

1 [Payroll Expense Tax Exclusion for Qualified Renewable Clean Energy Technology
2 Businesses.]

3 **Ordinance amending the Payroll Expense Tax Ordinance to establish a tax exclusion**
4 **for qualified ~~renewable~~ clean energy technology businesses, as specified.**

5 Note: Additions are *single-underline italics Times New Roman*;
6 deletions are *strikethrough italics Times New Roman*.
7 Board amendment additions are double underlined.
8 Board amendment deletions are ~~strikethrough normal~~.

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

10 Section 1. The San Francisco Business and Tax Regulations Code is hereby amended
11 by adding Sections 906.2 of Article 12-A (Payroll Expense Tax Ordinance), as follows:

12 SEC. 906.2. ~~RENEWABLE~~CLEAN ENERGY TECHNOLOGY BUSINESS EXCLUSION.

13 (a) Any person that employs a full-time staff of at least ten but not more than one
14 hundred employees and is engaging in a ~~renewable~~clean energy technology business within the
15 City may exclude from their ~~person's~~ payroll expense all compensation paid to, on behalf of or for the
16 benefit of ~~all the person's employees, of that person~~ and all distributions by an association by way of
17 salary to those having an ownership interest in such association, who or that perform substantially all
18 work or render substantially all services in direct support of such person's ~~renewable~~ clean energy
19 technology efforts, ~~business~~ subject to the conditions and limitations set forth in this Section. For
20 purposes of this Section, outside independent contractors shall not be considered employees of the
21 renewable clean energy technology business.

22 (b) For purposes of this section, the terms "person," "business," "association,"
23 "~~renewable clean energy~~ business ~~technology~~" and "clean energy technology business" have
24 the following meanings:

1 (1) The term "person" includes the combination of all subsidiaries, affiliates
2 and other business entities related by ownership including but not limited to partnerships, joint
3 ventures, limited liability companies, corporations and other business organizations of
4 whatever form. Any beneficial ownership of the stock of publicly traded corporations shall not
5 be considered for purposes of this definition.

6 (2) The term "business" is as defined in Section 6.2-5 of Article 6 of the San
7 Francisco Business and Tax Regulations Code.

8 (3) The term "association" is as defined in Section 6.2-4 of Article 6 of the
9 San Francisco Business and Tax Regulations Code.

10 (4) "Clean energy technology" means a business that develops the
11 development, manufacture or application of scientific advances that produce or contribute to
12 the production of renewable clean energy sources including utilizing electrical energy produced by
13 wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal
14 energy conversion, quantifiable energy conservation measures, tidal energy, wave energy,
15 biomass, including municipal solid waste, biofuels, or fuels derived from organic sources,
16 hydrogen fuels derived from renewable energy sources, or fuel cells where the fuel is derived
17 from renewable sources. Clean energy technology also means a business that produces
18 electrical energy savings brought about by the use of solar and heat pump water heating,
19 seawater air-conditioning district cooling systems, solar air-conditioning and ice storage,
20 quantifiable energy conservation measures, use of rejected heat from co-generation and
21 combined heat and power systems excluding fossil-fueled qualifying facilities that sell
22 electricity to electric utility companies. does not include: (1) (A) the installation of clean energy
23 technologies, (2) (B) any fossil fuel based energy production, including but not limited to, clean
24 coal, clean diesel, natural gas and hydrogen from natural gas, (3) (C) any nuclear based

25

1 energy production, ~~(4)~~(D) waste to energy via combustion or incineration, or ~~(5)~~(E) other
2 technologies that are detrimental to human health. The Board of Supervisors may amend this
3 legislation to include future technologies.

4 (5) "Clean energy technology business" means a business in which at least
5 seventy five percent of all business activities carried on during the tax year are directly related
6 to clean energy technology.

7 (c) In order to be eligible for the payroll expense tax exclusion authorized under this
8 Section, persons wishing to claim the exclusion must:

9 (1) Complete and submit an initial application to the Director of the
10 Department of the Environment for review and evaluation.

11 (2) After approval, file an annual affidavit with the Department of the
12 Environment affirming that they continue to meet the eligibility criteria set forth in regulations
13 adopted by the Department of the Environment. The affidavit must be filed with the
14 Department of the Environment on or before January 31 of every year after the year the
15 application is first approved.

16 (3) Maintain a reasonable method of documentation that can be reviewed or
17 verified objectively that tracks how employees whose compensation qualifies for the payroll
18 expense tax exclusion spend their time at work, and provide such documentation to the Tax
19 Collector upon request.

