

1 [Business Tax.]

2
3 **Motion submitting the San Francisco Business Tax Reform Ordinance of 2002 to the**
4 **qualified electors of the City and County of San Francisco, at the November 5, 2002**
5 **general municipal election.**
6

7 WHEREAS, The Board of Supervisors of the City and County of San Francisco duly
8 adopted the San Francisco Business Tax Reform Ordinance of 2002; and,

9 WHEREAS, Pursuant to Article XIII C of the Constitution of the State of California, the
10 San Francisco Business Tax Reform Ordinance of 2002 must be approved by the qualified
11 electors of the City and County of San Francisco by simple majority to become operative; and,

12 WHEREAS, The San Francisco Business Tax Reform Ordinance of 2002 is on file with
13 the Clerk of the Board of Supervisors in File No. _____, which is hereby declared to be
14 a part of this motion as if set forth fully herein; now, therefore, be it

15 MOVED, That the San Francisco Business Tax Reform Ordinance of 2002 shall be
16 submitted for approval to the qualified electors of the City and County of San Francisco, at the
17 November 5, 2002 general municipal election, as follows:
18

19 "Section 3. The San Francisco Business and Tax Regulations Code is hereby
20 amended by adding Article 12-A-1 (Gross Receipts Tax Ordinance) thereto, to read as
21 follows:
22

23 SEC. 1001. SHORT TITLE. This Article shall be known as the "Gross Receipts Tax
24 Ordinance."
25

1 SEC. 1002. OPERATION OF DEFINITIONS. Except where the context otherwise requires, the
2 terms used in this Article shall have the meanings given to them in Sections 6.2-1 et seq. of Article 6.

3
4 SEC. 1003. IMPOSITION OF GROSS RECEIPTS TAX; STATEMENT OF VOTER INTENT;
5 AUTHORIZATION AND RATIFICATION OF TAX COLLECTOR REGULATIONS, ETC. (a) Except
6 as provided under Sections 1004 and 1004.1, every person engaging in business within the City whose
7 business activities are of a type specified in Sections 1003.1 through 1003.5, inclusive, shall pay a tax
8 measured by the person's gross receipts from such activities, and shall calculate such tax as set forth
9 Section 1003.6.

10 (b) The Gross Receipts Tax is imposed for general governmental purposes and in order to
11 require commerce and the business community to carry a fair share of the costs of local government in
12 return for the benefits, opportunities and protections afforded by the City. Proceeds from the tax shall
13 be deposited in the City's general fund and may be expended for any purposes of the City.

14 (c) The voters intend by adopting this measure to authorize application of the Gross Receipts
15 Tax in the broadest manner consistent with the provisions of this Article and the requirements of
16 California Constitution Article XIIC, the United States Constitution and any other applicable
17 provision of federal and state law. The voters hereby declare that they authorize and ratify any
18 reasonable rules, regulations, determinations and interpretations promulgated or issued by the Tax
19 Collector to implement and administer the Gross Receipts Tax upon all commerce and business
20 activities specified in Sections 1003.1 through 1003.5, inclusive, and occurring within, attributable to
21 or having sufficient nexus with the City to lawfully impose the tax hereunder, regardless of the form
22 (corporate or otherwise) of the person or other legal entity engaging in such business within the City.

23
24 SEC. 1003.1. LESSORS OF REAL ESTATE. (a) Subject to exceptions in Subsection (d) of this
25 Section, Section 1004, and Section 1004.1, the Gross Receipts Tax shall apply to all persons engaging

1 in business within the City as lessors of real estate. A person is engaging in business within the City as
2 a lessor of real estate (hereinafter "lessor") if (i) such lessor, in whole or in part, is the legal or
3 beneficial owner of, or has a leasehold interest in, any land and/or building thereon (including
4 miniwarehouses and self-storage units, and excluding hotels as defined in Section 501 of Article 7), or
5 any portion thereof, that is located within the City (hereinafter "premises"), and (ii) receives, directly
6 or indirectly, rents of any kind or character from another person (hereinafter "tenant") for the right to
7 occupy or use such premises, regardless of whether such occupancy or use is for residential or non-
8 residential purposes.

9 (b) The gross receipts of a lessor of real estate include:

10 (1) The total amount of all lease or rental amounts paid or rendered by, on behalf of, or
11 for the benefit of, all of the lessor's tenants, valued in money, for the occupancy or use of all
12 premises located within the City, and any services that are part of the lease or rental of the
13 premises, whether received in money or otherwise, that are paid to, on behalf of, or for the
14 benefit of, the lessor.

15 (2) All receipts, cash, credits, property of any kind or character and the fair market
16 value of services so paid or rendered for such occupancy, use and services.

17 (3) All amounts paid directly or indirectly to or for the benefit of a lessor that are
18 included as gross income of the lessor for federal income tax purposes shall be presumed to
19 part of the lessor's gross receipts subject to tax under this Article. The lessor may rebut this
20 presumption by establishing to the satisfaction of the Tax Collector that such amounts reported
21 as gross income for federal income tax purposes are not part of the lessor's gross receipts as
22 defined by this Section.

23 (c) The gross receipts of a lessor of real estate shall be calculated without any deduction on
24 account of labor or service costs (including, without limitation, costs for property management
25 services, whether paid by the tenant, lessor or a third party), maintenance, interest paid, insurance,

1 taxes, utilities billed by the lessor to the lessee, losses, or any other expense incurred, directly or
2 indirectly, in connection with the person's business as a lessor of real estate with respect to the leased
3 premises.

4 (d) Notwithstanding Subsection (a), a person receiving rental or lease income in connection
5 with the operation of any of the following shall not, by reason of that fact alone, be deemed to be a
6 lessor of real property subject to the Gross Receipts Tax: (1) a cooperative housing corporation, as
7 defined in Section 216(b) of the Internal Revenue Code of 1986, as amended; (2) one residential
8 structure consisting of fewer than four units; or (3) one residential condominium.

9
10 SEC. 1003.2. TAXICAB COLOR SCHEMES. (a) Subject to exceptions in Section 1004 and
11 Section 1004.1, the Gross Receipts Tax shall apply to all persons engaging in business within the City
12 who hold a taxicab color scheme permit pursuant to Section 1125 of the San Francisco Police Code
13 (hereinafter "color scheme permit holders").

14 (b) The gross receipts of a color scheme permit holder shall include all receipts, cash,
15 credits, property of any kind or character and the fair market value of services that are paid to, on
16 behalf of, or for the benefit of, such permit holder in connection with the business conducted under the
17 authority of such permit, including but not limited to gate fees as defined under Section 1135.1 of the
18 San Francisco Police Code, receipts for the right to advertise upon taxicabs belonging to or affiliated
19 with the permit holder's taxicab color scheme, receipts from the sale of fuel, lubricants and other
20 automotive products used or intended to be used for the taxicabs belonging to or affiliated with the
21 permit holder's taxicab color scheme, and any fee, tribute, commission or other receipt by, for or on
22 behalf of a taxicab medallion holder for the right to affiliate with the permit holder's color scheme.

23 (c) The gross receipts of a taxicab color scheme permit holder shall be calculated without
24 any deduction on account of labor or service costs, maintenance, interest paid, insurance, taxes, losses,

1 or any other expense incurred, directly or indirectly, in connection with the person's business
2 conducted under the authority of the person's color scheme permit.

3
4 SEC. 1003.3. AUTOMOBILE RENTAL AND LEASING. (a) Subject to exceptions in Section
5 1004 and Section 1004.1, the Gross Receipts Tax shall apply to all persons engaging within the City in
6 the business of renting or leasing automobiles, trucks, utility trailers, recreational vehicles and other
7 motor vehicles (hereinafter "automobile rental and leasing business").

8 (b) The gross receipts of an automobile rental and leasing business shall include all
9 receipts, cash, credits, property of any kind or character and the fair market value of services that are
10 paid to, on behalf of, or for the benefit of, a person derived from or attributable to such person's
11 automobile rental and leasing business within the City, including but not limited to receipts from the
12 rental or leasing of vehicles, the retail sale of fuel, lubricants and other automotive products used or
13 intended to be used in the rented or leased vehicles, the sale of damage waivers or other waivers or
14 coverage in the nature of insurance, and services related to the person's automobile rental and leasing
15 business that are performed within the City.

