

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 Committee

DATE: August 23, 2018

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. 180753

Ordinance amending the Business and Tax Regulations Code to add provisions to administer the Early Care and Education Commercial Rents Tax, and to make other non-substantive changes.

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

1 [Business and Tax Regulations Code - Administration of Early Care and Education
2 Commercial Rents Tax]

3 **Ordinance amending the Business and Tax Regulations Code to add provisions to**
4 **administer the Early Care and Education Commercial Rents Tax, and to make other**
5 **non-substantive changes.**

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

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

14 Section 1. The Business and Tax Regulations Code is hereby amended by revising
15 Sections 6.1-1, 6.2-12, 6.2-17, 6.8-1, 6.9-1, 6.9-2, 6.9-3, 6.9-5, 6.15-1, 6.15-2, and 6.17-1, to
16 read as follows:

17 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

18 (a) These common administrative provisions shall apply to Articles 6, 7, 8, 9, 10, 10B,
19 11, 12, 12-A, 12-A-1, ~~and~~ 12-B, and 21 of this Code and to Chapter 105 of the Administrative
20 Code, unless the specific language of either Code otherwise requires. Any provision of this
21 Article 6 that references or applies to Article 10 shall be deemed to reference or apply to
22 Article 10B. Any provision of this Article 6 that references or applies to a tax shall be deemed
23 to also reference or apply to a fee administered pursuant to this Article, and shall be deemed
24 to also reference or apply to an assessment levied pursuant to the Property and Business
25 Improvement District Law of 1994 (California Streets and Highways Code sections 36600

1 et seq.) or Article 15 of this Code. A fee administered pursuant to Article 6 or an assessment
2 levied pursuant to the Property and Business Improvement District Law of 1994 or Article 15
3 of this Code shall for purposes of this Article be deemed to be imposed pursuant to the
4 provisions of the Business and Tax Regulations Code.

5 (b) Unless expressly provided otherwise, all statutory references in this Article 6 and
6 the Articles set forth in subsection (a) shall refer to such statutes as amended from time to
7 time and shall include successor provisions.

8 (c) For purposes of this Article 6, a domestic partnership established pursuant to
9 Chapter 62 of the Administrative Code shall be treated the same as a married couple.

10
11 **SEC. 6.2-12. NEXUS: "ENGAGING IN BUSINESS WITHIN THE CITY."**

12 The taxes imposed by Article 12-A (Payroll Expense Tax Ordinance), ~~and~~ Article 12-A-1
13 (Gross Receipts Tax Ordinance), and Article 21 (Early Care and Education Commercial Rents Tax
14 Ordinance), and the registration fee imposed by Article 12 (Business Registration Ordinance)
15 shall apply to any person engaging in business within the City unless exempted therefrom
16 under ~~such~~said Articles. A person is "engaging in business within the City," within the meaning
17 of this Article 6, if that person meets one or more of the following conditions:

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

19 (b) An employee, representative or agent of the person maintains a fixed place of
20 business within the City for the benefit or partial benefit of the person; or

21 (c) The person or one or more of the person's employees, representatives or agents
22 owns, rents, leases, or hires real or personal property within the City for business purposes for
23 the benefit or partial benefit of the person; or

1 (d) The person or one or more of the person's employees, representatives or agents
2 regularly maintains a stock of tangible personal property within the City, for sale in the
3 ordinary course of the person's business; or

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

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

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

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

15 (i) The person or one or more of the person's employees, representatives or agents
16 exercises corporate or franchise powers within the City for the benefit or partial benefit of the
17 person; or

18 (j) The person or one or more of the person's employees, representatives or agents
19 liquidates a business when the liquidators thereof hold themselves out to the public as
20 conducting such business.

21
22 **SEC. 6.2-17. RETURN.**

23 The term "return" means any written statement required to be filed under Articles 6, 7,
24 8, 9, 10, 10B, 11, 12, 12-A, ~~or 12-A-1~~, or 21, or under laws applicable to a fee administered
25 pursuant to Article 6, or under laws applicable to an assessment levied pursuant to the

1 Property and Business Improvement District Law of 1994 (California Streets and Highways
2 Code sections 36600 *et seq.*) or Article 15 of this Code.

