

File No. 140798

Committee Item No. 4

Board Item No. 1

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date October 8, 2014

Board of Supervisors Meeting

Date October 28, 2014

Cmte Board

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Completed by: Linda Wong Date October 3, 2014
 Completed by: L.W. Date October 14, 2014

1 [Business and Tax Regulations Code - Amendments to Common Administrative Provisions,
2 Business Registration, Payroll Expense Tax, and Gross Receipts Tax]

3 **Ordinance amending the Business and Tax Regulations Code by: 1) revising the**
4 **minimum filing amounts for the payroll expense tax and gross receipts tax and making**
5 **the amounts consistent with administrative requirements for the small business**
6 **exemptions; 2) clarifying penalty and interest provisions; 3) clarifying that each**
7 **member of a combined group engaged in business in San Francisco must register with**
8 **the Tax Collector; 4) clarifying when annual adjustments must be made to the business**
9 **registration fee; 5) clarifying the basis of the business registration fee; and 6) deleting**
10 **obsolete registration provisions.**

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

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

19 Section 1. The Business and Tax Regulations Code is hereby amended by revising
20 Article 6, Sections 6.9-2, 6.9-3, and 6.17-1, to read as follows:

21 **SEC. 6.9-2. DETERMINATIONS, RETURNS AND PAYMENTS; RETURNS.**

22 (a) **Returns.** Except as provided in subsection (b) below, on or before the due date, or
23 in the event of a cessation of business within 15 days of such cessation, each taxpayer shall
24 file a return for the subject period on a form provided by the Tax Collector, regardless of
25 whether there is a tax liability owing. A person subject to any tax or required to remit any third-

1 party tax who has not received a return form or forms from the Tax Collector is responsible for
2 obtaining such form(s) and filing a return or returns on or before the due date, or upon the
3 cessation of business. Returns shall show the amount of tax and any third-party tax paid or
4 otherwise due for the related period and such other information as the Tax Collector may
5 require. Each person subject to any tax or required to remit any third-party tax and required to
6 file the return shall transmit the return, together with the remittance of the amount of tax or
7 third-party tax due, to the Tax Collector at the Tax Collector's Office on or before the due date
8 specified in Section 6.9-1.

9 (b) **Minimum Filing Amount.** Notwithstanding any other provision of this Section, and
10 commencing with tax years beginning on or after January 1, 2014:

11 (1) ~~With respect to each tax year, the Tax Collector may exempt from the annual tax~~
12 ~~return filing requirement those taxpayers whose liability under the Payroll Expense Tax Ordinance~~
13 ~~person whose combined taxable payroll expense in the City under the Payroll Expense Tax Ordinance~~
14 ~~(Article 12-A), computed without regard to the small business exemption set forth in~~
15 ~~Section 905-A of Article 12-A, is less than \$150,000, shall be exempt from filing a payroll expense~~
16 ~~tax return. the Minimum Filing Amount for such tax year. For purposes of this Section, the Minimum~~
17 ~~Filing Amount shall be an amount of tax liability, computed without regard to such small business~~
18 ~~exemption, between zero and \$2,250. The Tax Collector shall specify the Minimum Filing Amount prior~~
19 ~~to the beginning of each tax year. If the Tax Collector fails to specify a Minimum Filing Amount prior~~
20 ~~to the start of a new tax year, the Minimum Filing Amount for such tax year shall be the Minimum~~
21 ~~Filing Amount for the preceding tax year.~~

22 (2) ~~Notwithstanding any other provision of this Section, commencing with tax years~~
23 ~~beginning on or after December 31, 2013, a person, other than a lessor of residential real estate as~~
24 ~~that term is used in Section 954.1 of Article 12-A-1, taxpayer whose combined taxable gross~~
25 receipts in the City under the Gross Receipts Tax Ordinance (Article 12-A-1), computed

1 without regard to the small business tax exemption set forth under Section 954.1 of Article 12-
2 A-1, is less than \$500,000, shall be exempt from filing a gross receipts tax return.

3 (3) A lessor of residential real estate, as that term is used in Section 954.1 of Article 12-
4 A-1, who leases fewer than 4 units in any individual building, shall be exempt from filing a gross
5 receipts tax return.