16 (c) The gross receipts of an automobile rental and leasing business shall be calculated
17 without any deduction on account of labor or service costs, maintenance, interest paid, insurance,
18 taxes, losses, or any other expense incurred, directly or indirectly, in connection with the person's
19 automobile rental and leasing business.

20
21 SEC. 1003.4. GASOLINE STATIONS. (a) Subject to exceptions in Section 1004 and Section
22 1004.1, the Gross Receipts Tax shall apply to all persons engaging within the City in retail sales of
23 gasoline, diesel fuel, gasohol or other fuel used or intended to be used for motor vehicles, or retailing
24 such products in combination with convenience store items (hereinafter "gasoline stations").

1 **(b) The gross receipts of a gasoline station shall include all receipts, cash, credits, property**
2 **of any kind or character and the fair market value of services that are paid to, on behalf of, or for the**
3 **benefit of, a person derived from or attributable to such person's gasoline station business within the**
4 **City, including but not limited to, receipts from the retail sale of fuel, lubricants and other automotive**
5 **products used or intended to be used for motor vehicles, services related to the person's gasoline**
6 **station business that are performed on the premises of such gasoline station, and retail sales of**
7 **convenience store items or other concessions sold on the premises of such gasoline station.**

8 **(c) The gross receipts of a gasoline station shall be calculated without any deduction on**
9 **account of labor or service costs, maintenance, interest paid, insurance, taxes, losses, or any other**
10 **expense incurred, directly or indirectly, in connection with the person's gasoline station business.**

11
12 **SEC. 1003.5. CONTRACTORS. (a) Subject to exceptions in Section 1004 and Section 1004.1,**
13 **the Gross Receipts Tax shall apply to all persons engaging in business within the City in the**
14 **construction trades (hereinafter "contractors"), including without limitation: residential construction**
15 **(e.g., new work, additions, alterations and repairs of single residential housing units and multifamily**
16 **residential housing units); non-residential building construction (e.g., new work, additions, alterations**
17 **and repairs of manufacturing and industrial buildings, and commercial and institutional buildings);**
18 **highway, street, bridge and tunnel construction (e.g., new work, additions, alterations and repairs of**
19 **highways, streets, roads, airport runways, bridges, viaducts and tunnels); heavy non-building**
20 **construction (e.g., cable laying, dock construction, golf-course construction, joint-venture contractors**
21 **for water, sewer and pipelines, mass transit project construction, park construction, and power and**
22 **communication transmission line construction); plumbing, heating and air-conditioning contractors;**
23 **painting and wall covering contractors; electrical contractors; masonry, drywall, insulation and tile**
24 **contractors; carpentry and floor contractors; roofing, siding and sheet metal contractors; concrete**
25 **contractors; water well drilling contractors; and other special trade contractors (e.g., attenae**

installation, coating and glazing of concrete surfaces, conveyor systems installation, elevator installation, erecting metal storage tanks, fireproofing, house moving, erecting metal, structural steel, and similar products of prestressed or precast concrete to produce structural elements, on-site welding, radon remediation and sandblasting).

(b) The gross receipts of a contractor shall include all receipts, cash, credits, property of any kind or character and the fair market value of services that are paid to, on behalf of, or for the benefit of, a person derived from or attributable to such person's construction business.

(c) The gross receipts of a contractor shall be calculated without any deduction on account of labor or service costs, maintenance, interest paid, insurance, taxes, losses, or any other expense incurred, directly or indirectly, in connection with the person's construction business.

SEC. 1003.6. GROSS RECEIPTS TAX RATES. The rates of gross receipts tax under Sections 1003.1, 1003.2, 1003.3, 1003.4 and 1003.5 shall be as follows:

<u>Sec. No.</u>	<u>Type of Business</u>	<u>Rate</u>
<u>1003.1</u>	<u>Lessors of Real Estate</u>	<u>0.3%</u>
<u>1003.2</u>	<u>Taxicab Color Schemes</u>	<u>0.3%</u>
<u>1003.3</u>	<u>Automobile Rental & Leasing</u>	<u>0.3%</u>
<u>1003.4</u>	<u>Gasoline Stations</u>	<u>0.3%</u>
<u>1003.5</u>	<u>Contractors</u>	<u>0.3% of gross receipts between \$0 and 2,000,000;</u> <u>0.35% of gross receipts from \$2,000,000 to</u> <u>\$5,000,000; and 0.4% of gross receipts over</u> <u>\$5,000,000.</u>

1 SEC. 1004. EXEMPTIONS. (a) Except as provided in Subsection (b) of this Section, an
2 organization that is exempt from income taxation by Chapter 4 (commencing with Section 23701) of
3 Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section
4 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, as amended, as qualified by
5 Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as amended, shall be exempt
6 from taxation under this Article.

7 (b) An organization otherwise exempt from income taxation under Subsection (a) that is
8 directly engaged within the City in an unrelated trade or business within the meaning of Section 513(a)
9 of the Internal Revenue Code of 1986, as amended, and has, from its own operations, unrelated
10 business taxable income within the meaning of Section 512(a)(1) of the Internal Revenue Code of 1986,
11 as amended, shall pay the tax on its gross receipts from its unrelated trade or business activities that
12 are specified in Sections 1003.1 through 1003.5, inclusive, and attributable to the City.

13 (c) "Gross receipts" as otherwise defined in Sections 1003.1 through 1003.5, inclusive,
14 shall not include receipts from the business activities specified in such sections if, and only so long as
15 and to the extent that, the City is prohibited from taxing such receipts under the Constitution or laws of
16 the United States or under the Constitution or laws of the State of California.

17 (d) To the extent that any person subject to tax under this Article has paid a tax on gross
18 receipts (not including any sales tax or income tax), to any other taxing jurisdiction, on any gross
19 receipts as defined in Section 1003.1 through 1003.5, inclusive, and taxed under this Article, the tax
20 paid to such other taxing jurisdiction shall be credited against the tax due under this Article.

21 (e) Nothing in this Article shall be construed as requiring the payment of any tax for
22 engaging in a business or the doing of an act when such payment would constitute an unlawful burden
23 upon or an unlawful interference with interstate or foreign commerce, or which payment would be in
24 violation of the Constitution or a statute of the United States or of the Constitution or a statute of the
25 State of California.

1
2 SEC. 1004.1. SMALL BUSINESS EXEMPTION. (a) Notwithstanding any other provision of
3 this Article, "small business enterprises," as hereinafter defined, shall be exempt from payment of the
4 Gross Receipts Tax; provided, that small business enterprises shall pay the annual registration fee
5 pursuant to Section 855 of this Code.

6 (b) The term "small business enterprise" shall mean and include any taxpayer:

7 (1) Whose tax liability under this Article, but for this exemption provision, would not
8 exceed \$2,500; and

9 (2) Who has filed a tax return by the last day of February for the preceding tax year. If
10 the taxpayer fails to file a return by that date, the taxpayer shall be subject to a penalty as
11 specified in subsection (c).

12 (c) In lieu of the penalty specified in Section 6.17-3 of Article 6 for failing to file a return, any
13 person who otherwise qualifies for the small business exemption set forth in this Section who fails to
14 file a return by the last date of February shall pay a penalty as follows:

15 (1) If the person's Gross Receipts Tax liability under this Article, but for the small
16 business exemption under this Section, would be less than \$1,000, the penalty shall be \$100 plus
17 10% of the amount of such liability, for each month, or fraction thereof, that the return is
18 delinquent, up to a maximum amount equal to the person's liability for such tax but for the
19 small business exemption;

20 (2) If the person's Gross Receipts Tax liability under this Article, but for the small
21 business exemption under this Section, would be \$1,000 or more, then the penalty shall be \$250
22 plus 10% of the amount of such liability, for each month, or fraction thereof, that the return is
23 delinquent, up to a maximum amount equal to the person's liability for such tax but for the
24 small business exemption.

1 (d) The Tax Collector may, in his or her discretion, reduce the penalty set forth in subsection
2 (c) to not less than \$100 upon a showing that the late filing of the return was due to reasonable cause
3 and not due to wilful neglect.