3
4 **SEC. 6.8-1. CITY, PUBLIC ENTITY AND CONSTITUTIONAL EXEMPTIONS.**

5 (a) Nothing in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, ~~or 12-A-1~~, or 21 shall be
6 construed as imposing a tax upon:

7 (1) The City;

8 (2) The State of California, or any county, municipal corporation, district or other
9 political subdivision of the State, except where any constitutional or statutory immunity from
10 taxation is waived or is not applicable;

11 (3) The United States of America, or any of its agencies or subdivisions, except
12 where any constitutional or statutory immunity from taxation is waived or is not applicable; or

13 (4) Any person exempted from the particular tax by the Constitution or statutes
14 of the United States or the Constitution or statutes of the State of California.

15 (b) The foregoing exemption from taxation does not relieve an exempt party from its
16 duty to collect, report, and remit third-party taxes.

17
18 **SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF TAXES.**

19 Except for jeopardy determinations under Section 6.12-2, and subject to remittances
20 required under Sections 6.9-2 and 6.9-3, all amounts of taxes and fees imposed by Articles 6,
21 7, 8, 9, 10, 10B, 11, 12, 12-A, ~~and 12-A-1~~, and 21 are due and payable, and shall be delinquent
22 if not paid to the Tax Collector on or before the following dates:

23 (a) For the hotel tax (Article 7) and the parking tax (Article 9), for each month, on or
24 before the last day of the following month;

1 (b) For the payroll expense tax (Article 12-A), ~~and~~ the gross receipts tax (Article 12-A-
2 1) (including the tax on administrative office business activities imposed under Section 953.8
3 of Article 12-A-1), and the Early Care and Education Commercial Rents Tax (Article 21), on or
4 before the last day of February of each year;

5 (c) For the utility users tax (Article 10) and the access line tax (Article 10B), for each
6 monthly period, on or before the last day of the following month;

7 (d) For the stadium operator admission tax (Article 11), within 5 days after the event,
8 subject to the provisions of Section 804 of Article 11;

9 (e) For the business registration certificate (Article 12), on or before the last day of
10 May preceding the registration year commencing July 1 of that year; and

11 (f) For the sugary drinks distributor tax (Article 8), for each quarterly period, on or
12 before the last day of the month immediately following each calendar quarter.

13
14 **SEC. 6.9-2. DETERMINATIONS, RETURNS AND PAYMENTS; RETURNS.**

15 (a) **Returns.** Except as provided in subsection (b) below, on or before the due date, or
16 in the event of a cessation of business within 15 days of such cessation, each taxpayer shall
17 file a return for the subject period on a form provided by the Tax Collector, regardless of
18 whether there is a tax liability owing. A person subject to any tax or required to remit any
19 third-party tax who has not received a return form or forms from the Tax Collector is
20 responsible for obtaining such form(s) and filing a return or returns on or before the due date,
21 or upon the cessation of business. Returns shall show the amount of tax and any third-party
22 tax paid or otherwise due for the related period and such other information as the Tax
23 Collector may require. Each person subject to any tax or required to remit any third-party tax
24 and required to file the return shall transmit the return, together with the remittance of the
25

1 amount of tax or third-party tax due, to the Tax Collector at the Tax Collector's Office on or
2 before the due date specified in Section 6.9-1.

