


BOARD of SUPERVISORS



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MEMORANDUM

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

FROM:  Linda Wong, Assistant Clerk
Budget and Finance Sub-Committee

DATE: May 24, 2018

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Sub-Committee

The Board of Supervisors' Budget and Finance Sub-Committee has received the following amended legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 180373-2

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an Ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services, private transit vehicle services, and autonomous vehicle passenger services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

No Comment

Recommendation Attached

Chairperson, Small Business Commission

FILE NO. 180373

MOTION NO.

1 [Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on
2 Transportation Network Company Services, Private Transit Vehicle Services, and
3 Autonomous Vehicle Passenger Services]

4 **Motion ordering submitted to the voters at an election to be held on November 6, 2018**
5 **an Ordinance amending the Business and Tax Regulations Code to add a new gross**
6 **receipts tax category for transportation network company services, private transit**
7 **vehicle services, and autonomous vehicle passenger services, revise the application of**
8 **the gross receipts tax for persons engaged in multiple business activities, and**
9 **eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain**
10 **persons in the Central Market Street and Tenderloin Area; and increasing the City's**
11 **appropriations limit by the amount collected under the new gross receipts tax category**
12 **for four years from November 6, 2018.**

13
14 **MOVED, That the Board of Supervisors hereby submits the following ordinance to the**
15 **voters of the City and County of San Francisco, at an election to be held on November 6,**
16 **2018.**

17
18 **Ordinance amending the Business and Tax Regulations Code to add a new gross**
19 **receipts tax category for transportation network company services, private transit**
20 **vehicle services, and autonomous vehicle passenger services, revise the application of**
21 **the gross receipts tax for persons engaged in multiple business activities, and**
22 **eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain**
23 **persons in the Central Market Street and Tenderloin Area; and increasing the City's**
24 **appropriations limit by the amount collected under the new gross receipts tax category**
25 **for four years from November 6, 2018.**

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

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

7 Section 1. Pursuant to Article XIII C of the Constitution of the State of California, this
8 ordinance shall be submitted to the qualified electors of the City and County of San Francisco
9 at the November 6, 2018, consolidated general election.

10 Section 2. Purpose and Findings. The People of the City and County of San Francisco
11 declare their purpose and findings in enacting this ordinance as follows:

12 (a) Promoting and maintaining the City's economic competitiveness requires a high
13 level of investment in the City's infrastructure and operations.

14 (b) The gross receipts tax provides a significant source of the City's revenue for
15 general purposes of the City.

16 (c) As a charter city and to raise revenue for general purposes of the City, the City
17 desires to exercise its sovereign right of taxation under the California Constitution to the
18 maximum extent permissible.

19 (d) Transportation service industries utilizing emerging and new technologies need to
20 pay their fair share of taxes to the City.

21 (e) The addition of a new gross receipts tax category for transportation network
22 company services, private transit vehicle services, and autonomous vehicle passenger
23 services reflects emerging and new technologies that are supplementing or replacing previous
24 business models and recognizes the need to generate revenue to maintain a high quality of
25 life and continued economic growth in the City.

1 Section 3. The Business and Tax Regulations Code is hereby amended by adding
2 Section 953.7.5 to Article 12-A-1 and revising Sections 953, 953.9, and 956, to read as
3 follows:

4 **SEC. 953. IMPOSITION OF GROSS RECEIPTS TAX.**

5 (a) Except as otherwise provided under this Article 12-A-1, the City imposes and every
6 person engaging in business within the City shall pay an annual gross receipts tax measured
7 by the person's gross receipts from all taxable business activities attributable to the City.
8 A person's liability for the gross receipts tax shall be calculated according to Sections 953.1
9 through 953.7.5.

10 (b) The gross receipts tax is a privilege tax imposed upon persons engaging in
11 business within the City for the privilege of engaging in a business or occupation in the City.
12 The gross receipts tax is imposed for general governmental purposes. Proceeds from the tax
13 shall be deposited in the City's general fund and may be expended for any purposes of the
14 City.

15 (c) The voters intend by adopting this measure to authorize application of the gross
16 receipts tax in the broadest manner consistent with the provisions of this Article 12-A-1 and the
17 requirements of the California Constitution, the United States Constitution, and any other
18 applicable provision of federal and state law.

19 (d) The gross receipts tax imposed under this Article 12-A-1 is in addition to the payroll
20 expense tax imposed under Article 12-A. Persons not otherwise exempt from the gross
21 receipts tax or payroll expense tax shall pay both taxes. Persons exempt from either the
22 gross receipts tax or payroll expense tax, but not both, shall pay the tax from which they are
23 not exempt.

1 (e) Except for subsection (d) of this Section 953, the tax on Administrative Office
2 Business Activities imposed by Section 953.8 is intended as a complementary tax to the gross
3 receipts tax, and shall be considered a gross receipts tax for purposes of this Article 12-A-1.