4
5 SEC. 1005. ALLOCATION; BUSINESS WITHIN AND WITHOUT CITY; BUSINESSES
6 SUBJECT TO THE GROSS RECEIPTS TAX AND PAYROLL EXPENSE TAX. (a) Any person deriving
7 gross receipts from business activities engaged in both within and without the City that are specified in
8 Sections 1003.1, 1003.2, 1003.3, 1003.4 or 1003.5 shall allocate such gross receipts to determine the
9 amount thereof derived from or attributable to such activities within the City for purposes of
10 calculating the person's tax liability under this Article. The person shall make such allocation, which
11 shall be set forth on appropriate returns, using the ordinary method of allocation for each of the
12 business activities specified in Sections 1003.1 through 1003.5, inclusive, as follows:

13 (i) Lessors of Real Estate. For purposes of calculating the amount of gross receipts of
14 lessors of real estate (as defined in Section 1003.1), taxpayers shall include 100% of the gross
15 receipts that are derived from or attributable to the leasing or renting of premises (as defined in
16 Section 1003.1) located within the City; taxpayers shall not include gross receipts that are
17 derived from or attributable to the leasing or renting of real estate located outside of the City.

18 (ii) Taxicab Color Scheme Permit Holders. For purposes of calculating the amount of
19 gross receipts of taxicab color scheme permit holders (as defined in Section 1003.2), taxpayers
20 shall include 100% of the gross receipts that are derived from or attributable to the taxpayer's
21 color scheme permit business.

22 (iii) Automobile Rental and Leasing. For purposes of calculating the amount of gross
23 receipts of persons engaged in the business of automobile rental and leasing (as defined in
24 Section 1003.3), taxpayers shall include 100% of the gross receipts that are derived from or
25 attributable to vehicles that are rented or leased from a location within the City; taxpayers shall

1 not include gross receipts that are derived from or attributable to vehicles that are rented or
2 leased from a location outside the City.

3 (iv) Gasoline Stations. For purposes of calculating the amount of gross receipts of
4 gasoline stations (as defined in Section 1003.4), taxpayers shall include 100% of the gross
5 receipts that are derived from or attributable to the operation of all of the taxpayer's gasoline
6 stations located within the City.

7 (v) Contractors. For purposes of calculating the amount of gross receipts of
8 contractors (as defined in Section 1003.5), taxpayers shall include 100% of the gross receipts
9 that are derived from or attributable to construction projects located within the City; taxpayers
10 shall not include gross receipts that are derived from or attributable to construction projects
11 located outside of the City.

12 (b) To the extent that a person who is subject to the Gross Receipts Tax also engages in
13 business activities within the City that are not specified in Sections 1003.1, 1003.2, 1003.3, 1003.4 or
14 1003.5, the person shall be subject to the Payroll Expense Tax to the extent provided in Article 12-A
15 (and not the Gross Receipts Tax) attributable to all business activities within the City other than those
16 specified in Section 1003.1 through 1003.5, inclusive, of this Article.

17 (c) The Tax Collector may promulgate regulations and issue rules, determinations and
18 interpretations regarding the ordinary methods of allocation set forth in this Section so as to fairly
19 allocate the gross receipts of all persons subject to this Article in order to impose the tax generally and
20 in individual cases only upon gross receipts from the business activities specified in Sections 1003.1
21 through 1003.5, inclusive, that are derived from or attributable to such activities engaged in within the
22 City. The Tax Collector may, in the application to individual cases of such regulations, rules,
23 determinations and interpretations and regulations, depart from or make such modifications thereto as
24 may be necessary to allocate fairly the taxpayer's gross receipts and impose the tax under this Article
25 in a lawful manner.

1 (d) If the Tax Collector reallocates gross receipts upon examination of any return, the Tax
2 Collector shall notify the person in writing of the basis upon which the Tax Collector made the
3 reallocation. The Tax Collector shall provide such notice as soon as practicable following such
4 reallocation. The time for the doing of any act required by this Article or Article 6, and the
5 commencement of any liability hereunder, shall not begin to run until the Tax Collector provides such
6 notice.

7
8 SEC. 1006. PAYMENTS, RETURNS, PREPAYMENTS AND EXTENSIONS. Payments, returns,
9 prepayments and extensions for person's subject to this Article shall be as prescribed in the common
10 administrative provisions set forth in Article 6.

11
12 SEC. 1007. AUTHORITY TO PROMULGATE REGULATIONS. Notwithstanding any other
13 provision of this Article or Article 6, the Tax Collector may promulgate regulations and issue rules,
14 determinations and interpretations consistent with the purposes of this Article and Article 6 as may be
15 necessary and appropriate to apply such Articles in a lawful manner, including provisions for penalties
16 due to fraud, underpayment of fees and taxes, or any evasion of such Articles or the rules and
17 regulations promulgated thereunder. All regulations, rules, determinations and interpretations
18 promulgated or issued by the Tax Collector that are not inconsistent with such Articles, and that were
19 promulgated or issued prior to the effective date of this Article, shall remain in full force and effect.

20
21 Section 4. The San Francisco Business and Tax Regulations Code is hereby amended
22 by amending Sections 902, 902.1, 902.3, 902.6, 903, 903.1, 904, 905-A and 906, and by
23 repealing Sections 906A and 906E, of Article 12-A (Payroll Expense Tax Ordinance) thereof,
24 to read as follows:

1 SEC. 902. OPERATION OF DEFINITIONS. Except where the context otherwise
2 requires, (i) the terms used in this ~~ordinance Article~~ shall have the meanings given to them in
3 Sections 902.1 through ~~902.9~~ 902.3, inclusive, of this ~~ordinance Article~~, and (ii) terms not defined
4 in this Article that are defined in Article 6 shall have the same meaning as given to them in Article 6.
5

6 SEC. 902.1. PASS-THROUGH ENTITY. The term "pass-through entity" includes a trust,
7 partnership, corporation described in Subchapter S of the Internal Revenue Code of 1986, as amended,
8 limited liability company, limited liability partnership, professional corporation, and any other person
9 or entity which is not subject to the income tax imposed by Subtitle A, Chapter 1 of the Internal
10 Revenue Code of 1986, as amended, or which is allowed a deduction in computing such tax for
11 distributions to the owners or beneficiaries of such person or entity.
12

13 SEC. ~~902.6~~ 902.2. PAYROLL EXPENSE. (a) The term "Payroll Expense" shall mean
14 the compensation paid to, on behalf of, or for the benefit of an individual or pass-through entity,
15 including salaries, wages, commissions, property issued in exchange for the performance of
16 services (including but not limited to stock options), compensation to owners of pass-through entities
17 and any other form of compensation, to an individual who or that, during any tax year, performs
18 work or renders services, in whole or in part in the City and County of San Francisco; and if more
19 than one individual or pass-through entity during any tax year performs work or renders
20 services in whole or in part in the City and County of San Francisco, the term "Payroll Expense"
21 shall mean the total compensation paid including salaries, wages, bonuses, commissions,
22 property issued in exchange for the performance of services (including but not limited to stock options),
23 compensation to owners of pass-through entities and any other form of compensation, to all such
24 individuals and pass-through entities.
25

1 (b) All compensation, including all cash distributions to owners of a pass-through entity,
2 shall be included in the calculation of such entity's payroll expense for purposes of determining such
3 entity's tax liability under this Article. For purposes of this Section, the compensation paid to an owner
4 of a pass-through entity shall be presumed to be 90% of the amount of gross income of such owner for
5 federal income tax purposes. A pass-through entity may rebut this presumption by establishing to the
6 satisfaction of the Tax Collector that the compensation paid to an owner of such pass-through entity is
7 less than 90% of such amount.

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

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

1 with such real estate broker or mortgage broker, regardless of whether the mortgage processor is also
2 licensed as a mortgage broker under the laws of the State of California.

3
4 SEC. 902.3. PROFESSIONAL SPORTS TEAM. The term "professional sports team" means a
5 person who is an owner or part owner of an athletic team if the athletes or players of such team
6 generally receive compensation for being members of the team or for entering any contract to
7 participate on behalf of such sports team.