3 (b) **Exemption From Filing.** Commencing with tax years beginning on or after
4 January 1, 2017, a person who qualifies for the small business tax exemption in Section 905-
5 A of Article 12-A shall be exempt from filing a payroll expense tax return, and a person or
6 combined group who qualifies for the small business exemption in Section 954.1 of Article 12-
7 A-1 shall be exempt from filing a gross receipts tax return and an Early Care and Education
8 Commercial Rents Tax return. Notwithstanding the preceding sentence, any person taking any
9 of the following exclusions must file a payroll expense tax return, ~~and~~ a gross receipts tax
10 return, and an Early Care and Education Commercial Rents Tax return, regardless of whether such
11 person qualifies for the small business tax exemption from the payroll expense tax or the
12 small business exemption from the gross receipts tax after claiming the exclusion:

13 (1) the Biotechnology Exclusion in Section 906.1;

14 (2) the Clean Technology Business Exclusion in Section 906.2;

15 (3) the Central Market Street and Tenderloin Area Payroll Expense Tax
16 Exclusion in Section 906.3; or

17 (4) the Stock-Based Compensation Exclusion in Section 906.4.

18
19 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS; REMITTANCES.**

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

23 * * * *

24 (3) **Payroll Expense Tax, ~~and~~ Gross Receipts Tax, and Early Care and**
25 **Education Commercial Rents Tax: Estimated Tax Payments.** Except as provided in

1 Section 6.9-3(a)(3)(~~DF~~) with respect to estimated tax payments of the gross receipts tax,
2 every person or combined group liable for payment of the payroll expense tax (Article 12-A),
3 ~~or~~ the gross receipts tax (Article 12-A-1) (including the tax on administrative office business
4 activities imposed under Section 953.8 of Article 12-A-1), or the Early Care and Education
5 Commercial Rents Tax (Article 21) shall make three estimated tax payments, in addition to the
6 annual payments in Section 6.9-3(a)(4), as follows:

7 (A) **Due Dates.** The first, second, and third estimated tax payments for a
8 tax year shall be due and payable, and shall be delinquent if not paid on or before, April 30,
9 July 31, and October 31, respectively, of that tax year. Estimated tax payments shall be a
10 credit against the person or combined group's total annual payroll expense tax, ~~or~~ gross
11 receipts tax (including the tax on administrative office business activities imposed under
12 Section 953.8 of Article 12-A-1), or Early Care and Education Commercial Rents Tax liability, as
13 applicable, for the tax year in which such estimated tax payments are due.

14 (B) **Payroll Expense Tax Estimated Tax Payments.** For purposes of
15 this Section 6.9-3, a person's estimated tax payments of payroll expense tax for any tax year
16 shall each equal the lesser of:

17 (i) 25% of the payroll expense tax liability shown on the person's
18 return for the tax year (or, if no return is filed, 25% of the person's actual payroll expense tax
19 liability for the tax year); or

20 (ii) 25% of the payroll expense tax liability shown on the person's
21 return for the preceding tax year. If the person did not file a return for the preceding tax year,
22 the person shall be deemed to have filed a return showing no liability for purposes of this
23 Section 6.9-3(a)(3)(B)(ii), and no estimated tax payments of payroll expense taxes shall be
24 due for the current tax year.
25

1 (C) **Gross Receipts Tax Estimated Tax Payments.** For purposes of
2 this Section 6.9-3, a person or combined group's estimated tax payments of gross receipts
3 tax, including the tax on administrative office business activities imposed under Section 953.8
4 of Article 12-A-1, for any tax year shall each equal the lesser of:

5 (i) 25% of the gross receipts tax liability (including any liability for
6 the tax on administrative office business activities imposed under Section 953.8 of Article 12-
7 A-1) shown on the person or combined group's return for the tax year (or, if no return is filed,
8 25% of the person or combined group's actual gross receipts tax liability for the tax year); or

9 (ii) 25% of the gross receipts tax liability (including any liability for
10 the tax on administrative office business activities imposed under Section 953.8 of Article 12-
11 A-1) shown on the person or combined group's return for the preceding tax year. If the
12 person or combined group did not file a return for the preceding tax year, the person or
13 combined group shall be deemed to have filed a return showing no liability for purposes of this
14 Section 6.9-3(a)(3)(C)(ii), and no estimated tax payments of gross receipts taxes shall be due
15 for the current tax year.