4 (f) For a five-year period beginning in 2015, the Treasurer, Controller, and Chief
5 Economist shall jointly prepare an annual report to the Mayor and Board of Supervisors on the
6 implementation of the measure. The report shall include projections of collections of the gross
7 receipts tax, compare these projections to those anticipated in preparation of the measure,
8 and outline impacts of the measure on San Francisco's economy and business community.
9 The report may recommend policy, administrative, or technical changes for the consideration
10 of the Mayor and Board of Supervisors that further the goals established in the measure.

11
12 **SEC. 953.7.5. GROSS RECEIPTS TAX APPLICABLE TO TRANSPORTATION NETWORK**
13 **COMPANY SERVICES, PRIVATE TRANSIT VEHICLE SERVICES, AND AUTONOMOUS**
14 **VEHICLE PASSENGER SERVICES.**

15 *(a) Notwithstanding Sections 953.1 through 953.7, inclusive, the base gross receipts tax rate*
16 *provided by this Section 953.7.5 shall apply to the business activities of transportation network*
17 *company services, private transit vehicle services, and autonomous vehicle passenger services. The*
18 *base tax rate provided by this Section 953.7.5 is:*

19 *.625% (e.g., \$6.25 per \$1,000) for taxable gross receipts between \$0 and \$1,000,000*

20 *.705% (e.g., \$7.05 per \$1,000) for taxable gross receipts between \$1,000,000.01 and*
21 *\$2,500,000*

22 *.87% (e.g., \$8.70 per \$1,000) for taxable gross receipts between \$2,500,000.01 and*
23 *\$25,000,000*

24 *.975% (e.g., \$9.75 per \$1,000) for taxable gross receipts over \$25,000,000*
25

1 (b) Persons or combined groups with more than \$50,000,000 in total gross receipts, before any
2 allocation or apportionment, derived from the business activities of transportation network company
3 services, private transit vehicle services, and/or autonomous vehicle passenger services shall not be
4 subject to the administrative office tax under Section 953.8, even if they are engaging in business within
5 the City as an administrative office, as defined in Section 953.8(b).

6 (c) For purposes of this Section 953.7.5, the following definitions shall apply:

7 "Autonomous vehicle passenger services" means any transportation of passengers offered to
8 the public for compensation using any vehicle, with or without a driver, equipped with and into which
9 has been integrated technology that has the capability to drive a vehicle without the active physical
10 control or monitoring by a human operator.

11 "Private transit vehicle services" means any transportation provided by a private transit
12 vehicle, as that term is defined in Section 1202 of the Transportation Code.

13 "Transportation network company services" means prearranged transportation services, within
14 and outside California, for compensation using any means whatsoever, including but not limited to an
15 online-enabled application or platform or any offline method, to connect passengers with drivers using
16 a personal vehicle, as those terms are defined and used in Section 5431 of the California Public
17 Utilities Code but disregarding references to "California," "this state," and the "commission."

18 (d) The amount of gross receipts from transportation network company services activities and
19 autonomous vehicle passenger services subject to the gross receipts tax shall be one-half of the amount
20 determined under Section 956.1 plus one-half of the amount determined under Section 956.2.

21 (e) The amount of gross receipts from private transit vehicle services activities subject to the
22 gross receipts tax shall be the total amount determined under Section 956.1.

23 (f) As indicated in Section 953(b), the proceeds from the tax collected under this Section
24 953.7.5 can be spent for unrestricted general revenue purposes.

1 **SEC. 953.9. PERSONS OR COMBINED GROUPS ENGAGED IN MULTIPLE BUSINESS**
2 **ACTIVITIES.**

3 If a person, or a combined group as described in Section 956.3, engages in business
4 activities described in more than one of Sections 953.1 through 953.7.5, inclusive, of this
5 Article 12-A-1, the rate or rates of gross receipts tax to be applied to that person or group, and
6 the method for determining gross receipts in the City, shall be determined as follows:

7 (a) Tax Years Beginning On or After January 1, 2019. If a person or combined group's total
8 gross receipts, before any allocation or apportionment, derived from business activities described in
9 any of Sections 953.1 through 953.7.5, inclusive, are less than the separate activity threshold, then the
10 gross receipts of any such activities may, at the option of the person or combined group, be combined
11 for all purposes related to computing the gross receipts tax with the gross receipts of that person or
12 combined group derived from business activities described in whichever of Sections 953.1 through
13 953.7.5, inclusive, generated the highest amount of gross receipts for the person or combined group.
14 This subsection (a) is not applicable if the person or combined group did not derive total gross receipts
15 from business activities described in any of Sections 953.1 through 953.7.5, inclusive, that were equal
16 to or higher than the separate activity threshold. For tax year 2019, the separate activity threshold
17 shall be \$10,000. The Tax Collector may increase the separate activity threshold for a particular tax
18 year by specifying a new separate activity threshold prior to the beginning of the tax year if the Tax
19 Collector determines that doing so would improve filing simplicity without significantly reducing tax
20 revenues. If the Tax Collector does not set a new separate activity threshold prior to the beginning of
21 any tax year, the separate activity threshold for that tax year shall be \$10,000, even if the separate
22 activity threshold was higher during the prior tax year. This subsection (a) applies to tax years
23 beginning on or after January 1, 2019.