8
9 SEC. 903. IMPOSITION OF PAYROLL EXPENSE TAX. (a) A tax for general ~~revenue~~
10 governmental purposes is hereby imposed upon every person ~~who, in connection with said~~
11 ~~person's business, engages, hires, employs or contracts with one or more individuals as employee, to~~
12 ~~perform work or render services in whole or in part~~ engaging in business within the City ~~and County~~
13 ~~of San Francisco~~ as defined in Section 6.2-13 of Article 6; provided, that such tax shall be levied
14 only upon that portion of the person's payroll expense ~~which that~~ is attributable to the City ~~and~~
15 ~~County of San Francisco~~ as set forth in Section 904.

16 (b) ~~This ordinance shall not be construed as requiring any license whatsoever, nor shall~~
17 ~~payment of this tax be a condition precedent to engaging in any business within the City and County of~~
18 ~~San Francisco. This tax~~ The Payroll Expense Tax is imposed for general ~~revenue~~ governmental
19 purposes and in order to require commerce and the business community to carry a fair share
20 of the costs of local government in return for the benefits, opportunities and protections
21 afforded by the City ~~and County of San Francisco~~. Proceeds from the tax shall be deposited in the
22 City's general fund and may be expended for any purposes of the City.

23 (c) The voters intend by adopting this measure to authorize application of the Payroll
24 Expense Tax in the broadest manner consistent with the provisions of this Article and the requirements
25 of California Constitution Article XIII C, the United States Constitution and any other applicable

1 provision of federal and state law. To that end, the voters declare that they authorize and ratify any
2 reasonable rules, regulations, determinations and interpretations promulgated or issued by the Tax
3 Collector to implement and administer the tax upon all commerce and business activities occurring
4 within, attributable to or having sufficient nexus with the City to lawfully impose the tax, regardless of
5 the form (corporate or otherwise) of the person or other legal entity engaging in business in the City.

6 (d) To the extent a person who is subject to the Payroll Expense Tax also engages in
7 activities subject to the Gross Receipts Tax, the person's payroll expense attributable to such gross
8 receipts activities shall be deducted from the person's payroll expense as otherwise defined in Section
9 902.2 of this Article, and the person shall be subject to the Gross Receipts Tax on the person's gross
10 receipts attributable to such activities.

11
12 SEC. 903.1. RATES OF PAYROLL EXPENSE TAX. ~~Commencing July 1, 1990, the~~ The
13 amount rate of the payroll expense tax ~~for persons other than Associations~~ shall be 1-1/2 percent.
14 ~~of~~ The amount of a person's liability for the payroll tax shall be the product of such person's taxable
15 payroll expense multiplied by 0.015 of such person, and the amount of such tax for Associations shall
16 be 1-1/2 percent of the payroll expense of such Association, plus 1-1/2 percent of the total distributions
17 made by such Association by way of salary to those having an ownership interest in such Association.
18 Amounts paid or credited to those having an ownership interest in such Association prior and in
19 addition to the distribution of ownership profit or loss shall be presumed to be distributions "by way of
20 salary" and for personal services rendered, unless the taxpayer proves otherwise by clear and
21 convincing evidence.

22
23 SEC. 904. APPORTIONMENT OF PAYROLL EXPENSE. Where payroll expense is
24 incurred by reason of work performed or services rendered by an individual, ~~as Commission~~
25 ~~Merchant or Employee,~~ partly within and partly without the City ~~and County of San Francisco,~~ the

1 portion of such payroll expense attributable to the City ~~and County of San Francisco~~ (and subject
2 to tax hereunder) shall be determined as follows:

3 (a) Except as otherwise provided in this Section Subsection (b), the portion of such
4 payroll expense attributable to the City ~~and County of San Francisco~~ shall be the portion of such
5 payroll expense which the total number of working hours employed within the City ~~and County~~
6 bears to the total number of working hours within and without the City ~~and County~~.

7 (b) If the amount of such payroll expense depends on the volume of business
8 transacted by such individual, ~~and such individual spends the majority of his or her working hours~~
9 ~~outside of the City and County~~, then the portion of such payroll expense attributable to the City
10 ~~and County of San Francisco~~ shall be the portion of such payroll expense which the volume of
11 business transacted by such individual in the City ~~and County~~ bears to the volume of business
12 transacted by such individual within and without the City ~~and County~~.

13 (c) Notwithstanding any other provision of this section, the portion of payroll expense of a
14 person engaging in business as a professional sports team that is attributable to the City shall be the
15 product of the total payroll expense of the person multiplied by a fraction, the numerator of which is the
16 total number of regular season games played within the City during the tax year and the denominator
17 of which is the total number of regular season games played within and without the City during the tax
18 year.

19 (e d) If it is impracticable, unreasonable or improper to apportion such payroll expenses
20 as aforesaid either because of the ~~peculiar~~ particular nature of the services of such individual,
21 or on account of the unusual basis of compensation, or for any other reason, then the amount
22 of such payroll earnings reasonably attributable to work performed or services rendered, in
23 the City ~~and County~~, shall be determined on the basis of all relevant facts and circumstances of the
24 particular case, in accordance with ~~rules~~ any rulings or regulations ~~adopted~~ issued or promulgated
25 by the Tax Collector for the purpose.

1 (~~d e~~) If the ~~City~~ Tax Collector determines that the percentage of payroll expenses
2 attributable to ~~the City and County of San Francisco~~, for any one or more ~~taxpayers~~ persons, is a
3 relatively stable percentage, the Tax Collector ~~is authorized to~~ may establish that percentage as
4 a prima facie evidence of payroll expense attributable to ~~the City and County of San Francisco~~;
5 provided, ~~however~~, that the Tax Collector shall condition the establishment of such fixed
6 percentage upon the obligation of the taxpayer to report immediately to the Tax Collector any
7 significant change in the taxpayer's mode of business which ~~might have some effect upon~~ may
8 impact the portion of the ~~taxpayer's person's~~ payroll expense which is attributable to ~~the City and~~
9 ~~County of San Francisco~~; and, provided further, that the Tax Collector may rescind any such fixed
10 percentage ~~established by the Tax Collector is revocable by the Tax Collector~~ at any time.

11 (~~e~~) ~~Where work is performed or services are rendered outside of the City and County of San~~
12 ~~Francisco on an occasional or incidental basis, and not on a regular or continuous basis, the amount~~
13 ~~of payroll earnings reasonably attributable to the work performed or services rendered shall be~~
14 ~~attributable to the City and County. A business license issued to the taxpayer by another jurisdiction for~~
15 ~~work performed or services rendered shall be prima facie evidence of regular or continuous activity in~~
16 ~~that jurisdiction.~~

17
18 SEC. 905-A. SMALL BUSINESS TAX EXEMPTION. (a) Notwithstanding any other
19 provisions of this ~~Payroll Expense Tax Ordinance~~ Article, ~~except Sections 907 and 909 herein~~, "small
20 business enterprises" as hereinafter defined, shall be exempt from ~~taxation under this ordinance~~
21 ~~payment of the Payroll Expense Tax~~; provided, however, that small business enterprises shall
22 pay the annual registration fee pursuant to Section ~~885~~ 855 of ~~this Code~~ Article 12.

23 (b) The term "small business enterprise" shall mean and include any taxpayer ~~who~~
24 ~~has performed all of the following~~:

1 (1) Whose tax liability ~~hereunder~~ under this Article, but for this exemption
2 provision, would not exceed \$2,500; and

3 (2) ~~For the purpose of taxes due on payroll expenses and/or salary distribution~~
4 ~~incurred on or after January 1, 1995, who~~ Who has filed a tax return ~~pursuant to Section 907~~
5 ~~of this Article~~ by the last date of February ~~of each~~ for the preceding tax year. If the
6 taxpayer fails to file a return by that date, the taxpayer shall be subject to a penalty as
7 specified in subsection (c).