20 (4) File an annual Payroll Expense Tax Return with the Tax Collector
21 regardless of the amount of tax liability shown on the return after claiming the exclusion
22 provided for in this Section.

23 (d) The Director of the Department of the Environment shall:
24
25

1 (1) No later than the effective date of this ordinance, after a public hearing,
2 adopt rules, regulations and forms regarding eligibility and the application process for the
3 payroll tax expense exclusion. The Director of the Department of the Environment may
4 amend such rules, regulations and forms from time to time as necessary.

5 (2) Review all applications for completeness and if an application is approved
6 issue a certificate of eligibility to the applicant. The Director's decision on the application shall
7 be final.

8 (3) Provide the Tax Collector with a list of persons eligible to claim the tax
9 exclusion authorized under this Section for the preceding tax year by March 1 of each year.
10 The Tax Collector shall grant or deny the tax exclusion on the basis of the Department of the
11 Environment's determination along with the review, at the Tax Collector's option, of the
12 documentation maintained by the employer under Subsection (c)(3) of this Section.

13 ~~(e)~~*(e) The renewable clean energy technology exclusion authorized under this Section shall*
14 *be available to and may be taken by each a person for each tax year that person holds a valid*
15 *certificate of eligibility engaging in the renewable energy business in the City for a period of ten*
16 *years from the effective date of this Section or the commencement of the person's renewable clean*
17 *energy technology business in the City, whichever is later. The date the Tax Collector first received*
18 *the person's application for a business registration certificate for the person's renewable clean energy*
19 *technology business shall be presumed to be the date of commencement of such business unless the*
20 *person establishes a different commencement date to the satisfaction of the Tax Collector.*

21 ~~(d)~~*(f) The renewable clean energy technology exclusion authorized under this Section shall*
22 *expire on the fifteenth anniversary date of the effective date of this Section. A person may not use or*
23 *claim any unused portion of the ten year clean energy technology exclusion after the expiration date*
24 *of this Section. Unless exempted under Sections 906 of this Article, every person engaging in the a*
25

1 renewable clean energy technology business in the City shall pay the tax imposed under this Article
2 on the full amount of the person's payroll expense attributable to the City from and after the expiration
3 of this Section.

4 (e)(g) If a person's calculated liability for the Payroll Expense Tax does not exceed \$2,500 for
5 the tax year after applying the renewable clean energy technology exclusion under this Section, the
6 person shall be exempt from payment of the Payroll Expense Tax for that tax year as provided in
7 Section 905-A.

8 (h) The effective date of this ordinance shall be January 1, 2006.

9 (i) The Tax Collector shall submit an annual report to the Board of Supervisors for
10 each year for which the clean energy technology exclusion authorized under this Section is
11 available that sets forth aggregate information on the dollar value of the clean energy
12 technology exclusions taken each year, the number of businesses taking the exclusion, the
13 change in the number of clean energy technology businesses engaging in business in the
14 City, and any identifiable increase or decrease in the number of jobs in the clean energy
15 technology business sector compared to the number of jobs in the clean energy technology
16 business sector for the immediately preceding calendar year.

17 (j) The Assessor-Recorder shall submit an annual report to the Board of
18 Supervisors for each year for which the clean energy technology exclusion authorized under
19 this Section is available that sets forth any identifiable increases in property taxes resulting
20 from clean energy technology businesses location, relocation or expansion to or within the
21 City.

22 (k) The Controller, after five three years from the enactment of this Ordinance, shall
23 perform an assessment and review of the effect of the clean energy technology tax exclusion.
24 Based on such assessment and review the Controller shall prepare and submit an analysis to
25

1 the Board of Supervisors. The analysis shall be based on criteria deemed relevant by the
2 Controller, and may include but is not limited to, data contained in the annual reports to the
3 Board of Supervisors as required by subsections (i) and (j) of Section 1.

4 (l) A misrepresentation or misstatement by any person regarding eligibility for the
5 clean energy technology payroll expense tax exclusion authorized by this section that results
6 in the underpayment or underreporting of the payroll expense tax shall be subject to penalties
7 as provided in Section 6.17-2 of Article 6 of the San Francisco Business and Tax
8 Administrative Code.

9
10 APPROVED AS TO FORM:
11 DENNIS J. HERRERA, City Attorney

12 By: _____
13 Carol A. Boardman
14 Deputy City Attorney