6
7 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS.**

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

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

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

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

1 (B) **Installment Payments.**

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

9 (ii) **Payroll Expense Tax Installments.** A person's first, second,
10 and third quarterly installment payments of payroll expense tax for any tax year shall be
11 computed by using the person's taxable payroll expense (as defined under Article 12-A) for
12 each quarter and the rate of tax applicable to the tax year in which the first, second, and third
13 quarterly installments are due. Notwithstanding the foregoing sentence, and except for
14 taxpayers under Section 953.8 of Article 12-A-1, for tax years commencing after December
15 31, 2013, the first, second, and third quarterly installments shall be computed using the rates
16 set forth in the following table:

17

| <i>Tax Year</i> | <i>1st, 2nd and 3rd Installments</i> |
|------------------------|---|
| 2014 | 1.350% |
| 2015 | 1.125% |
| 2016 | 0.750% |
| 2017 | 0.375% |
| 2018 | 0.000% |

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(iii) **Gross Receipts Tax Installments.** A person's first, second, and third quarterly installments of gross receipts tax for any tax year shall be computed by using the person's taxable gross receipts (as defined under Article 12-A-1) for each quarter and the rate of tax applicable to the tax year in which the first, second and third quarterly installments are due. Notwithstanding the foregoing sentence, and except for taxpayers under Section 953.8 of Article 12-A-1, for tax years commencing after December 31, 2013, the first, second and third quarterly installments shall be computed using the rates applicable to the person's taxable gross receipts under Sections 953.1 through 953.7 of Article 12-A-1, multiplied by the percentages set forth in the following table:

| <i>Tax Year</i> | <i>1st, 2nd and 3rd Installments</i> |
|-----------------|--------------------------------------|
| 2014 | 10% |
| 2015 | 25% |
| 2016 | 50% |
| 2017 | 75% |
| 2018 | 100% |

(C) Computation of Liability; Payments.

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

1 (ii) Any amounts paid on a person's payroll expense tax liability for
2 a tax year that are in excess of that person's actual payroll expense tax liability for that year
3 shall be credited to that person's gross receipts tax liability for that year. Any amounts paid on
4 a person's gross receipts tax liability for a tax year that are in excess of that person's actual
5 gross receipts tax liability for that year shall be credited to that person's payroll expense tax
6 liability for that year.

7 (b) **Tax Installment Penalties.** Every person who fails to pay any tax installment
8 required under this Section before the relevant delinquency date shall pay a penalty in the
9 amount of 5 percent of the amount of the delinquent tax installment per month, or fraction
10 thereof, up to 20 percent in the aggregate, and shall also pay interest on the amount of the
11 delinquent tax installment from the date of delinquency at the rate of 1 percent per month, or
12 fraction thereof, for each month the installment is delinquent, until paid.

13 The penalty and interest provided under this subsection shall not apply if each of the
14 payroll expense tax and gross receipts tax payments are equal to or greater than the actual
15 tax owed for that quarter, or the sum of the payroll expense tax payments and gross receipts
16 tax payments *for the quarter* is equal to or greater than 26 percent of the sum of the payroll
17 expense tax and gross receipts tax liability for the immediately preceding tax year. For
18 taxpayers under Section 953.8 of Article 12-A-1, for tax year 2014 only, the penalty and
19 interest provided under this subsection shall also not apply if a first, second, or third gross
20 receipts tax quarterly installment payment is in an amount that is at least 26 percent of the
21 payroll expense tax liability for the immediately preceding tax year.

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

24 (d) **Forms and Adjustments.** Tax remittances required under this Section shall be
25 accompanied by a tax remittance form prepared by the Tax Collector, but failure of the Tax

1 Collector to furnish the taxpayer with a tax remittance form shall not relieve the taxpayer from
2 any tax payment obligation.

3
4 **SEC. 6.17-1. PENALTIES AND INTEREST FOR FAILURE TO PAY.**

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

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

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

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

3
4 Section 2. The Business and Tax Regulations Code is hereby amended by deleting
5 Article 12, Section 852.3, as follows:

6
7 **SEC. 852.3. "REGISTRATION TRANSITION PERIOD."**

8 The term "Registration Transition Period" means the six-month period commencing January 1,
9 2003, and ending June 30, 2003.

10
11 Section 3. The Business and Tax Regulations Code is hereby amended by revising
12 Article 12, Sections 852.1, 855, and 856, to read as follows:

13
14 **SEC. 852.1. "NEWLY ESTABLISHED BUSINESS."**

15 (a) The term "newly established business" means a business that was not conducted
16 within the City during the immediately preceding tax year. The following shall not be
17 considered newly established businesses:

18 ~~(1) A business to which a valid existing registration certificate is transferred in~~
19 ~~accordance with Section 856(j) of this Article.~~

20 (21) A business conducted from a new location, whether within or without the
21 City, if the business conducted at the location during the preceding tax year was discontinued
22 prior to or concurrently with commencement of business at the new location.

23 (32) A business that was conducted within the City at any time during the
24 preceding tax year.