8 (c) In lieu of the penalty specified in Section 6.17-3 of ~~this Code~~ Article 6 for failing to
9 file a return, any person who otherwise qualifies for the small business exemption set forth in
10 this Section who fails to file a return by the last date of February shall pay a penalty as
11 follows:

12 (1) If the person's Payroll Expense Tax liability ~~for taxes due on payroll expenses~~
13 ~~and/or salary distribution~~ under this Article, but for the small business exemption under
14 this Section, would be less than \$1,000, the penalty shall be \$100 plus 10% of the
15 amount of such liability, for each month, or fraction thereof, that the return is
16 delinquent, up to a maximum amount equal to the person's liability for such tax but for
17 the small business exemption;

18 (2) If the person's Payroll Expense Tax liability ~~for taxes due on payroll expenses~~
19 ~~and/or salary distribution~~ under this Article, but for the small business exemption under
20 this Section, would be \$1,000 or more, then the penalty shall be \$250 plus 10% of the
21 amount of such liability, for each month, or fraction thereof, that the return is
22 delinquent, up to a maximum amount equal to the person's liability for such tax but for
23 the small business exemption.

24 (d) The Tax Collector may, in his or her discretion, reduce the penalty set forth in
25 subsection (c) to not less than \$100 upon a showing that the late filing of the return was due

1 to ~~circumstances beyond the reasonable control of the person~~ reasonable cause and not due to wilful
2 neglect.

3
4 SEC. 906. EXEMPTION PROVISIONS. (a) Except as provided in Subsection (b) of
5 this Section, an organization having a formally recognized exemption from income tax
6 pursuant to Sections 501(c) or 501(d) or 401(a) of ~~Title 26 of the United States Code~~ the Internal
7 Revenue Code of 1986, as amended, as qualified by Sections 502, 503 and 504 of ~~Title 26 of the~~
8 ~~United States Code~~ the Internal Revenue Code of 1986, as amended, shall be exempt from taxation
9 under this ~~ordinance~~ Article.

10 (b) An organization otherwise exempt from taxation under Subsection (a) of this
11 Section that is directly engaged within the City in an unrelated trade or business within the meaning of
12 Section 513(a) of the Internal Revenue Code of 1986, as amended, and has, from its own operations,
13 unrelated business taxable income within the meaning of Section 512(a)(1) of the Internal Revenue
14 Code of 1986, as amended, if it receives unrelated business receipts, shall pay ~~a~~ the Payroll Expense
15 Tax equal to the amount ~~arrived at~~ calculated by multiplying the tax which would have been
16 due under this ~~Section~~ Article if the organization were not an exempt organization by the
17 percentage which its unrelated business receipts bear to its total receipts. If it is impracticable,
18 unreasonable or improper to allocate such organization's payroll expense as aforesaid either because
19 of the particular nature of the organization's unrelated trade or business or the particular nature of the
20 services provided to the organization in connection therewith by its employees, or on account of the
21 unusual basis of compensation, or for any other reason, then the amount of such payroll expense
22 reasonably attributable to work performed or services rendered in the City shall be determined on the
23 basis of all relevant facts and circumstances of the particular case, in accordance with any rulings or
24 regulations issued or promulgated by the Tax Collector for the purpose.

1 ~~(c) — All Sections of the United States Code shall mean those Sections of the United States~~
2 ~~Code as they exist on the effective date of this ordinance.~~

3 ~~(d c) Blind persons licensed under the provisions of Chapter 6A of Title 12 of the~~
4 ~~United States Code ("Vending Stands for Blind in Federal Buildings") and blind persons licensed~~
5 ~~under the provisions of Article 5 of Chapter 6 of Part 2 of Division 10 of the Welfare and~~
6 ~~Institutions Code of the State of California ("Business Enterprises for the Blind") need not~~
7 ~~include in the computation of payroll expense the first \$15,000 of payroll expense in any one~~
8 ~~year which is attributable to their licensed operations within the City and County of San Francisco.~~
9 ~~A blind person, within the meaning of this Section, shall mean a person having not more than 10~~
10 ~~percent visual acuity in the better eye, with correction. Such blindness shall be certified by a licensed~~
11 ~~physician and surgeon who specializes in diseases of the eye, or by the Bureau of Vocational~~
12 ~~Rehabilitation of the Department of Education of the State of California, and the exemption provided~~
13 ~~by this Section shall not apply until a certificate as to such blindness shall be furnished to the Tax~~
14 ~~Collector.~~

15 ~~(e d) Skilled Nursing Facilities licensed under the provisions of Title 22, California~~
16 ~~Administrative Code, Division 5 ("Licensing and Certification of Health Facilities and Referral~~
17 ~~Agencies") Chapter 3 ("Skilled Nursing Facilities"), shall be exempt from taxation under this~~
18 ~~Article.~~

19 ~~(f) — The following persons are exempt from this tax, as provided in Section 1005.4, of Article~~
20 ~~12-B:~~

21 ~~(1) — Any tenant of the Port of San Francisco whose principal business is ship repair~~
22 ~~and whose workforce consists of at least 30 percent San Francisco residents; and~~

23 ~~(2) — Any subcontractor of any such exempt ship repair business whose workforce~~
24 ~~consists of at least 30 percent San Francisco residents, provided that it derives at least 70~~
25 ~~percent of its revenue from the ship repair industry.~~

1 (e) For only so long as and to the extent that the City is prohibited from imposing the tax
2 under this Article, the following persons shall be exempt from the Payroll Expense Tax:

3 (1) Banks and financial corporations exempt from local taxation under Article XIII,
4 Section 27 of the California Constitution and Revenue and Taxation Code Section 23182;

5 (2) Insurance companies exempt from local taxation under Article XIII, Section 28 of
6 the California Constitution;

7 (3) Persons engaging in business as a for-hire motor carrier of property under Revenue
8 and Taxation Code Section 7233;

9 (4) Person's engaging in intercity transportation as a household goods carrier under
10 Public Utilities Code Section 5327;

11 (5) Charter-party carriers operating limousines that do not maintain a business office
12 within the City under Public Utilities Code Section 5371.4.

13 (6) Any person upon whom the City is prohibited under the Constitution or statute of the
14 State of California from imposing the Payroll Expense Tax.

15 (f) To the extent that any taxpayer has paid a substantially similar tax to any other taxing
16 jurisdiction on any payroll expense taxed under this Article, the tax paid to such taxing jurisdiction
17 shall be credited against the tax due under this Article.

18 (g) Nothing in this Article shall be construed as requiring the payment of any tax for
19 engaging in a business or the doing of an act when such payment would constitute an unlawful burden
20 upon or an unlawful interference with interstate or foreign commerce, or which payment would be in
21 violation of the Constitution or a statute of the United States or of the Constitution or a statute of the
22 State of California.

23
24 ~~SEC. 906A. ENTERPRISE ZONE TAX CREDIT. (a) A credit against this tax shall be allowed~~
25 ~~for each person who maintains a fixed place of business within the San Francisco Enterprise Zone and~~

1 ~~who, on or after January 1, 1992, creates one or more new jobs and hires employees who qualify under~~
2 ~~Subsection (b) of this Section; provided, however, that in no event shall the tax credit reduce a person's~~
3 ~~tax liability to less than zero. Moreover, the tax credits shall only serve as an offset against the~~
4 ~~additional tax that would be paid as a result of additional hiring by a business within the zone. Each~~
5 ~~person claiming this credit shall file with the Tax Collector, on a form prescribed by the Tax Collector,~~
6 ~~an affidavit attesting to facts establishing his or her entitlement to the tax credit; said affidavit shall be~~
7 ~~supported by State tax credit forms (EDD, DSS, and PIC).~~

8 ~~(b)——An employee is a "qualified employee" for purposes of computing this tax credit if he or~~
9 ~~she is newly hired by the taxpayer on or after January 1, 1992 and either (1) is receiving subsidized~~
10 ~~employment training or services under the terms of the Federal Job Training Partnership Act (JTPA);~~
11 ~~or (2) is registered in the Greater Avenues for Independence (GAIN) Program; or (3) is certified by the~~
12 ~~Employment Development Department as eligible for the federal Work Opportunity Credit Program; or~~
13 ~~(4) is receiving General Assistance.~~

14 ~~(c)——The tax credit, for each qualified employee, shall be a varying percentage of the~~
15 ~~additional tax that would be incurred as a result of additional wages paid for work performed within~~
16 ~~the Enterprise Zone, and the dollar amount of such tax credit shall depend both upon the duration of~~
17 ~~employment as of the date payroll taxes are due, and the eligible wages paid, as follows:~~