16 (D) **Early Care and Education Commercial Rents Tax Estimated Tax**
17 **Payments For Tax Years Commencing On or After January 1, 2020.** For purposes of this
18 Section 6.9-3, a person or combined group's estimated tax payments of Early Care and Education
19 Commercial Rents Tax for any tax year beginning on or after January 1, 2020, shall each equal the
20 lesser of:

21 (i) 25% of the Early Care and Education Commercial Rents Tax liability
22 shown on the person or combined group's return for the tax year (or, if no return is filed, 25% of the
23 person or combined group's actual Early Care and Education Commercial Rents Tax liability for the
24 tax year); or

1 (ii) 25% of the Early Care and Education Commercial Rents Tax
2 liability shown on the person or combined group's return for the preceding tax year. If the person or
3 combined group did not file a return for the preceding tax year, the person or combined group shall be
4 deemed to have filed a return showing no liability for purposes of this Section 6.9-3(a)(3)(D)(ii), and
5 no estimated tax payments of Early Care and Education Commercial Rents Taxes shall be due for the
6 current tax year.

7 (E) Early Care and Education Commercial Rents Tax Estimated Tax
8 Payments for Tax Years Ending On or Before December 31, 2019. For purposes of this
9 Section 6.9-3, a person or combined group's estimated tax payments of Early Care and Education
10 Commercial Rents Tax for tax years ending on or before December 31, 2019, shall each equal the
11 person or combined group's taxable gross receipts from the lease of commercial space in properties
12 in the City (as defined in Article 21) for each quarter multiplied by the appropriate tax rate in
13 Section 2104(b) of Article 21.

14 (DF) Lessor of Residential Real Estate; Exemption. Notwithstanding
15 anything else in this Section 6.9-3(a)(3), a lessor of residential real estate, as defined in
16 Section 954.1 of Article 12-A-1, shall not be required to make estimated tax payments of
17 gross receipts tax, but shall pay its full gross receipts tax liability on or before the last day of
18 February following the tax year, if the lessor's gross receipts within the City shown on the
19 lessor's return for either the current tax year or the preceding tax year did not exceed the
20 threshold in Section 954.1(b) of Article 12-A-1.

21 (EG) Estimated Tax Penalties.

22 (i) Every person or combined group who fails to pay any
23 estimated tax payment required under this Section 6.9-3(a)(3) before the relevant
24 delinquency date shall pay an "Estimated Tax Penalty" in the amount of 5% of the amount of
25 the underpayment. For purposes of this Section 6.9-3(a)(3)(EG), the amount of the

1 underpayment shall be the required estimated tax payment less the amount, if any, of the
2 estimated tax payment paid on or before the delinquency date. The Estimated Tax Penalty
3 provided under this Section 6.9-3(a)(3)(~~EG~~) shall not apply if the sum of the payroll expense
4 tax estimated tax payments, ~~and~~ gross receipts tax estimated tax payments (including
5 estimated tax payments of the tax on administrative office business activities imposed under
6 Section 953.8 of Article 12-A-1), and Early Care and Education Commercial Rents Tax estimated
7 tax payments for the quarter is equal to or greater than the sum of the estimated tax payments
8 due for these taxes.

9 (ii) An Estimated Tax Penalty imposed under this Section
10 6.9-3(a)(3)(~~EG~~) may be waived by the Tax Collector, in whole or in part, upon a finding
11 that the person or combined group meets the requirements under Section 6.17-4.

12 (iii) The Estimated Tax Penalties imposed under this
13 Section 6.9-3(a)(3)(G) shall not apply to estimated tax payments of the Early Care and
14 Education Commercial Rents Tax for tax periods ending on or before December 31, 2019, as
15 described in Section 6.9-3(a)(3)(E).