1 (b) The Tax Collector may, on written application by the taxpayer, and after
2 considering all the facts and circumstances, determine that a business described in
3 Subsection (a) of this Section is in fact newly established and not a continuation of a business
4 conducted within the City during the immediately preceding tax year.

5
6 **SEC. 855. REGISTRATION CERTIFICATE – FEE.**

7 (a) Fee for registration years ending on or after June 30, 2004, but ending on or
8 before June 30, 2014. Except as otherwise provided in this Section and Section 856 of this
9 Article, the annual fee for obtaining a registration certificate for registration years ending on or
10 after June 30, 2004, but ending on or before June 30, 2014, payable in advance, shall be as
11 follows:

| <i>San Francisco Payroll Expense Tax for the Immediately Preceding Tax Year</i> | <i>Annual Registration Fee</i> |
|---|--------------------------------|
| Less than \$1 | \$25 |
| \$1 to \$10,000 | \$150 |
| \$10,000.01 to \$50,000 | \$250 |
| More than \$50,000 | \$500 |

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20 (b) In the event that an applicant for a registration certificate, for registration years
21 ending on or after June 30, 2004, but ending on or before June 30, 2014, has not filed a tax
22 return for the immediately preceding tax year as required by Section 6.9-2 of Article 6, the Tax
23 Collector shall determine the amount of the registration fee required based on the applicant's
24 estimated tax liability under Article 12-A (Payroll Expense Tax Ordinance) for the period
25 covered by the registration certificate.

1 (c) **Fee for Registration Year Commencing July 1, 2014 and Ending June 30,**
 2 **2015.** Except as otherwise provided in this Section and Section 856 of this Article, the annual
 3 fee for obtaining a registration certificate, for the registration year commencing July 1, 2014
 4 and ending June 30, 2015, payable in advance, shall be as follows:

| <i>San Francisco Payroll Expense for the Immediately Preceding Tax Year</i> | <i>Annual Registration Fee</i> |
|--|---------------------------------------|
| \$0 to \$66.66 | \$75 |
| \$66.67 to \$75,000 | \$150 |
| \$75,001 to \$100,000 | \$250 |
| \$100,001 to \$150,000 | \$500 |
| \$150,001 to \$200,000 | \$700 |
| \$200,001 to \$250,000 | \$800 |
| \$250,001 to \$1,000,000 | \$300 |
| \$1,000,001 to \$2,500,000 | \$800 |
| \$2,500,001 to \$5,000,000 | \$5,000 |
| \$5,000,001 to \$10,000,000 | \$15,000 |
| \$10,000,001 to \$25,000,000 | \$25,000 |
| \$25,000,001 to \$40,000,000 | \$30,000 |
| \$40,000,001 or more | \$35,000 |

21
 22 (d) In the event that an applicant for a registration certificate, for registration year
 23 commencing July 1, 2014 and ending June 30, 2015, has not filed a tax return for the
 24 immediately preceding tax year as required by Section 6.9-2 of Article 6, the Tax Collector
 5 shall determine the amount of the registration fee required based on the applicant's payroll

1 expense under Article 12-A (Payroll Expense Tax Ordinance) for the period covered by the
 2 registration certificate. ~~A combined group as described in Section 956.3 of Article 12-A-1 shall apply~~
 3 ~~for a certificate and calculate its fee on a combined basis.~~

4 **(e) Fee for Registration Years Ending After June 30, 2015.**

5 (1) **General Rule.** Except as otherwise provided in this Section and Section 856
 6 of this Article, the annual fee for obtaining a registration certificate, for the registration years
 7 ending after June 30, 2015, payable in advance, shall be as follows:

| <i>San Francisco Gross Receipts for the Immediately Preceding Tax Year</i> | <i>Annual Registration Fee</i> |
|---|---------------------------------------|
| \$0 to \$100,000 | \$90 |
| \$100,001 to \$250,000 | \$150 |
| \$250,001 to \$500,000 | \$250 |
| \$500,001 to \$750,000 | \$500 |
| \$750,001 to \$1,000,000 | \$700 |
| \$1,000,001 to \$2,500,000 | \$300 |
| \$2,500,001 to \$7,500,000 | \$500 |
| \$7,500,001 to \$15,000,000 | \$1,500 |
| \$15,000,001 to \$25,000,000 | \$5,000 |
| \$25,000,001 to \$50,000,000 | \$12,500 |
| \$50,000,001 to \$100,000,000 | \$22,500 |
| \$100,000,001 to \$200,000,000 | \$30,000 |
| \$200,000,001 and over | \$35,000 |

