tax or amount of the tax. The penalty and interest provided under this
14 subsection shall not apply if the sum of the payroll expense tax payments and gross receipts tax
15 payments is equal to or greater than the sum of the payroll expense tax and gross receipts tax liability
16 for that tax year.

17 (b) If the failure to pay any tax is due to fraud or an intent to evade the Business
18 and Tax Regulations Code or the Tax Collector's rules and regulations, an additional penalty
19 in the amount of 50 percent of the amount due, in addition to any other penalties and interest,
20 shall be added thereto. A taxpayer or other person against whom a fraudulent failure to pay
21 penalty is asserted is entitled to a notice of such determination to be issued in accordance
22 with the provisions of Section 6.11-1 et seq. and to the appeal rights set forth in
23 Section 6.13-1 et seq.

24 (c) Unpaid taxes ~~and penalties~~ shall also accrue interest at the rate of 1 percent per
25 month, or fraction of a month, from the date the taxes become delinquent through the date the

1 taxpayer or operator pays the delinquent taxes, penalties, interest and fees accrued to the
2 date of payment in full.

3
4 **SEC. 6.17-2. PENALTIES FOR UNDERREPORTING OF TAX.**

5 (a) Penalties for Negligence. If the Tax Collector determines that all or part of any
6 tax required to be reported on any return was underreported and that such underreporting
7 was attributable to negligence, the Tax Collector may impose a penalty in the amount of 5
8 percent of the amount of the underreported tax, in addition to the tax or amount of tax, if the
9 negligence is for not more than 1 month, with an additional 5 percent for each month or
10 fraction of a month during which such negligence continues, up to 20 percent in the
11 aggregate.

12 (b) Penalties for Intentional Disregard of Rules, Fraud, or Intent to Evade Tax.
13 When it is determined by the Tax Collector that all or part of any tax required to be reported
14 on any return was underreported and such underreporting was attributable to fraud or an
15 intent to evade the Business and Tax Regulations Code, the Tax Collector may impose a
16 penalty in the amount of 50 percent of the amount of the underreported tax. The taxpayer or
17 other person determined to be liable for penalties pursuant to this Section is entitled to a
18 notice of deficiency determination or jeopardy determination and to the appeal rights as to
19 such determinations.

20 (c) Additional Penalty for Substantial Underreporting.

21 (1) For purposes of this section, "substantial underreporting of tax" means
22 the tax finally determined by the Tax Collector ~~under Articles 7, 9, 10, 10B, 11, 12-A, or 12-A-1 of~~
23 ~~this Business and Tax Regulations Code~~ exceeds the amount of tax reported on a taxpayer's
24 original or amended return for a taxable period by 25 percent or more, or if no return is filed,
25 the tax liability determined by the Tax Collector pursuant to Section 6.11-1 exceeds \$5000.

1 (2) If the Tax Collector determines that a taxpayer has made a substantial
2 underreporting of tax for any taxable period, the Tax Collector may impose an additional
3 penalty in an amount equal to 50 percent of the tax attributable to the substantially
4 underreported amount. The penalty for substantial underreporting is in addition to any other
5 penalty imposed under this Article 6.

6 (3) The additional penalty for substantial underreporting applies to all taxable
7 periods ending on or after June 19, 2010.

8
9 **SEC. 6.17-3. NEGLIGENCE PENALTIES FOR FAILURE TO REGISTER,**
10 **MISSTATEMENTS IN REGISTRATION, FAILURE TO TIMELY UPDATE REGISTRATION,**
11 **FAILURE TO ALLOW INSPECTION OF RECORDS UPON REQUEST, AND FAILURE TO**
12 **FILE A RETURN; SANCTION FOR FAILURE TO PRODUCE REQUESTED RECORDS.**

13 (a) Any person who fails to register, fails to amend a registration within 7 days of a
14 material change or who makes a material misrepresentation in a registration or who fails to
15 comply with a rule or regulation promulgated by the Tax Collector in a timely manner shall
16 pay, in addition to any other liability that may be imposed under the provisions of this Article, a
17 penalty in an amount equal to either \$100 or the penalty assessed pursuant to Section 6.17-1,
18 whichever is greater.

