

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Anne Pearson, Deputy City Attorney, Office of the City Attorney  
Carmen Chu, Assessor Recorder, Office of the Assessor-Recorder  
Alistair Gibson, Acting Administrator, Assessment Appeals Board  
Ben Rosenfield, City Controller, Office of the Controller

FROM: Linda Wong, Assistant Clerk  
Budget and Finance Committee

DATE: April 28, 2020

SUBJECT: LEGISLATION INTRODUCED

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The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation introduced by Supervisor Aaron Peskin:

**File No. 200399**

**Ordinance amending the Business and Tax Regulations Code to permit the City Attorney, with the consent of the County Recorder, to allow or settle real property transfer tax claims for refund and lawsuits in excess of \$25,000 for any amount up to the amount of transfer tax, penalties, and interest paid that exceeds the amount of transfer tax, penalties, and interest that would have been due on the transaction if the amount due had been calculated using the value of the real property as finally determined by the Assessment Appeals Board.**

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [linda.wong@sfgov.org](mailto:linda.wong@sfgov.org).

c: Douglas Legg, Office of the Assessor-Recorder  
Holly Lung, Office of the Assessor-Recorder  
Todd Rydstrom, Office of the Controller

1 [Business and Tax Regulations Code - Real Property Transfer Tax Refunds]

2

3 **Ordinance amending the Business and Tax Regulations Code to permit the City**  
 4 **Attorney, with the consent of the County Recorder, to allow or settle real property**  
 5 **transfer tax claims for refund and lawsuits in excess of \$25,000 for any amount up to**  
 6 **the amount of transfer tax, penalties, and interest paid that exceeds the amount of**  
 7 **transfer tax, penalties, and interest that would have been due on the transaction if the**  
 8 **amount due had been calculated using the value of the real property as finally**  
 9 **determined by the Assessment Appeals Board.**

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

14

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

16

17 Section 1. Article 12-C of the Business and Tax Regulations Code is hereby amended  
 18 by revising Section 1113 to read as follows:

19

20 **SEC. 1113. CLAIMS FOR REFUNDS.**

21 (a) Except as otherwise provided in subsection (~~ed~~) of this Section 1113 or as provided  
 22 in Section 1113.1, the Controller shall refund or cause to be refunded the amount of any tax,  
 23 interest, or penalty imposed under this Article 12-C that has been overpaid or paid more than  
 24 once, or has been erroneously or illegally collected or received by the City, provided the  
 25 person that paid such amount files a claim in writing with the Controller within the later of one

1 year of payment of such amount or the date the tax was due. The claim must state: (1) the  
2 specific amount claimed to have been overpaid or paid more than once, or erroneously or  
3 illegally collected or received by the City; (2) the date of transfer; and (3) the grounds upon  
4 which the claim is founded, with specificity sufficient to enable the responsible City officials to  
5 understand and evaluate the claim.

6 (b) Claims for refund shall be made according to California Government Code, Title 1,  
7 Division 3.6, Part 3. The Controller shall furnish a form to be used for these claims. The  
8 Controller shall enter the claim in the register, and shall forthwith forward it to the City  
9 Attorney. The City Attorney is designated to take such actions on claims as authorized by  
10 California Government Code, Title 1, Division 3.6, Part 3, Chapter 2, except that the City  
11 Attorney's authority with regard to rejecting or allowing claims shall be as provided in this  
12 Section 1113. The City Attorney may reject the claim, and shall notify the claimant of such  
13 rejection. Except as provided in subsection (c), Allowance or compromise and settlement of  
14 claims under this Section 1113 in excess of \$25,000 shall require the written approval of the  
15 City Attorney and approval of the Board of Supervisors by resolution. The City Attorney may  
16 allow or compromise and settle such claims if the amount is \$25,000 or less. No claim may  
17 be paid until the Controller certifies that monies are available from the proper funds or  
18 appropriations to pay the claim as allowed or as compromised and settled. If the City  
19 approves the claim, the City may refund the excess amount collected or paid, or may credit  
20 such amount toward any amount due and payable to the City from the person from whom it  
21 was collected or by whom it was paid, and the balance may be refunded to such person, or  
22 the person's administrator or executor. For purposes of this Section 1113, a claim shall be  
23 deemed to accrue on the later of the date the tax was due or the date the tax was paid.