1 (2) **Fee for Retail Trade, Wholesale Trade and Certain Services.** Except as
 2 otherwise provided in this Section and Section 856 of this Article, for registration years ending
 3 after June 30, 2015, the annual fee for obtaining a registration certificate, payable in advance,
 4 for a business that was required to report all of its gross receipts pursuant to Article 12-A-1,
 5 Section 953.1 for the preceding tax year, shall be as follows:
 6

| <i>San Francisco Gross Receipts for the Immediately Preceding Tax Year</i> | <i>Annual Registration Fee</i> |
|---|---------------------------------------|
| \$0 to \$100,000 | \$75 |
| \$100,001 to \$250,000 | \$125 |
| \$250,001 to \$500,000 | \$200 |
| \$500,001 to \$750,000 | \$400 |
| \$750,001 to \$1,000,000 | \$600 |
| \$1,000,001 to \$2,500,000 | \$200 |
| \$2,500,001 to \$7,500,000 | \$400 |
| \$7,500,001 to \$15,000,000 | \$1,125 |
| \$15,000,001 to \$25,000,000 | \$3,750 |
| \$25,000,001 to \$50,000,000 | \$7,500 |
| \$50,000,001 to \$100,000,000 | \$15,000 |
| \$100,000,001 to \$200,000,000 | \$20,000 |
| \$200,000,001 and over | \$30,000 |

22
 23 (f) Except as provided in subsection (g) (Administrative Office Business Activities), in
 24 the event that an applicant for a registration certificate, for a registration year ending after
 5 June 30, 2015, has not filed a tax return for the immediately preceding tax year as required by

1 Section 6.9-2 of Article 6, the Tax Collector shall determine the amount of the registration fee
2 required based on the applicant's estimated gross receipts under Article 12-A-1 (Gross
3 Receipts Tax Ordinance) for the period covered by the registration certificate.

4 (g) **Fee for Administrative Office Business Activities.** Except as otherwise
5 provided in this Section and Section 856 of this Article, the annual fee for obtaining a
6 registration certificate for Administrative Office Business Activities under Section 953.8 of
7 Article 12-A-1, for the registration years ending after June 30, 2015, payable in advance, shall
8 be as follows:

| <i>San Francisco Payroll Expense for Immediately Preceding Tax Year</i> | <i>Annual Registration Fee</i> |
|---|--------------------------------|
| \$0 to \$2,500,000 | \$15,000 |
| \$2,500,001 to \$25,000,000 | \$25,000 |
| \$25,000,000 or more | \$35,000 |

15
16 (h) In the event that an applicant for a registration certificate for Administrative Office
17 Business Activities under Section 953.8 of Article 12-A-1, for a registration year ending after
18 June 30, 2015, has not filed a tax return for the immediately preceding tax year as required by
19 Section 6.9-2 of Article 6, the Tax Collector shall determine the amount of the registration fee
20 required based on the applicant's estimated payroll expense under Article 12-A-1 for the
21 period covered by the registration certificate.

22 (i) The amount of annual registration fee under subsections ~~(e)~~, (e)₂ and (g) of this
23 ~~Article 12~~, Section 855, for all registration years ending after June 30, 201~~6~~5, shall be adjusted
24 annually in accordance with the increase in the Consumer Price Index: All Urban Consumers
25 for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States

1 Bureau of Labor Statistics, or any successor to that index, as of December 31st of the
2 preceding year, beginning July 1, 2016.

3 (j) Any organization having a formally recognized exemption from income taxation
4 pursuant to Section 501(c), 501(d) or 401(a) of the Internal Revenue Code of 1986, as
5 amended, as qualified by Sections 502, 503, 504 and 508 of the Internal Revenue Code of
6 1986, as amended, shall not be required to pay a registration fee under this Article unless the
7 organization is also engaged within the City in an unrelated trade or business within the
8 meaning of Section 906 of Article 12-A or Section 954 of Article 12-A-1.

9 (k) A person shall be exempt from paying the registration fee required by this Section if
10 and to the extent that, and only so long as, federal or state law prohibits the imposition of the
11 registration fee upon such person.

12 (l) The business registration fee is a tax imposed for general governmental purposes
13 and may not be extended or increased without a vote of the people, as provided in Article
14 XII/C of the California Constitution. This tax may be collected in any manner legally permitted
15 to the City.

16
17 **SEC. 856. REGISTRATION CERTIFICATE – APPLICATION AND ISSUANCE.**

18 (a) Each person engaging in business within the City shall apply to the Tax Collector
19 for a registration certificate, using the form prescribed by the Tax Collector. The application
20 shall be accompanied by the person's registration fee as determined under this Article, except
21 for the initial application filed for a person that is part of a combined group (as described in
22 Section 956.3 of Article 12-A-1) where the combined group has already paid the fee on a combined
23 basis. A combined group as described in Section 956.3 of Article 12-A-1 shall apply for a
24 separate certificate for each person in the combined group that is engaging in business within the City.