19 (b) The Tax Collector may impose a penalty upon any person who fails to file a
20 return or returns required under this Article on or before the date prescribed for filing up to
21 \$500 for each such failure. The penalty under this provision shall be in addition to any other
22 liability that may be imposed under the provisions of this Article. Filing a return that the Tax
23 Collector determines to be incomplete in any material aspect may be deemed failure to file a
24 return in violation of this Section. Any return required to be filed on a combined basis, and which is
25 not filed on that basis, is an incomplete return. In addition, any return required to report worldwide

1 gross receipts and payroll of a person or combined group under Section 956.2, which does not report
2 gross receipts and payroll on a worldwide basis, is an incomplete return.

3 (c) Any person who fails to allow a full inspection of records pursuant to a request
4 made by the Tax Collector within the time prescribed by the Tax Collector shall pay, in
5 addition to any other liability that may be imposed under the provisions of this Article, a
6 penalty in the amount of \$500 for each such failure.

7 (d) Unless the failure to allow inspection was due to reasonable cause and not
8 willful neglect, any person who fails to provide records pursuant to a written request made by
9 the Tax Collector may not contest the Tax Collector's decision regarding the amount of such
10 person's liability for any taxes, administrative collection costs, interest, penalties or other costs
11 and charges imposed under the Business and Tax Regulations Code, or oppose the collection
12 of such amount, in any subsequent administrative or judicial proceeding, on the basis of any
13 record the Tax Collector previously requested in writing that such person failed to make
14 available to the Tax Collector on or before the earliest to occur of the following:

15 (1) The conclusion of the hearing on a petition for redetermination held
16 pursuant to Sections 6.12-5 or 6.13-2;

17 (2) The date the jeopardy determination became final under Section 6.12-5 if
18 such person did not request hearing thereon;

19 (3) The date the deficiency determination became final under Section 6.13-4
20 if such person did not request a hearing thereon.

21 //

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23 //

24 //

25

1 **SEC. 6.21-1. TRANSFEREE AND SUCCESSOR LIABILITY.**

2 (a) No person shall purchase or acquire an interest in a business subject to any tax
3 imposed under the Business and Tax Regulations Code without first obtaining either a receipt
4 from the Tax Collector showing that all of the seller's taxes on the business have been paid,
5 or a certificate stating that no amount is due. For purposes of this Section, "purchase" shall
6 include any other voluntary transfer for consideration of a business, except for purchase of
7 stock of a publicly-traded company.

8 (b) The Tax Collector shall issue such a receipt or certificate, or a notice of the
9 amount that must be paid as a condition of issuing the certificate, to the buyer within 30 days
10 after receiving a written request. However, failure of the Tax Collector to timely mail the
11 notice will not release the buyer from his or her obligations under this Section, except to the
12 extent of penalties and interest in the event that the Tax Collector enforces the buyer's
13 obligation in a civil action authorized pursuant to the Business and Tax Regulations Code.

14 (c) If the buyer purchases or acquires an interest in a business owing any taxes,
15 interest or penalties ~~imposed under Articles 7, 9, 12-A, or 12-A-1~~, the buyer shall withhold from
16 the purchase price and pay to the Tax Collector a sufficient amount to satisfy said taxes,
17 interest and penalties.

18 (d) If the buyer purchases or acquires an interest in a business in violation of this
19 Section, the buyer shall become personally liable for the amount of taxes, interest and
20 penalties owed on the business.

21 (e) The buyer's obligations shall accrue at the time the business is purchased or the
22 interest acquired, or at the time the Tax Collector determines the seller's final liability,
23 whichever is later.