24 (c) Notwithstanding the \$25,000 limitation on the City Attorney's authority in subsection (b) of  
25 this Section 1113, the City Attorney, with the approval of the County Recorder but without the approval

1 of the Board of Supervisors, may allow or compromise and settle claims under this Section 1113, and  
2 suits for refund following the denial of claims under this Section 1113, for any amount up to the amount  
3 of transfer tax, penalties, and interest paid that exceeds the amount of transfer tax, penalties, and  
4 interest that would have been due on a transaction if the amount of transfer tax, penalties, and interest  
5 due had been calculated using the value of the real property on the date of the transaction as finally  
6 determined by the Assessment Appeals Board of the City and County of San Francisco.

7 (~~e~~) The City Attorney, in ~~his or her~~ the City Attorney's discretion and upon good cause  
8 shown, prior to the expiration of the one-year limitations period, may waive the requirement  
9 set forth in subsection (a) of this Section 1113 that a taxpayer file a written claim for a refund  
10 in any case in which the County Recorder and City Attorney determine on the basis of the  
11 evidence that:

12 (1) an amount of tax, interest, or penalty has been overpaid or paid more than  
13 once, or has been erroneously or illegally collected or received by the City; and

14 (2) all other conditions precedent to the payment of a refund to the taxpayer  
15 have been satisfied.

16 (~~e~~) If a refund claim is allowed under this Section 1113 or a refund request is allowed  
17 under Section 1113.1, the Controller will not pay the refund unless the taxpayer first records a  
18 document that reflects payment of tax in an amount reduced by the amount of the refund.

19  
20 Section 2. Effective Date. This ordinance shall become effective 30 days after  
21 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
22 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
23 of Supervisors overrides the Mayor's veto of the ordinance.



## **LEGISLATIVE DIGEST**

[Business and Tax Regulations Code - Real Property Transfer Tax Refunds]

**Ordinance amending the Business and Tax Regulations Code to permit the City Attorney, with the consent of the County Recorder, to allow or settle real property transfer tax claims for refund and lawsuits in excess of \$25,000, for any amount up to the amount of transfer tax, penalties, and interest paid that exceeds the amount of transfer tax, penalties, and interest that would have been due on the transaction if the amount due had been calculated using the value of the real property as finally determined by the Assessment Appeals Board.**

### Existing Law

Under current law, the Board of Supervisors has delegated to the City Attorney authority to approve refunds of overpayments to the City, including of the City's real property transfer tax, up to \$25,000. Refunds in excess of \$25,000 must be approved by the Board of Supervisors.

### Amendments to Current Law

This ordinance would permit the City Attorney, in limited circumstances, to grant refunds of transfer tax and associated penalties and interest in excess of \$25,000 without Board of Supervisors approval. A refund in excess of \$25,000 would be permitted where the City's independent Assessment Appeals Board has valued the property for property tax purposes. The maximum refund allowed under this ordinance would be based on the Assessment Appeals Board's value; any greater refund would have to be approved by the Board of Supervisors. The refund would also have to be approved by the County Recorder (a function of the City's Assessor-Recorder's office).

### Background Information

The City's real property transfer tax generally is based on the price paid or the value of the real property transferred or deemed transferred, depending on the circumstances. The independent Assessment Appeals Board may hear a taxpayer's property tax appeal, and determine the value of the property for property tax purposes. If the City Attorney and the Recorder agree that the value determined by the Assessment Appeals Board is fair and should also govern for transfer tax purposes, this ordinance would permit the City to more efficiently settle transfer tax claims on that basis, without expending Board of Supervisors resources to evaluate an issue that has already been decided by an independent body.