1 but shall ~~and~~ calculate and remit its fee on a combined basis and shall file only one application for
2 renewal for all entities in the combined group.

3 (b) A person shall have 15 days after commencing business within the City to apply for
4 a registration certificate. The registration fee for newly-established businesses shall be
5 prorated as follows:

6 (1) For the registration year commencing on or after July 1, 2014 and ending
7 June 30, 2015, the fee for obtaining a registration certificate for a newly established business
8 shall be determined pursuant to Section 855(c) of this Article using the applicant's estimated
9 payroll expense under Article 12-A (Payroll Expense Tax Ordinance) for the tax year in which
10 the person commences such business within the City. For registration years commencing on
11 or after July 1, 2015, the fee for obtaining a registration certificate for a newly established
12 business shall be determined pursuant to Section 855(e) of this Article using the applicant's
13 estimated gross receipts under Article 12-A-1 (Gross Receipts Tax Ordinance) for the tax year
14 in which the person commences such business within the City. The registration fee shall be
15 prorated as follows: For persons commencing business between January 1st and March
16 31st, the registration fee shall be 50 percent of the annual fee; for persons commencing
17 business between April 1st and June 30th, the registration fee shall be 25 percent of the
18 annual fee; for persons commencing business between July 1st and September 30th, the
19 registration fee shall be 100 percent of the annual fee; and for persons commencing business
20 between October 1st and December 31st, the registration fee shall be 75 percent of the
21 annual fee. Where a registration certificate is issued for a period other than for a registration
22 year, the Tax Collector shall have discretion to prorate the registration fee in accordance with
23 this model.

24 (2) Notwithstanding any other provision of this Article, no person obtaining a
25 registration certificate for a newly established business that qualifies for the minimum

1 registration fee set forth in Section 855 of this Article shall be entitled to prorate the
2 registration fee under this Section, but instead shall pay the minimum registration fee.

3 (c) All applications for renewal of registration certificates shall be accompanied by the
4 full amount of the applicant's annual registration fee for the period covered by the registration
5 certificate. A combined group shall file only one application for renewal for all entities in the
6 combined group.

7 (d) Promptly after receiving a properly completed application and registration fee from
8 any person, the Tax Collector shall determine whether the applicant has paid all outstanding:
9 (1) gross receipts taxes; (2) payroll expense taxes; (3) costs and/or charges assessed
10 pursuant to Article 5.1 of the Public Works Code, as amended from time to time, for failure to
11 abate a nuisance regarding the cleanliness of an abutting public sidewalk or right-of-way; and
12 (4) other taxes and license fees due to the City. In addition, the Tax Collector may investigate
13 whether the applicant has paid other amounts ~~owning~~^{owing} to the City as a result of fines,
14 penalties, interest, assessments, or any other financial obligations imposed by law, regulation
15 or contract. If the Tax Collector determines that all liabilities have been paid, the Tax
16 Collector shall issue a registration certificate to the applicant for each place of business
17 maintained by the applicant.

18 (e) If a person submits a timely application under this Section and the Tax Collector
19 determines that the applicant has satisfied all the requirements of this Article, including the
20 payment of all outstanding liabilities owed to the City, then the Tax Collector shall issue a
21 registration certificate to the applicant ~~within~~^{by the later of:} (1) 30 days after the Tax Collector
22 makes such determination; or (2) the date on which the registration certificate would be effective.

23 (f) Each registration certificate shall be non-assignable and nontransferable. The
24 holder of the registration certificate shall surrender the certificate to the Tax Collector
_5 immediately upon the sale or transfer of the business for which the Tax Collector issued the

1 registration certificate. The holder of the registration certificate shall also surrender the
2 certificate to the Tax Collector when such holder ceases to conduct business at the location
3 designated in the certificate.