16 (~~FH~~) **Estimated Tax Filings.**

17 (i) Every person or combined group engaged in business in the
18 City must submit estimated tax filings for payroll expense taxes, ~~and~~ gross receipts taxes
19 (including taxes on administrative office business activities imposed under Section 953.8 of
20 Article 12-A-1), and Early Care and Education Commercial Rents Taxes, as applicable, before the
21 delinquency dates for each estimated tax payment of those taxes, if either of the following are
22 true:

23 a. the person or combined group owes payroll expense tax,
24 ~~or~~ gross receipts tax (including the tax on administrative office business activities imposed
25

1 under Section 953.8 of Article 12-A-1), or Early Care and Education Commercial Rents Tax
2 estimated tax payments; or

3 b. the person or combined group reported payroll expense
4 taxes, ~~or~~ gross receipts taxes (including taxes on administrative office business activities
5 imposed under Section 953.8 of Article 12-A-1), or Early Care and Education Commercial Rents
6 Taxes on their return for the preceding tax year, regardless of whether the person owes any
7 estimated tax payments for the current tax year.

8 (ii) If a person or combined group fails to make an estimated tax
9 filing under this Section 6.9-3(a)(3)(~~FH~~), the Tax Collector shall deem the estimated tax
10 payment due to be the amount calculated under Sections 6.9-3(a)(3)(B)(ii), ~~or~~ 6.9-3(a)(3)(C)(ii),
11 or 6.9-3(a)(3)(D)(ii), as applicable, until the person or combined group files an annual return for
12 the tax year (or, if no annual return is filed, until the person or combined group's actual tax
13 liability for the tax year is known), at which time the estimated tax payments due shall be
14 recalculated under Sections 6.9-3(a)(3)(B), ~~and (C)~~, and (D), as applicable. This subsection
15 (a)(3)(H)(ii) shall not apply to estimated tax filings of the Early Care and Education Commercial Rents
16 Tax for tax periods ending on or before December 31, 2019.

17 (4) **Payroll Expense Tax, ~~and~~ Gross Receipts Tax, and Early Care and**
18 **Education Commercial Rents Tax: Computation of Annual Liability; Payments.**

19 (A) The total payroll expense tax liability of a person shall be computed
20 using the rate for that tax year computed, certified, and published by the Controller under
21 Section 903.1 of Article 12-A or as otherwise provided in Article 12-A. The total gross
22 receipts tax liability of a person or combined group, other than a person or combined group
23 subject to tax under Section 953.8 of Article 12-A-1, shall be computed using the rate for
24 that tax year computed, certified, and published by the Controller under Section 959 of
25 Article 12-A-1, or as otherwise provided in Article 12-A-1. The total liability for the tax on

1 administrative office business activities of a person or combined group subject to tax under
2 Section 953.8 of Article 12-A-1 shall be computed as provided in Section 953.8, or as
3 otherwise provided in Article 12-A-1. The total Early Care and Education Commercial Rents Tax
4 liability of a person or combined group shall be computed as provided in Section 2104, or as
5 otherwise provided in Article 21. Except as otherwise provided, the total payroll expense tax,
6 ~~and~~ gross receipts tax (including the tax on administrative office business activities under
7 Section 953.8 of Article 12-A-1), and Early Care and Education Commercial Rents Tax liabilities,
8 less any estimated tax payments for the tax year, shall be reported and paid on or before
9 the last day of February of the year immediately following the tax year.

10 (B) Any amounts paid on a person's payroll expense tax liability for a tax
11 year that are in excess of that person's actual payroll expense tax liability for that year shall be
12 credited to that person's gross receipts tax or Early Care and Education Commercial Rents Tax
13 liability for that year, if any. Any amounts paid on a person's gross receipts tax liability for a
14 tax year that are in excess of that person's actual gross receipts tax liability for that year shall
15 be credited to that person's payroll expense tax or Early Care and Education Commercial Rents
16 Tax liability for that year, if any. Any amounts paid on a person's Early Care and Education
17 Commercial Rents Tax liability for a tax year that are in excess of that person's actual Early Care and
18 Education Commercial Rents Tax liability for that year shall be credited to that person's payroll
19 expense tax or gross receipts tax liability for that year, if any.