24 (ab) Tax Years Beginning Before January 1, 2019. If more than 80% of a person or
25 combined group's gross receipts, determined in accordance with Section 956, are derived

1 from business activities described in only one of Sections 953.1 through 953.7, inclusive, then
2 the rules of that applicable Section apply to all of its gross receipts derived from all business
3 activities. This subsection (b) applies to tax years beginning before January 1, 2019.

4 ~~(b)~~ If, after any application of subsection (a) or (b) of this Section 953.9, a person or
5 combined group's business activities in the City are still described in more than one of
6 Sections 953.1 through 953.7.5, inclusive, ~~and subsection (a) of this Section 953.9 does not apply,~~
7 then such person or combined group shall separately compute the gross receipts tax for each
8 set of business activities, after any application of subsection (a) or (b) of this Section 953.9, as
9 provided in the Section applicable to that particular set of business activities, modified as
10 follows:

11 ~~(1) if the set of business activities described in any of Sections 953.1 through 953.7.5,~~
12 ~~inclusive, generates less than 20 percent of the total gross receipts of the person or group, then the~~
13 ~~receipts and payroll of any such set of activities may be combined for all purposes related to computing~~
14 ~~the gross receipts tax with whichever set of that person's or group's activities are taxed at the highest~~
15 ~~rate;~~

16 ~~(2)~~ the small business exemption provided in Section 954.1 shall apply only if
17 the sum of receipts within the City from all sets of business activities does not exceed
18 \$1,000,000 in total, adjusted annually in accordance with the increase in the Consumer Price Index:
19 All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the
20 United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the
21 preceding year, beginning with December 31, 2014;

22 ~~(3)~~ the progressive rates described in Sections 953.1 through 953.7.5 apply on
23 an aggregate basis for businesses with multiple sets of activities;

24 ~~(4)~~ the applicable rate for each set of business activities shall be determined in
25 numbered order of the Sections describing each set of business activities; i.e., the gross

1 receipts and tax for business activities described in Section 953.1 should be determined first,
2 Section 953.2 second, and so on;

3 (54) the rate(s) applicable to any set of activities after the first shall be
4 determined by adding together the gross receipts determined for all previous sets of activities
5 and applying the rate scale commencing with the total gross receipts so determined; and

6 (65) the gross receipts tax liability for the person or combined group shall be the
7 sum of the liabilities for each set of business activities.

8
9 **SEC. 956. ALLOCATION AND APPORTIONMENT FOR ALL PERSONS DERIVING**
10 **GROSS RECEIPTS FROM BUSINESS ACTIVITIES BOTH WITHIN AND OUTSIDE THE**
11 **CITY.**

12 All persons deriving gross receipts from business activities both within and outside the
13 City shall allocate and/or apportion their gross receipts to the City, using the rules set forth in
14 Section 956.1 and 956.2, in the manner directed in Sections 953.1 through 953.7.5, inclusive,
15 *and in Section 953.9 of this Article.*

16
17 Section 4. The Business and Tax Regulations Code is hereby amended by revising
18 Section 903.6 of Article 12-A, to read as follows:

19
20 **SEC. 906.3. CENTRAL MARKET STREET AND TENDERLOIN AREA PAYROLL**
21 **EXPENSE TAX EXCLUSION.**

22 * * * *

23 (g) The Central Market Street and Tenderloin Area exclusion authorized under this
24 Section 906.3 shall expire on December 31, 2018~~the eighth anniversary date of the effective date of~~
25 ~~this Section~~. A person may not use or claim any unused portion of the Central Market Street

1 and Tenderloin Area exclusion after the expiration date of this Section. Unless exempted
2 under Section 906 of this Article 12-A, every person engaging in a business in the Central
3 Market Street and Tenderloin Area in the City shall pay the tax imposed under this Article on
4 the full amount of the person's payroll expense attributable to the City from and after the
5 expiration of this Section.