4 (g) If the Tax Collector determines that any liabilities enumerated in subsection (d) of
5 this Section remain unpaid as of the date an application is received, the Tax Collector shall
6 give written notification of that fact to the applicant. The written notification shall set forth the
7 amount owed, the liabilities enumerated in subsection (d) of this Section for which the
8 amount(s) are owed, the dates the liabilities were incurred and any other information the Tax
9 Collector deems necessary to apprise the applicant of what specific liabilities are owed to the
10 City. The Tax Collector shall not issue a registration certificate unless and until the applicant
11 has paid all amounts owing to the City, including, but not limited to, taxes, license fees, and
12 costs or charges assessed for failure to abate a nuisance condition on a public right-of-way
13 under Article 5.1 of the Public Works Code, as amended from time to time, for which the
14 applicant is liable; provided, that if a good faith dispute exists regarding the amount of the
15 outstanding liability or liabilities owed by the applicant to the City and the dispute is pending
16 before a City agency or court of competent jurisdiction, then the Tax Collector shall not refuse
17 to issue a registration certificate solely for non-payment of the amount in dispute.

18 (h) Each registration certificate, and each duplicate thereof, shall set forth the name
19 under which the person transacts or intends to transact business, the location of the
20 registrant's place of business and such other information as the Tax Collector may require,
21 and be prominently displayed therein. In the case of a sole proprietorship, the registration
22 certificate shall be signed by the sole proprietor; in the case of a partnership, the registration
23 certificate shall be signed by a general partner; in the case of a limited liability company, the
24 registration certificate shall be signed by the managing member; and in the case of a
25

1 corporation, the registration certificate shall be signed by the person authorized by the
2 corporation to sign on its behalf.

3 (i) Each person liable for payment of a registration fee pursuant to this Article shall pay
4 only one annual registration fee. The Tax Collector shall issue a separate registration
5 certificate for each location within the City where the person engages in business.

6 (j) The person may register up to 15 fictitious business names (sometimes abbreviated
7 DBA, dba or d/b/a) without an additional charge. The Tax Collector shall charge a fee of \$25,
8 in addition to the registration fee, for each fictitious business name under which the business
9 or operation is registered to conduct business in the City in addition to the first 15 fictitious
10 business names registered.

11 (k) In addition to all other civil penalties provided for by law, the Tax Collector may
12 charge any person who fails to register in a timely manner a fictitious business name or a
13 location within the City where the person engages in business, an administrative penalty of
14 \$500 per fictitious business name or business location that the person fails to register.
15

16 Section 4. The Business and Tax Regulations Code is hereby amended by revising
17 Article 12-A, Section 905-A, to read as follows:
18

19 **SEC. 905-A. SMALL BUSINESS TAX EXEMPTION.**

20 (a) Notwithstanding any other provisions of this Article, a "small business enterprise"
21 as hereinafter defined, shall be exempt from payment of the payroll expense tax; provided,
22 however, that a small business enterprise shall pay the annual registration fee pursuant to
23 Section 855 of Article 12.

24 (b) The term "small business enterprise" shall mean and include any taxpayer:
25

1 (1) Whose tax liability under this Article, but for this exemption provision, would
2 not exceed \$2,500 or, effective January 1, 2009 whose taxable payroll expense does not
3 exceed \$250,000; and

4 (2) Who ~~has timely~~ filed a tax return ~~by the last date of February~~ for the ~~preceding~~
5 tax year, if that person or group had payroll expense in the City of at least \$150,000. If the person is
6 required to file a tax return under this Section, and taxpayer fails to file a return by ~~that~~ the due date,
7 the taxpayer shall be subject to a penalty as specified in subsection (d).

8 (c) For the 2011 tax year, and each second succeeding tax year the Tax Collector
9 shall increase the ceiling for the small business tax exemption (rounded to the nearest
10 \$10,000 increment) to reflect increases in the United States Department of Labor's Bureau of
11 Labor Statistics consumer price index for all urban customers for the San Francisco-Oakland-
12 San Jose area for each of the preceding two tax years.

13 (d) In lieu of the penalty and interest specified in Section 6.17-31 of Article 6 for ~~failing~~
14 ~~failure to payfile a return~~, any person who otherwise qualifies for the small business tax
15 exemption set forth in this Section, and who had payroll expense in the City of at least \$150,000,
16 who fails to timely file a return ~~by the last date of February~~ shall pay a penalty as follows:

17 (1) ~~If the person's payroll expense tax liability under this Article, but for the small~~
18 ~~business tax exemption under this Section, would be \$2,250 or more, the penalty for the first month,~~
19 ~~or fraction thereof, that the return is delinquent, shall be 5 percent of the amount of the tax liability,~~
20 ~~calculated without regard to the small business exemption in this Section. such liability, The penalty~~
21 ~~shall increase by an additional 5 percent for each month, or fraction thereof; that the return amount~~
22 ~~due is delinquent, plus an additional 5 percent each month, or fraction thereof, that the amount due is~~
23 ~~delinquent,~~ up to a maximum of 20 percent of the tax liability. Any penalties remaining unpaid
24 for a period of 90 days or more shall be subject to an additional penalty of 20 percent of the
25 amount of the tax liability excluding penalties and interest.