20 (b) **Hotel and Parking Taxes.** Unless otherwise provided, an operator subject to the
21 hotel tax (Article 7) or the parking tax (Article 9) shall make monthly remittances in the amount
22 of the actual tax owed.

23 (c) **Forms and Adjustments.** Tax remittances required under this Section 6.9-3 shall
24 be accompanied by a tax remittance form prepared by the Tax Collector, but failure of the Tax
25

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. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND**
5 **EXEMPTIONS.**

6 The credits and exemptions set forth in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-
7 1, ~~and~~ 12-C, and 21, in laws applicable to fees administered pursuant to Article 6, and in laws
8 applicable to assessments levied pursuant to the Property and Business Improvement District
9 Law of 1994 (California Streets and Highways Code sections 36600 *et seq.*) or Article 15 of
10 this Code, are provided on the assumption that the City has the power to offer such credits
11 and exemptions. If a credit or exemption is invalidated by a court of competent jurisdiction,
12 the taxpayer must pay any additional amount that the taxpayer would have owed but for such
13 invalid credit or exemption. Amounts owed as a result of the invalidation of a credit or
14 exemption that are paid within three years after the decision of the court becomes final shall
15 not be subject to interest or penalties.

16
17 **SEC. 6.15-1. REFUNDS.**

18 * * * *

19 (g) **Requests for Refund; Refunds Permissible Without a Claim.** The Tax
20 Collector may authorize the Controller to refund tax, interest, or penalty payments, without a
21 refund claim having been filed and without review by the City Attorney, if the Tax Collector
22 determines that the amount paid exceeds the tax, penalties, and interest due. The person
23 that made the overpayment may request such a refund from the Tax Collector on a return,
24 amended return, or request for refund form that is issued by the Tax Collector and that is filed
25 with the Tax Collector within the later of one year of the payment of such amount or the date

1 the return accompanying such payment was due. The Tax Collector may also authorize the
2 Controller to refund the overpaid tax, interest, or penalty payments on its own initiative within
3 this one-year period. A refund requested on a return, amended return, or request for refund
4 form under this subsection (g) shall automatically be deemed denied for purposes of
5 subsections (a), (b), and (d) of this Section 6.15-1 if the Tax Collector does not grant or deny
6 the refund request within one year of the date it was filed. Any action by the Tax Collector
7 after a refund request under this subsection (g) has been deemed denied shall not constitute
8 a denial and shall have no effect on the statute of limitations for filing a claim for refund under
9 subsections (a)-(f) of this Section 6.15-1. In lieu of requesting a refund on a return, amended
10 return, or request for refund form, a taxpayer may elect to apply an overpayment of the
11 business registration fee in Article 12, the payroll expense tax in Article 12-A, the gross
12 receipts tax in Article 12-A-1 (including the tax on administrative office business activities
13 under Section 953.8 of Article 12-A-1), ~~or~~ the sugary drinks distributor tax in Article 8, or the
14 Early Care and Education Commercial Rents Tax in Article 21 as a credit against the taxpayer's
15 immediately succeeding payment or payments due of any of these ~~five~~ tax types. Any
16 election to apply an overpayment to the taxpayer's future liability shall be binding and may not
17 later be changed by the taxpayer.

18
19 **SEC. 6.15-2. REFUNDS; INTEREST.**

20 (a) Any amounts refunded prior to entry of a final judgment in a judicial proceeding
21 shall bear interest at the rate for prejudgment interest on refunds of local taxes or fees
22 provided by Section 3287(c) of the California Civil Code, as amended from time to time, and
23 shall be computed from the date of payment to the date of refund.

24 (b) If the Controller offsets overpayments for a period or periods against another
25 liability or liabilities currently owed to the City, or against penalties or interest on the other

1 liability or liabilities currently owed to the City, the taxpayer will be credited with interest on the
2 amount so applied at the rate of interest set forth above, computed from the date of payment.