18 ~~(1)——The eligible wages to which the percentage is applied shall be limited to wages~~
19 ~~paid for work performed by the qualified employee while physically present within San~~
20 ~~Francisco.~~

21 ~~(2)——The percentage to be applied to eligible wages shall depend upon the employee's~~
22 ~~duration of employment as follows:~~

23 ~~Credit Allowed on~~

24 ~~Duration of Employment~~

~~Payroll Tax Liability~~

25 ~~First 24 months~~

~~100%~~

1	<i>Second 24 months</i>	<i>50%</i>
2	<i>Third 24 months</i>	<i>25%</i>
3	<i>Fourth 24 months</i>	<i>15%</i>
4	<i>Fifth 24 months</i>	<i>10%</i>

5

6 ~~SEC. 906E. CREDIT OF SURPLUS BUSINESS TAX REVENUE. (a) General Rule. Any~~

7 ~~business, as defined in Section 902.2 of Part III of the Municipal Code, that does not qualify as a "small~~

8 ~~business enterprise" under the provisions of Section 905-A (Small Business Exemption), shall be~~

9 ~~allowed a credit against the Payroll Expense Tax for any taxable year ending within a fiscal year of the~~

10 ~~City and County of San Francisco immediately following a fiscal year in which the City and County of~~

11 ~~San Francisco has surplus Business Tax revenue; provided, however, that in no event shall the tax~~

12 ~~credit allowable pursuant to this Section reduce a taxpayer's liability for such tax to an amount less~~

13 ~~than zero. For each fiscal year, the Controller shall determine whether the City and County of San~~

14 ~~Francisco has surplus Business Tax revenue. The Controller's determination whether the City and~~

15 ~~County of San Francisco has surplus Business Tax revenue shall be made on or before the first~~

16 ~~business day of September following the close of such fiscal year; provided, however, that for purposes~~

17 ~~of the 1997/1998 fiscal year, the Controller may make his or her determination on or before December~~

18 ~~31, 1998. The Controller shall notify the Tax Collector of his or her determination.~~

19 ~~(b) Amount of Credit. For purposes of this Section, the amount of the tax credit for any~~

20 ~~taxable year shall be \$500.00; provided, however, that in no event shall the tax credit allowable~~

21 ~~pursuant to this Section reduce a taxpayer's liability for such tax to an amount less than zero.~~

22 ~~(c) Definitions. The following definitions shall apply to the terms used in this Section.~~

23 ~~(1) For any fiscal year of the City and County of San Francisco, the City and County~~

24 ~~of San Francisco shall be deemed to have "surplus Business Tax revenue" if and only if the~~

~~actual Business Tax revenue for such fiscal year exceeds the anticipated Business Tax revenue for such fiscal year.~~

~~(2) — For any fiscal year of the City and County of San Francisco, the "actual Business Tax revenue" means the aggregate amount of tax revenue collected pursuant Article 12-A (Payroll Expense Tax Ordinance) and Article 12-B (Business Tax Ordinance) of Part III of the San Francisco Municipal Code, less the amount of such revenue for such year allocable solely to tax rate increases in such year.~~

~~(3) — For any fiscal year of the City and County of San Francisco, the "anticipated Business Tax revenue" is an amount equal to the product of (i) the actual Business Tax revenue for the fiscal year immediately preceding such fiscal year, multiplied by (ii) 107.5 percent.~~

~~(d) — Effective Date. The tax credit provided by this Section shall be allowable in taxable years ending after 1997.~~

Section 5. The San Francisco Business and Tax Regulations Code is hereby amended by amending Section 855 of Article 12 (Business Registration Ordinance) thereof, to read as follows:

SEC. 855. REGISTRATION CERTIFICATE - FEE. (a) Except as otherwise provided in this Section and Section 856 of this Article, the annual fee for obtaining a registration certificate, payable in advance, shall be as follows:

Computed Payroll Expense Tax and Gross Receipts Tax for the Immediately Preceding Tax Year	Annual Registration Fee
Less than \$ 1	\$ 25
\$ 1 to \$ 10,000	\$ 150

\$ 10,000 to \$ 50,000	\$ 250
More than \$ 50,000	\$ 500

(b) In the event that an applicant for a registration certificate has not filed a tax return for the immediately preceding tax year as required by ~~the Payroll Expense Tax Ordinance~~ Section 6.9-2 of Article 6, the Tax Collector shall determine the amount of the registration fee required based on the applicant's estimated tax liability under Article 12-A (Payroll Expense Tax Ordinance) and Article 12-A-1 (Gross Receipts Tax Ordinance) ~~payroll expense~~ for the period covered by the registration certificate.

(c) The fee for obtaining a registration certificate for any calendar year ending on or before December 31, 2001 shall be determined in accordance with the registration fee provisions of the Business and Tax Regulations Code, or its predecessor, governing such year.

(d) Any organization having a formally recognized exemption from income taxation pursuant to Section 501(c), 501(d) or 401(a) of ~~Title 26 of the United States Code~~ the Internal Revenue Code of 1986, as amended ~~from time to time~~, as qualified by Sections 502, 503, 504 and 508 of ~~Title 26 of the United States Code~~ the Internal Revenue Code of 1986, as amended ~~from time to time, or the successor statutes of any of them~~, shall not be required to pay a registration fee under this Article unless the organization is also engaged within the City in an unrelated trade or business within the meaning of Section 906 of Article 12-A and Section 1004 of Article 12-A-1 of the Business and Tax Regulations Code.

(e) A person shall be exempt from paying the registration fee required by this Section if and to the extent that federal or state law prohibits the imposition of the registration fee upon such person.

1 (f) The registration fee imposed by this Article is imposed for general governmental
2 purposes and in order to require commerce and the business community to carry a fair share of the
3 costs of local government in return for the benefits, opportunities and protections afforded by the City.
4 Proceeds from the fee shall be deposited within the City's general fund and may be expended for any
5 purposes of the City.
6

7 Section 6. The San Francisco Business and Tax Regulations Code is hereby amended
8 by amending Sections 6.1-1, 6.2-14, 6.2-16, 6.7-1, 6.9-5 and 6.10-1, and by adding Sections
9 6.2-2, 6.2-4, 6.2-5, 6.2-9, 6.2-13, 6.2-17 and 6.2-19, of Article 6 (Common Administrative
10 Provisions) thereof, to read as follows:
11

12 SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS. (a) Except where the
13 specific language of the ~~Part III of the Municipal Code~~ Business and Tax Regulations Code or
14 context otherwise requires, these common administrative provisions shall apply to Articles 6,
15 7, 9, 10, 10A, 11, 12, 12-A, 12-A-1 and 12-B of ~~Part III of the Municipal Code~~ such Code.

16 (b) Unless expressly provided otherwise, all ~~All~~ statutory references in this Article and
17 the Articles set forth in Subsection (a) shall refer to such statutes as amended from time to time
18 and shall include successor provisions. For purposes of collecting the Emergency Response Fee
19 under Article 10A, any ~~Any~~ reference to a "tax" in this Article shall include the Emergency
20 Response Fee ~~of Article 10A~~ where appropriate.

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

1 SEC. 6.2-2. AGENT. The term "agent" means an agent as that term is defined in Title 9,
2 Chapter 1, Article 1 of the Civil Code of the State of California (Sections 2295 et seq.), and includes,
3 without limitation, an actual agent, ostensible agent, general agent, or special agent.

4
5 SEC. 6.2-4. ASSOCIATION. The term "association" includes a partnership, limited
6 partnership, limited liability company, limited liability partnership and any other form of
7 unincorporated business or enterprise (except a sole proprietorship).

8
9 SEC. 6.2-5. BUSINESS. The term "business" means any activity, enterprise, profession, trade
10 or undertaking of any nature conducted or engaged in, or ordinarily conducted or engaged in, with the
11 object of gain, benefit or advantage, whether direct or indirect, to the taxpayer or to another or others.
12 The term "business" includes nonprofit entities, trade associations and subsidiary or independent
13 entities which conduct operations for the benefit of others and at no profit to themselves. The term
14 "business" also includes an organization having a formally recognized exemption from income taxation
15 pursuant to Section 501(c), 501(d) or 401(a) of the Internal Revenue Code of 1986, as amended, as
16 qualified by Sections 502, 503, 504 and 508 of the Internal Revenue Code of 1986, as amended.