6 * * * *

7
8 Section 5. Appropriations Limit Increase. Pursuant to California Constitution
9 Article XIII B and applicable laws, for four years from November 6, 2018, the appropriations
10 limit for the City shall be increased by the aggregate sum collected by the levy of the tax
11 imposed under Section 953.7.5 of Article 12-A-1 of the Business and Tax Regulations Code.
12

13 Section 6. Severability. If any section, subsection, sentence, clause, phrase, or word
14 of this ordinance, or any application thereof to any person or circumstance, is held to be
15 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
16 shall not affect the validity of the remaining portions or applications of the ordinance. The
17 People of the City and County of San Francisco hereby declare that they would have passed
18 this ordinance and each and every section, subsection, sentence, clause, phrase, and word
19 not declared invalid or unconstitutional without regard to whether any other portion of this
20 ordinance or application thereof would be subsequently declared invalid or unconstitutional.
21

22 Section 7. No Conflict with Federal or State Law. Nothing in this ordinance shall be
23 interpreted or applied so as to create any requirement, power, or duty in conflict with any
24 federal or state law.
25

1 Section 8. Scope of Ordinance. In enacting this ordinance, the People of the City and
2 County of San Francisco intend to amend only those words, phrases, paragraphs,
3 subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other
4 constituent parts of the Municipal Code that are explicitly shown in this ordinance as additions
5 or deletions, in accordance with the "Note" that appears under the official title of the
6 ordinance.

7
8 Section 9. Effective and Operative Date. The effective date of this ordinance shall be
9 ten days after the date the official vote count is declared by the Board of Supervisors. This
10 ordinance shall become operative on January 1, 2019.

11
12 APPROVED AS TO FORM:

13 DENNIS J. HERRERA, City Attorney

14
15 By:



KERNE H. O. MATSUBARA
Deputy City Attorney

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LEGISLATIVE DIGEST

(Amended in Committee - Second Draft - 5/17/18)

[Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on Transportation Network Company Services, Private Transit Vehicle Services, and Autonomous Vehicle Passenger Services]

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services, private transit vehicle services, and autonomous vehicle passenger services, revise the application of the gross receipts tax for persons engaged in multiple business activities, and eliminate the payroll expense tax exclusion and the gross receipts tax limit for certain persons in the Central Market Street and Tenderloin Area; and increasing the City's appropriations limit by the amount collected under the new gross receipts tax category for four years from November 6, 2018.

Existing Law

Persons engaged in business in the City, including transportation network companies ("TNCs"), companies providing private transit vehicle ("PTV") services, and providers of autonomous vehicle ("AV") passenger services, currently pay a gross receipts tax to the City. Rates vary by line of business and the amount of the person's taxable gross receipts, and range from 0.075% to 0.65%. If a business conducts multiple lines of business that cross multiple rate schedules, special rules apply depending on whether a business activity accounts for more than 80% of the business's total gross receipts (the "80-20 Rule"), and whether a business activity accounts for less than 20% of the business's total gross receipts (the "20% Rule").

Persons engaged in business in the City also currently pay a payroll expense tax to the City. Certain businesses in the Central Market Street and Tenderloin Area are eligible for an exclusion from the payroll expense tax as well as a limit on the gross receipts tax. Such exclusion and limit are set to expire on May 20, 2019.

Amendments to Current Law

Effective January 1, 2019, this ordinance would increase the gross receipts tax for TNC services, PTV services, and AV passenger services, by adding a new industry category for such services. The gross receipts tax rates for this industry category would be:

- .625% for taxable gross receipts between \$0 and \$1,000,000;
- .705% for taxable gross receipts between \$1,000,000.01 and \$2,500,000;
- .87% for taxable gross receipts between \$2,500,000.01 and \$25,000,000; and

- .975% for taxable gross receipts above \$25,000,000.

The existing gross receipts tax rules and procedures, as amended by this ordinance, would apply to taxpayers in this new industry category. The gross receipts tax from this new industry category may be used for the City's general purposes.

Also effective January 1, 2019, this ordinance would replace the 80-20 Rule and the 20% Rule with a *de minimis* rule, by which taxpayers may combine the gross receipts from any business activity that generates less than \$10,000 in total gross receipts with the gross receipts that generate the highest amount of the taxpayer's total gross receipts. The Tax Collector would have the authority to raise the \$10,000 threshold prior to the beginning of a tax year, if the Tax Collector determines that doing so would improve filing simplicity without significantly reducing tax revenues.

This ordinance also would change the expiration date of the payroll expense tax exclusion and gross receipts tax limit for certain businesses in the Central Market Street and Tenderloin Area from May 20, 2019 to December 31, 2018.

This ordinance would increase the City's appropriations limit under Article XIII B by the amounts collected from the additional tax from this new industry category, for four years from November 6, 2018.

Background Information

This legislative digest reflects amendments made in committee on May 17, 2018. The amendments added AV passenger services to the new industry category, modified the definition of TNC services, and made other non-substantive changes.

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