24 (f) The liability at law or in equity of a successor, transferee or alter ego of any
25 taxpayer or other person determined to be liable for any tax, interest, cost or penalty subject

1 to this Article, imposed upon a taxpayer may be determined, collected and paid in the same
2 manner and subject to the same provisions and limitations as a deficiency determination
3 pursuant to Sections 6.11-1, 6.11-2, and 6.13-1 et seq. Nothing in this subsection shall be
4 construed to limit the rights or procedures available to the Tax Collector to collect from any
5 successor, transferee or alter ego, at law or in equity, as may be provided by law.
6

7 Section 3. The Business and Tax Regulations Code is hereby amended by revising
8 Article 12-A, Section 907, to read as follows:
9

10 **SEC. 907. PAYMENTS, RETURNS, ~~PREPAYMENTS~~ INSTALLMENT PAYMENTS**
11 **AND EXTENSIONS.**

12 (a) Payments, returns, ~~prepayments~~ installment payments and extensions for persons
13 subject to this Article shall be as prescribed in the common administrative provisions set forth
14 in Article 6.

15 (b) For tax years commencing after December 31, 2013, a combined group as described in
16 Section 956.3 of Article 12-A-1 must file a single payroll expense tax return; the combined group must
17 choose a single person to file the return on its behalf. Each person within the combined group
18 engaging in business in the City must provide a power of attorney to the person filing the return,
19 authorizing the person filing the return to file said return and to act on behalf of each person with
20 respect to payments, refunds, audits, resolutions, and any other items related to the tax liability
21 reflected in the return. The power of attorney shall be substantially in a form prescribed or approved
22 by the Tax Collector. Each return filed by a combined group constitutes a combined return under this
23 Article and Article 6. The person filing any combined return shall pay the tax liability reflected on the
24 return and any liability determined on audit at the time and in the manner set forth for returns and
25 liabilities in Article 6. The payroll expense tax liability of each person within a combined group.

1 including any applicable exemptions or exclusions, shall be computed as if that person was filing its
2 own separate return. The total liability on the combined return shall be the sum of the liabilities of
3 each person within the combined group.
4

5 Section 4. The Business and Tax Regulations Code is hereby amended by revising
6 Article 12-A-1, Section 956.3, as follows:
7

8 **SEC. 956.3. COMBINED RETURNS.**

9 A person engaging in business within the City must file gross receipts tax returns as
10 provided in Article 6. Those returns must be filed on a combined basis with all of that person's
11 related entities. That person, and all of that person's related entities, constitute a combined
12 group. Every combined group must file a single return; the combined group ~~may~~ must choose a
13 single person to file the return on its behalf. Each person within the combined group engaging
14 in business in the City must provide a power of attorney to the person filing the return,
15 authorizing the person filing the return to file said return and to act on behalf of each person
16 with respect to payments, refunds, audits, resolutions, and any other items related to the tax
17 liability reflected in the return. The power of attorney shall be substantially in a form ~~to be~~
18 promulgated prescribed or approved by the Tax Collector. Each return filed by a combined
19 group constitutes a combined return under this Article and Article 6. The person filing any
20 combined return shall pay the tax liability reflected on the return and any liability determined
21 on audit at the time and in the manner set forth for returns and liabilities in Article 6.
22

23 Section 5. Effective and Operative Dates.

24 (a) This ordinance shall become effective 30 days after enactment. Enactment
25 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or

1 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
2 overrides the Mayor's veto of that ordinance.

3 (b) This ordinance shall become operative January 1, 2014.
4

5 Section 6. Severability of Ordinance Provisions; Construction of Ordinance.

6 (a) If any section, sentence, clause, phrase, or portion of this ordinance is for any
7 reason held to be invalid or unenforceable by a court of competent jurisdiction, the remaining
8 sections, sentences, clauses, phrases, or portions of this ordinance shall nonetheless remain
9 in full force and effect. The Board of Supervisors of the City and County of San Francisco
10 hereby declares that it would have adopted each section, sentence, clause, phrase, or portion
11 of this ordinance, irrespective of the fact that any one or more sections, sentences, clauses,
12 phrases, or portions of this ordinance be declared invalid or unenforceable and, to that end,
13 the provisions of this ordinance are severable.