1 (2) Penalties are due and payable when assessed. Unpaid penalties shall
2 accrue interest at the rate of 1 percent per month, or fraction thereof, from the date that they
3 are assessed through the date of payment. The total amount of the penalties, interest and
4 fees shall not exceed the amount of the person's payroll expense tax liability for the period but
5 for the small business tax exemption.

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

9
10 Section 5. The Business and Tax Regulations Code is hereby amended by revising
11 Article 12-A-1, Section 954.1, to read as follows:

12
13 **SEC. 954.1. SMALL BUSINESS EXEMPTION.**

14 (a) Notwithstanding any other provision of this Article, a "small business enterprise," as
15 hereinafter defined for purposes of this Article 12-A-1, shall be exempt from payment of the
16 gross receipts tax, nevertheless, a small business enterprise shall pay the annual registration
17 fee pursuant to Section 855 of Article 12.

18 (b) For purposes of this Article 12-A-1, the term "small business enterprise" shall mean
19 and include any person or combined group, except for a lessor of residential real estate:

20 (1) Whose gross receipts within the City for the preceding tax year did not
21 exceed \$1,000,000, adjusted annually in accordance with the increase in the Consumer Price
22 Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as
23 reported by the United States Bureau of Labor Statistics, or any successor to that index, as of
24 December 31st of the preceding year, beginning with December 31, 2014; and

1 (2) Who timely filed a tax return ~~by the last day of February~~ for the ~~preceeding~~ tax
2 year, if that person or group had gross receipts in the City of ~~over~~ at least \$500,000. If a
3 person is required to file a tax return under this Section, and fails to file a return by ~~that the due~~
4 date, the taxpayer shall be subject to a penalty as specified in subsection (c).

5 (c) In lieu of the penalty and interest specified in Section 6.17-31 of Article 6 for ~~failing~~
6 ~~failure to payfile a return~~, any person who otherwise qualifies for the small business exemption
7 set forth in this Section, and who had gross receipts in the City of ~~over~~ at least \$500,000, who
8 fails to timely file a return ~~by the last date of February~~ shall pay a penalty as follows:

9 (1) The penalty for the first month, or fraction thereof, that the return is
10 delinquent, shall be 5 percent of the amount of the tax liability, calculated without regard to the
11 small business exemption in this Section. The penalty shall increase by an additional
12 5 percent each month, or fraction thereof, that the return is delinquent, up to a maximum of
13 20 percent of the tax liability. Any penalties remaining unpaid for a period of 90 days or more
14 shall be subject to an additional penalty of 20 percent of the amount of the tax liability
15 excluding penalties and interest.

16 (2) Penalties are due and payable when assessed. Unpaid penalties, ~~interest~~
17 ~~and fees~~ shall accrue interest at the rate of 1 percent per month, or fraction thereof, from the
18 date that they are assessed through the date of payment. The total amount of the penalties,
19 interest and fees shall not exceed the amount of the person's gross receipts tax liability for the
20 period but for the small business exemption.

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

24 (e) For purposes of this Article 12-A-1, and notwithstanding any other provision of this
25 Section, a lessor of residential real estate is a "small business enterprise" if and only if the

1 lessor leases fewer than 4 units in any individual building. "Residential real estate" means
2 real property where the primary use of or right to use the property is for the purpose of
3 dwelling, sleeping or lodging other than as part of the business activity of accommodations.
4 For purposes of this Article 12-A-1, Article 12-A, and Article 12, a lessor of residential real
5 estate is treated as a separate person with respect to each individual building in which it
6 leases residential real estate units, notwithstanding Section 6.2-15 of Article 6, or
7 Section 956.3 of this Article. The provisions of this subsection apply only to leasing residential
8 real estate units within a building, and not to any business activity related to other space,
9 either within the same building or other buildings, which is not residential real estate. The Tax
10 Collector is authorized to determine what constitutes a separate building and the number of
11 units in a building.

13 Section 6. Effective Date. This ordinance shall become effective 30 days after
14 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
15 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
16 of Supervisors overrides the Mayor's veto of the ordinance.

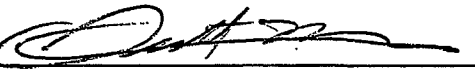
18 Section 7. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
19 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
20 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
21 Code that are explicitly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

1 Section 8. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any
3 court of competent jurisdiction, such decision shall not affect the validity of the remaining
4 portions of the ordinance. The Board of Supervisors hereby declares that it would have
5 passed this ordinance and each and every section, subsection, sentence, clause, phrase, and
6 word not declared invalid or unconstitutional without regard to whether any other portion of
7 this ordinance would be subsequently declared invalid or unconstitutional.
8

9 Section 9. No Conflict with Federal or State Law. Nothing in this ordinance shall be
10 interpreted or applied so as to create any requirement, power, or duty in conflict with any
11 federal or state law.
12

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

15 By:



16 Scott M. Reiber
17 Deputy City Attorney

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25

FILE NO.