17
18 SEC. 6.2-9. EMPLOYEE. The term "employee" means any individual in the service of an
19 employer, under an appointment or contract of hire or apprenticeship, express or implied, oral or
20 written, whether lawfully or unlawfully employed, and includes but is not limited to, all of the
21 enumerated categories in Subsections (a) through (f) of California Labor Code Section 3351,
22 regardless of whether Workers' Compensation Benefits, pursuant to Division 4, Part 1, Section 3200, et
23 seq. of the California Labor Code are required to be paid. Nothing herein shall be deemed to
24 incorporate any provisions from said Labor Code relating to scope of employment.

1 SEC. 6.2-13. NEXUS; ENGAGING IN BUSINESS WITHIN THE CITY. (a) The taxes imposed
2 by Article 12-A (Payroll Expense Tax Ordinance) and Article 12-A-1 (Gross Receipts Tax Ordinance),
3 and the registration fee imposed by Article 12 (Business Registration Ordinance), shall apply to any
4 person engaging in business within the City unless exempted therefrom under such Articles. A person
5 is "engaging in business within the City" if that person meets one or more of the following conditions:

6 (1) The person maintains a fixed place of business within the City; or

7 (2) An employee, representative or agent of the person maintains a fixed place of
8 business within the City for the benefit or partial benefit of the person; or

9 (3) The person or one or more of the person's employees, representatives or agents
10 owns, rents, leases, or hires real or personal property within the City for business purposes for
11 the benefit or partial benefit of the person; or

12 (4) The person or one or more of the person's employees, representatives or agents
13 regularly maintains a stock of tangible personal property within the City, for sale in the
14 ordinary course of the person's business; or

15 (5) The person or one or more of the person's employees, representatives or agents
16 employs or loans capital on property within the City for the benefit or partial benefit of the
17 person; or

18 (6) The person or one or more of the person's employees, representatives or agents
19 solicits business within the City for all or part of any seven days during a tax year; or

20 (7) The person or one or more of the person's employees, representatives or agents
21 performs work or renders services within the City for all or part of any seven days during a tax
22 year; or

23 (8) The person or one or more of the person's employees, representatives or agents
24 utilizes the streets within the City in connection with the operation of motor vehicles for
25 business purposes for all or part of any seven days during a tax year; or

1 (9) The person or one or more of the person's employees, representatives or agents
2 exercises corporate or franchise powers within the City for the benefit or partial benefit of the
3 person; or

4 (10) The person or one or more of the person's employees, representatives or agents
5 liquidates a business when the liquidators thereof hold themselves out to the public as
6 conducting such business.

7
8 SEC. ~~6.2-10~~ 6.2-14. OPERATOR. The term "operator" ~~shall~~ means any person
9 ~~operating~~ conducting or controlling a business subject to the tax on transient occupancy of hotel
10 rooms or the tax on occupancy of parking spaces in parking stations in the City ~~and County of~~
11 ~~San Francisco~~, including, but not limited to, the owner or proprietor of such premises, lessee,
12 sublessee, mortgagee in possession, licensee or any other person otherwise ~~operating~~
13 conducting or controlling such business. "Operator" shall also include any person ~~operating~~
14 conducting or controlling a business subject to the stadium operator occupancy tax in the City
15 ~~and County of San Francisco~~, as well as any service supplier required to collect the utility users
16 tax under Article 10 or the emergency response fee under Article 10A ~~of Part III of the~~
17 ~~Municipal Code~~.

18
19 SEC. ~~6.2-2~~ 6.2-16. PERSON. The term "person" ~~shall~~ means any individual, firm,
20 company, partnership, limited liability partnership, joint venture, association, proprietorship,
21 social club, fraternal organization, joint stock company, domestic or foreign corporation,
22 limited liability ~~corporation~~ company, estate, trust, business trust, receiver, trustee, trustee in
23 bankruptcy, administrator, executor, assignee, syndicate, or any other group or combination
24 acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, ~~excepting: the~~
25

1 ~~United States of America, the State of California, and any political subdivision of either thereof upon~~
2 ~~which the City and County is without power to impose the tax herein provided.~~

3 ~~Whenever the term "person" is used in any clause in this Article imposing either a tax liability~~
4 ~~or a penalty for failure to perform any act mandated by Part III of the Municipal Code, such term shall~~
5 ~~include any natural person who as an individual or with a spouse and/or lineal descendants owns or~~
6 ~~controls 50 percent or more of the voting stock of a corporation obligated to file returns and pay or~~
7 ~~remit tax pursuant to Part III of the Municipal Code; and in addition, is a person with the power to~~
8 ~~control the fiscal decision-making process by which the corporation allocates funds to creditors in~~
9 ~~preference to its tax obligations under the provisions of Part III of the Municipal Code. An individual~~
10 ~~who is an officer or director of a "person," as defined above, shall rebuttably be presumed to be a~~
11 ~~person with the power to control said entity's fiscal decision-making processes.~~

12 ~~Whenever the term "person" is used in any clause prescribing and imposing a penalty, the term~~
13 ~~as applied to associations shall include the owners or part owners thereof, and as applied to~~
14 ~~corporations, the officers, shareholders and directors thereof, in their individual capacities, if such~~
15 ~~owners, officers, shareholders and directors have charge of the affairs of said association or~~
16 ~~corporation.~~

17
18 SEC. 6.2-17. REPRESENTATIVE. The term "representative" means a representative as that
19 term is used in United States Public Law 86-272, Section 381 of Title 15 of the United States Code,
20 except that such term shall include an independent contractor notwithstanding Section 381(d)(2) of
21 Title 15 of the United States Code.

22
23 SEC. 6.2-19. SUCCESSOR. The term "successor" means any person who, through direct or
24 mesne conveyance, purchases or succeeds to the business or portion thereof, or the whole or any part
25 of the stock of goods, wares, merchandise, fixtures or other assets, or any interest therein of a taxpayer

1 quitting, selling out, exchanging or otherwise disposing of his or her business. Any person obligated to
2 fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the
3 performance of any contract as to which such person is a surety or guarantor.

4
5 SEC. 6.7-1. COLLECTION OF THIRD-PARTY TAXES. (a) Every operator receiving
6 payment of charges from a customer shall collect the amount of the third party tax imposed by
7 Part III of the Municipal Code from the customer. All amounts of third party tax so collected shall
8 be held to be a special fund in trust for the City. For purposes of this Section, “operator” shall have
9 the meaning set forth in Section 6.2-10, except that a person who otherwise qualifies as an
10 operator as herein defined under Section 6.2-14 shall not, by reason of the fact that he or she the
11 person is ~~was~~ exempt from ~~payment of~~ the tax, be exempted from the other obligations of an
12 operator, including without limitation the obligation to collect and remit to the City all third party
13 taxes collected from non-exempt customers hereunder.

14 ~~Further, where the~~ Where an operator ~~under this Section~~ is exempt from the tax but ~~a~~ its
15 tenant is not exempt, the ~~non-exempt~~ tenant shall be deemed to be an operator and shall be
16 liable for the tax. Where a customer is not the end user of a good or service subject to such
17 tax, the customer ~~in turn~~ shall be deemed an operator ~~or service provider for purposes of Part III~~
18 ~~of the Municipal Code.~~

19 (b) The Third party taxes shall be collected, insofar as practicable, at the same time
20 as and along with the collection of charges made in accordance with the regular billing
21 practice of the operator. If the amount paid by a customer is less than the full amount of the
22 charges and tax which has accrued for the billing period, a proportionate share of both the
23 charges and the tax shall be deemed to have been paid.

24 (c) Where a customer receives more than one billing, one or more being for
25 different periods than another, the duty to collect shall arise separately for each billing period.

1 In all cases of transactions upon credit or deferred payment, the payment of tax to the Tax
2 Collector may be deferred in accordance therewith, and the operator shall be liable therefor at
3 the time and to the extent that such credits are paid or deferred payments are made in
4 accordance with the rate of tax owing on the amount thereof.