3 (c) If a taxpayer elects to apply all or part of an overpayment of the business
4 registration fee in Article 12, the payroll expense tax in Article 12-A, the gross receipts tax in
5 Article 12-A-1 (including the tax on administrative office business activities under
6 Section 953.8 of Article 12-A-1), ~~or~~ the sugary drinks distributor tax in Article 8, or the Early
7 Care and Education Commercial Rents Tax in Article 21 as a credit against the taxpayer's
8 immediately succeeding payment or payments due of any of these ~~five~~ tax types, the
9 taxpayer will not be credited with interest on the amount so applied.

10
11 **SEC. 6.17-1. PENALTIES AND INTEREST FOR FAILURE TO PAY.**

12 (a) Any person who fails to pay any tax to the City, or any operator or other person
13 who fails to collect and remit any third-party taxes shall pay a penalty of ~~5% percent~~ of the tax,
14 if the failure is for not more than ~~one~~ month after the tax became delinquent, plus an
15 additional ~~5% percent~~ for each following month or fraction of a month during which such failure
16 continues, up to ~~20% percent~~ in the aggregate, until the date of payment. Any taxes remaining
17 unpaid for a period of 90 days after notification that the tax is delinquent shall be subject to an
18 additional penalty of ~~20% percent~~ of the amount of the tax. The penalty and interest provided
19 under this Section 6.17-1 shall not apply with respect to the payroll expense tax, ~~and~~ the gross
20 receipts tax, and the Early Care and Education Commercial Rents Tax if the sum of the payroll
21 expense tax payments, ~~and~~ gross receipts tax payments, and Early Care and Education
22 Commercial Rents Tax payments is equal to or greater than the sum of the payroll expense tax,
23 ~~and~~ gross receipts tax, and Early Care and Education Commercial Rents Tax liability for that tax
24 year.

1 (b) If the failure to pay any tax is due to fraud or an intent to evade the Business and
2 Tax Regulations Code or the Tax Collector's rules and regulations, an additional penalty in the
3 amount of ~~50% percent~~ of the amount due, in addition to any other penalties and interest, shall
4 be added thereto. A taxpayer or other person against whom a fraudulent failure to pay
5 penalty is asserted is entitled to a notice of such determination to be issued in accordance
6 with the provisions of Sections 6.11-1 et seq. and to the appeal rights set forth in Section 6.13-
7 1 et seq.

8 (c) Unpaid taxes shall also accrue interest at the rate of ~~1% percent~~ per month, or
9 fraction of a month, from the date the taxes become delinquent through the date the taxpayer
10 or operator pays the delinquent taxes, penalties, interest and fees accrued to the date of
11 payment in full.

12
13 Section 2. The Business and Tax Regulations Code is hereby amended by revising
14 Section 2103, to read as follows:

15
16 **SEC. 2103. DEFINITIONS.**

17 (a) Unless otherwise defined in this Article 21, the terms used in this Article shall have
18 the meanings given to them in Articles 6 and 12-A-1 of the Business and Tax Regulations
19 Code, as amended from time to time. All references to Sections of the Planning Code are to
20 the text of those Sections as of June 5, 2018.

21 (b) For purposes of this Article 21, the following definitions shall apply:

22 "Area Median Income" or "AMI" means Area Median Income for the San Francisco
23 area, derived from the U.S. Department of Housing and Urban Development, adjusted solely
24 for household size, as described in Administrative Code Section 10-100-81(c).
25

1 "Base Amount" means the Controller's calculation of the amount of City appropriations
2 (not including appropriations from the Fund and exclusive of expenditures funded by private
3 funding, development impact fees, or prior period balances, or funded or mandated by state or
4 federal law) for Baseline Programs for the Baseline Year, as adjusted in the manner provided
5 in subsections (g) and (h) of Section 2112.

6 "Baseline Programs" means all programs serving children of all ages under six that are
7 allocated funding through OECE.

8 "Baseline Year" means the Fiscal Year July 1, 2017 through June 30, 2018.