14 (b) No section, clause, part or provision of this ordinance shall be construed as
15 requiring the payment of any tax that would be in violation of the Constitution or laws of the
16 United States or of the Constitution or laws of the State of California.
17

18 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment

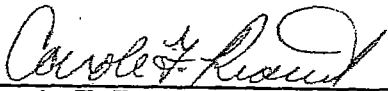
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1 additions, and Board amendment deletions in accordance with the "Note" that appears under
2 the official title of the ordinance.

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

5 By: 
6 Carole F. Ruwart
Deputy City Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Business Tax Installment Payments; Combined Reporting; Special Assessments]

Ordinance amending the Business and Tax Regulations Code to provide additional penalty relief for payroll expense tax and gross receipts tax payments; to require combined reporting of the payroll expense tax by related taxpayers; and to clarify that fees and special assessments are administered according to the common administrative provisions applicable to other business taxes.

Existing Law

Proposition E was enacted by the voters at the election on November 6, 2012, and becomes operative on January 1, 2014. Proposition E provides that as of January 1, 2014, the payroll expense tax is expected to be phased out, and the new gross receipts tax phased in. During the phase-in period (2014 through 2018), business taxpayers will be required to pay both the payroll expense tax and the gross receipts tax. The Treasurer-Tax Collector will administer the payroll expense tax while implementing the new gross receipts tax.

Commencing January 1, 2014, quarterly installment payments for the payroll expense tax and gross receipts tax must be computed by using the taxpayer's actual payroll expense and actual gross receipts for that quarter, multiplied by a percentage tax rate under each ordinance. Deficiencies in an installment payment amount are subject to penalties and interest.

Commencing January 1, 2014, receipts from the payroll expense and gross receipts taxes are treated on a "stand-alone" basis – an underpayment in one tax owed to the City is subject to penalties and interest even if the same taxpayer made an overpayment in the other tax to the City for the same business and the same period.

Commencing January 1, 2014, the gross receipts tax law requires that a combined group file a single tax return (a "combined return") for all members of the combined group. A "combined group" is a group comprised of related entities, as defined. However, under the existing payroll expense tax law, each taxpayer in a combined group files its own payroll expense tax return.

The Treasurer administers and collects various fees and special assessments levied by business improvement/community benefit districts pursuant to Article 6 of the Business and Tax Regulations Code.

Amendments to Current Law

This proposed ordinance provides that a taxpayer will not be subject to penalties or interest if the amount of the payroll expense tax or gross receipts tax installment is equal to or greater than the actual tax owed, or if the sum of the taxpayer's payroll expense tax and gross receipts tax installments is equal to or greater than 26 percent of the sum of the taxpayer's payroll expense tax and gross receipts tax liabilities from the immediately preceding tax year.

This ordinance specifies that a taxpayer's overpayment of gross receipts tax will be applied to any shortfall in that taxpayer's payroll expense tax, and vice-versa.

This ordinance provides that a combined group that is required to file a combined return for gross receipts tax purposes is also required to file a combined return for payroll expense tax purposes.

This ordinance clarifies that fees and special assessments are administered under the common administrative provisions of Article 6 that generally apply to all of the City's business taxes.

Background Information

This ordinance is intended to smooth the transition between the phasing out of the payroll expense tax and the phasing in of the gross receipts tax.

Providing penalty relief if a quarterly payment is equal to or greater than a preceding year liability, or if the overall amount of tax paid is correct, helps taxpayers transition to the methods of computing installment payments required under Proposition E, while ensuring that the City takes in tax revenue throughout the tax year. None of the changes will result in additional tax being imposed or collected.

Requiring a combined group of related business entities to file a single payroll expense tax return aligns the group's filing with the combined return requirement under the gross receipts tax. No additional tax is imposed or collected because the tax is calculated as if each member of the group was an individual payroll expense taxpayer.

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