5 (d) Any third party tax ~~required to be paid by a~~ imposed upon customer~~s~~ ~~under the~~
6 ~~provisions of Part III of the Municipal Code~~ shall be deemed a debt owed by the customer to the
7 City ~~and County~~. Any such tax required to be collected from a customer~~s~~ which has not been
8 remitted to the Tax Collector shall be deemed a debt owed to the City by the person required
9 to collect and remit such tax to the City.

10 (e) The Tax Collector shall have the power to adopt rules and regulations
11 prescribing methods and schedules for the collection and payment of ~~the~~ third party taxes and
12 such methods and schedules shall provide that the fractional part of one cent shall be
13 disregarded unless it amounts to one-half of one percent or more, in which case the amount
14 (determined without regard to the fractional part of one cent) shall be increased by one cent.

15 (f) The Tax Collector may require operators under this Section to maintain separate
16 trust accounts for taxes collected from customers. The Tax Collector ~~shall~~ may adopt rules
17 and regulations prescribing, among other things, when such accounts shall be required and
18 how such accounts shall be maintained.

19 (g) When third-party taxes are not paid when due, or when there is any deficiency
20 ~~determination~~ or jeopardy determination ~~of a deficiency in tax~~ against an operator for third-party
21 taxes, the Tax Collector may collect said liabilities, including interest and penalties accrued
22 through the date of payment, from any person~~s~~ the Tax Collector determines ~~had charge of the~~
23 ~~affairs of the operator and wilfully failed to remit said tax when due~~ was responsible for performing the
24 acts of collecting, accounting for, and remitting third party taxes to the City and failed to do so. For
25 purposes of this Section, a person shall be considered to responsible for performing the acts of

1 collecting, accounting for, and remitting third party taxes to the City if and to the extent such person
2 has the power to control the financial decision-making process by which the operator allocates funds to
3 creditors in preference to the operator's obligation to remit third party taxes to the City. When the
4 person responsible for the acts of collecting, accounting for, and remitting third party taxes to the City
5 cannot otherwise be determined, there shall be a rebuttable presumption that the President and Chief
6 Financial Officer of a corporation or any managing partner or member of an association is the person
7 responsible for performing such acts. The liability of such persons shall be joint and several with
8 each other and with the operator, and shall be established in the manner provided for under
9 this Article for other determinations.

10
11 SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND
12 EXEMPTIONS. The credits and exemptions set forth in Articles 7, 9, 10, 10A, 11, 12, 12-A and
13 12-A-1 12-B of Part III of the Municipal Code are provided on the assumption that the City has
14 the power to offer ~~the~~ such credits and exemptions ~~as provided under current law~~. If ~~the~~ a credit or
15 exemption is invalidated by a court of competent jurisdiction, the taxpayer must pay any
16 additional ~~tax~~ amount that ~~he or she~~ the taxpayer would have owed ~~if the credit had not been~~
17 ~~claimed but for such invalid credit or exemption. Repayment of such additional amounts~~ Amounts
18 owed as a result of the invalidation of a credit or exemption that are paid ~~made~~ within three years
19 after the decision of the court becomes final shall not be subject to interest or penalties ~~on that~~
20 ~~basis~~.

21
22 SEC. 6.10-1. COLLECTION OF TAX; SECURITY. The Tax Collector, whenever he or
23 she deems it necessary to insure compliance with ~~Part III of the Municipal~~ the Business and Tax
24 Regulations Code, may require any person subject thereto to deposit with the Tax Collector
25 such security as the Tax Collector may determine. The amount of the security shall be fixed

1 by the Tax Collector, but shall not be greater than twice the person's estimated average
2 liability for the period for which said person files returns, determined in such manner as the
3 Tax Collector deems proper, ~~but not to exceed \$50,000~~. The amount of the security may be
4 increased or decreased by the Tax Collector subject to the limitations herein provided. The
5 Tax Collector may sell the security at public auction if it becomes necessary so to do in order
6 to recover any tax or any amount required to be collected and remitted to the City, interest, or
7 penalty due. Notice of the sale ~~may~~ shall be served upon the person who deposited the
8 security and upon the taxpayer, if different, personally or by mail; if by mail, service shall be
9 made in the manner prescribed for service of a notice of a deficiency determination as set out
10 in Section 6.11-2 herein, and shall be addressed to the person at said person's address as it
11 appears in the records of the Tax Collector. Upon any sale, any surplus above the amounts
12 due shall be returned to the person who deposited the security.

13
14 Section 7. The San Francisco Business and Tax Regulations Code is hereby amended
15 by amending Section 501 of Article 7 (Tax on Transient Occupancy of Hotel Rooms) thereof,
16 to read as follows:

17
18 SEC. 501. ADDITIONAL DEFINITIONS. When used in this Article the following terms
19 shall mean or include:

20 (a) "Operator." Any person operating a hotel in the City and County of San
21 Francisco, including, but not limited to, the owner or proprietor of such premises, lessee,
22 sublessee, mortgagee in possession, licensee or any other person otherwise operating such
23 hotel.

1 (b) "Occupant." A person who, for a consideration, uses, possesses, or has the right
2 to use or possess any room in a hotel under any lease, concession, permit, right of access,
3 license to use or other agreement, or otherwise.

4 (c) "Occupancy." The use or possession, or the right to the use or possession of
5 any room or apartment in a hotel or the right to the use or possession of the furnishings or to
6 the services and accommodations accompanying the use and possession of the room.

7 (d) "Hotel." Any structure, or any portion of a structure, including any lodginghouse,
8 roominghouse, dormitory, Turkish bath, bachelor hotel, studio hotel, motel, auto court, inn,
9 public club, or private club, containing guest rooms and which is occupied, or is intended or
10 designated for occupation, by guests, whether rent is paid in money, goods, labor, or
11 otherwise. It does not include any jail, hospital, asylum, sanitarium, orphanage, prison,
12 detention, or other building in which human beings are housed and detained under legal
13 restraint.

14 (e) "Guest Room." A room occupied, or intended, arranged, or designed for
15 occupation, by one or more occupants. Every 100 square feet of superficial floor area in a
16 dormitory is a guest room.

17 (f) "Rent." The consideration received for occupancy valued in money, whether
18 received in money or otherwise, including all receipts, cash, credits, and property or services
19 of any kind or nature, and also the amount for which credit is allowed by the operator to the
20 occupant, without any deduction therefrom whatsoever.

21 (g) "Permanent Resident." Any natural person who, as an occupant, as of a given
22 date, ~~who~~ has or shall have occupied, or has or shall have the right of occupancy, of any guest
23 room in a hotel for at least 30 consecutive days next preceding such date.

1 Section 8. The San Francisco Business and Tax Regulations Code is hereby amended
2 by amending Section 606 of Article 9 (Tax on Occupancy of Parking Space in Parking
3 Stations) thereof, to read as follows:

4
5 SEC. 606. ADDITIONAL EXEMPTIONS. No tax shall be imposed hereunder:

6 (1) On the rent for any occupancy or parking space in parking stations
7 wherein the rent for such occupancy is paid by the deposit of a coin or coins in a
8 parking meter owned or operated by the City ~~and County~~ and located adjacent to said
9 parking space;

10 ~~(2) — On the rent for any occupancy of parking space in parking stations which are a~~
11 ~~part of residential or hotel premises, provided the occupant of said parking space is a resident~~
12 ~~or a registered guest of said premises;~~

13 ~~(3) — On the rent for any occupancy of parking space by registered hotel guests in~~
14 ~~parking stations not located on the hotel premises if no charge is made to the registered guest~~
15 ~~or if such charge is added to the room bill of the registered guest and paid by him to the hotel,~~
16 ~~provided that proper records are maintained by both the hotel and the operator which~~
17 ~~accurately reflect such exemption parking activity;~~

18 (4 2) On the rent for any occupancy of parking space in parking stations where:

19 (a) The motor vehicle occupying said parking space is owned by an
20 individual person who is on active duty in some branch of the United States
21 military service; and

22 (b) The motor vehicle is stored for not less than 75 days; provided that
23 the operator submits, at the time the return required by this ordinance is due, a
24 declaration under penalty of perjury, a form to be furnished by the Tax Collector,
25 verifying the facts necessary for this exemption.”