9 "Commercial Space" means any building or structure, or portion of a building or
10 structure, that is not "residential real estate," as that term is defined in Section 954.1(ce) of
11 Article 12-A-1 of the Business and Tax Regulations Code, as amended from time to time.
12 Notwithstanding the preceding sentence, Commercial Space shall not include any building or
13 structure, or portion of a building or structure, that is used for: (a) Industrial Use as defined in
14 Section 102 of the Planning Code; (b) Arts Activities as defined in Section 102 of the
15 Planning Code; or (c) Retail Sales or Service Activities or Retail Sales or Service
16 Establishments, as defined in Section 303.1(c) of the Planning Code, that are not Formula
17 Retail uses as defined in Section 303.1(b) of the Planning Code.

18 "Eligible Programs" are described in Section 2112(d)(1) of this Article 21.

19 "Fiscal Year" means the period starting July 1 and ending on the following June 30.

20 "Fund" means the Babies and Families First Fund described in Section 2111 of this
21 Article 21.

22 "OECE" means the City's Office of Early Care and Education, described in
23 Section 2A.310 of the Administrative Code, or its successor.
24
25

1 "State Median Income" or "SMI" means the state median income, adjusted for family
2 size, calculated by the California Department of Finance under California Education Code
3 Section 8263.1.

4 "Warehouse Space" means Commercial Space that is used for Commercial Storage,
5 for Volatile Materials Storage, for Wholesale Storage, or as a Storage Yard, as each of these
6 capitalized terms is defined in Section 102 of the Planning Code.

7
8 Section 3. Effective and Operative Dates.


9 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
10 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
11 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
12 Supervisors overrides the Mayor's veto of the ordinance.

13 (b) Operative Date. This ordinance shall become operative on January 1, 2019.
14

15 Section 4. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
16 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
17 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
18 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
19 additions, and Board amendment deletions in accordance with the "Note" that appears under
20 the official title of the ordinance.
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1 Section 5. Severability. If any section, subsection, sentence, clause, phrase, or word
2 of this ordinance, or any application thereof to any person or circumstance, is held to be
3 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
4 shall not affect the validity of the remaining portions or applications of the ordinance. The
5 Board of Supervisors hereby declares that it would have passed this ordinance and each and
6 every section, subsection, sentence, clause, phrase, and word not declared invalid or
7 unconstitutional without regard to whether any other portion of this ordinance or application
8 thereof would be subsequently declared invalid or unconstitutional.
9

10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: 
13 SCOTT M. REIBER
14 Chief Tax Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Administration of Early Care and Education Commercial Rents Tax]

Ordinance amending the Business and Tax Regulations Code to add provisions to administer the Early Care and Education Commercial Rents Tax, and to make other non-substantive changes.

Existing Law

Existing law provides for the administration of most of the City's taxes. These administrative provisions include definitions; the Tax Collector's audit and collection authority; filing and payment requirements; rules for refunds and lawsuits; penalty, interest, and citation provisions; and taxpayer confidentiality provisions, among others.

Amendments to Current Law

This ordinance would extend these provisions, as applicable, to the Early Care and Education Commercial Rents Tax, passed by the voters at the June 5, 2018 election. In general, the Early Care and Education Commercial Rents Tax would be administered in the same manner as the gross receipts tax in Article 12-A-1. But for tax years ending on or before December 31, 2019, persons or combined groups would calculate their estimated tax payments using their actual taxable gross receipts from the lease of commercial space in properties in the City for the quarter multiplied by the appropriate tax rate, instead of using the lesser of: (a) 25% of the tax liability shown on the person or combined group's return for the tax year; and (b) 25% of the tax liability shown on the person or combined group's return for the preceding tax year. And no estimated tax penalties would apply to estimated tax payments of the Early Care and Education Commercial Rents Tax for tax periods ending on or before December 31, 2019.

This ordinance would also update a cross reference to Article 12-A-1 in the definition of "Commercial Space" in the Early Care and Education Commercial Rents Tax Ordinance to reflect amendments made to Article 12-A-1 in early 2018.

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