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Amendments to Common Administrative Provisions, Business Registration, Payroll Expense Tax, and Gross Receipts Tax]

Ordinance amending the Business and Tax Regulations Code by: 1) revising the minimum filing amounts for the payroll expense tax and gross receipts tax and making the amounts consistent with administrative requirements for the small business exemptions; 2) clarifying penalty and interest provisions; 3) clarifying that each member of a combined group engaged in business in San Francisco must register with the Tax Collector; 4) clarifying when annual adjustments must be made to the business registration fee; 5) clarifying the basis of the business registration fee; and 6) deleting obsolete registration provisions.

Existing Law

Existing law:

- Exempts certain persons from filing returns and paying the payroll expense tax and/or gross receipts tax, and from paying penalties for the late payment of those taxes;
- Delineates who must register with the Tax Collector and pay the business registration fee;
- Sets the basis of the business registration fee; and
- Directs the Tax Collector to issue a business registration certificate within 30 days of the Tax Collector's determination that all requirements for obtaining the certificate have been met.

Amendments to Current Law

This ordinance would make a number of administrative changes to the payroll expense tax, gross receipts tax, and business registration fee, including:

- Clarifying the minimum amounts of payroll expense and gross receipts above which persons must file payroll expense tax and gross receipts tax returns;
- Creating a new gross receipts tax filing exemption for lessors of residential real estate that lease fewer than 4 units in an individual building;
- Clarifying that persons otherwise qualifying for the small business exemption from the payroll expense tax or gross receipts tax need to file a return only if required to do so under the return filing provisions of the Business and Tax Regulations Code, and clarifying the basis for the calculation of the penalty if the person does not file as required;
- Clarifying the situations in which taxpayers are exempt from paying penalties for the late payment of payroll expense taxes or gross receipts taxes;

FILE NO.

- Confirming that each member of a combined group of entities that is engaged in business in San Francisco must obtain a separate business registration certificate but that business registration certificate renewals must be submitted on a combined basis and business registration fees must be calculated on a combined basis;
- Clarifying that the business registration fee will be calculated based only on payroll expense or gross receipts attributable to San Francisco, and confirming that the amount of the business registration fee will not be adjusted for inflation until the fiscal year commencing July 1, 2016;
- Permitting the Tax Collector to issue a business registration certificate by the later of: (1) 30 days after the Tax Collector determines that all requirements for obtaining the certificate have been met; or (2) the date on which the business registration certificate would be effective; and
- Deleting provisions that have been rendered obsolete by prior amendments to the Business and Tax Regulations Code, and fixing minor typographical errors.

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TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Greg Kato, Policy and Legislative Manager
DATE: September 2, 2014
SUBJECT: *SUBSTITUTE LEGISLATION BOS FILE#140798*: ORDINANCE AMENDING
THE BUSINESS AND TAX REGULATIONS CODE COMMON
ADMINISTRATION PROVISIONS, BUSINESS REGISTRATION,
PAYROLL EXPENSE TAX, AND GROSS RECEIPTS TAX

Attached please find the original and 2 copies of Substitute Legislation for File #140798, the proposed Ordinance for Board of Supervisors approval which amends the Business and Tax Regulations Code Common Administration Provisions, Business Registration, Payroll Expense Tax, and Gross Receipts Tax to make a number of administrative changes.

The following person may be contacted regarding this Ordinance:

Greg Kato, Policy and Legislative Manager
(415)554-6888
greg.kato@sfgov.org

Interoffice Mail Address: City Hall Room 140

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

MEMORANDUM

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

FROM: Linda Wong, Assistant Clerk, Budget and Finance Committee,
Board of Supervisors

DATE: August 15, 2014

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

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

File No. 140798

Ordinance amending the Business and Tax Regulations Code by: 1) revising the minimum filing amounts for the payroll expense tax and gross receipts tax and making the amounts consistent with administrative requirements for the small business exemptions; 2) clarifying penalty and interest provisions; 3) clarifying that each member of a combined group engaged in business in San Francisco must register with the Tax Collector; 4) clarifying when annual adjustments must be made to the business registration fee; 5) clarifying the basis of the business registration fee; and 6) deleting obsolete registration provisions.

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