

## **LEGISLATIVE DIGEST**

[Business and Tax Regulations Code - Procedural Rules for Refunds of Business Taxes and Real Property Transfer Taxes]

**Ordinance amending the Business and Tax Regulations Code to conform the City's business tax and real property transfer tax refund provisions to State law, expand the circumstances and extend the time in which the Tax Collector can issue refunds of business taxes, extend the date on which a claim accrues for purposes of filing a claim for refund of business taxes, and make other revisions to the City's rules regarding refunds of business taxes and real property transfer taxes.**

### **Background and Existing Law**

Articles 6 and 12-C of the Business and Tax Regulations Code currently permit refunds of business taxes and real property transfer taxes in two situations: (1) when a taxpayer owed a refund timely files a request for refund with the Tax Collector (for business taxes) or Recorder (for real property transfer taxes); or (2) when a taxpayer owed a refund timely files a claim for refund with the Controller.

Under the request for refund procedures, the Tax Collector and Recorder may only authorize refunds within one year of payment of the tax. The Tax Collector may authorize refunds pursuant to a request for refund only if the tax was paid more than once or the amount paid exceeds the amount due as a result of an arithmetic or clerical error. The Recorder may authorize refunds pursuant to a request for refund only if the real property transfer tax was paid more than once, the amount paid exceeds the amount due as a result of an arithmetic or clerical error, or the real property transfer tax was paid on a type of transaction that is exempt from the tax.

Claims for refund must be filed with the Controller within the later of one year of payment or the date on which the return (for businesses taxes) or transfer tax affidavit (for real property transfer taxes) was due. The City may refund amounts pursuant to a claim if the amount was overpaid or paid more than once, or if it was erroneously or illegally collected or received by the City.

The application of the overlapping request for refund and claim for refund procedures has led to taxpayer confusion and administrative difficulties with respect to business taxes. Similar issues have not arisen with respect to real property transfer taxes.

Additionally, some of the provisions related to claims for refund to be filed with the Controller are arguably no longer consistent with state law, as interpreted by the California Supreme Court.

The proposed ordinance is intended to reduce taxpayer confusion, improve administrative efficiency, and bring the City's refund provisions into compliance with state law.

Amendments to Current Law

The proposed amendments would reduce the potential for overlap of requests for refund and claims for refund of business taxes by expanding the circumstances and extending the time in which taxpayers may file requests for refund of business taxes with the Tax Collector, and by tying the date by which a claim for refund of business taxes must be filed with the Controller to the completion of the Tax Collector's review of any requests for refund filed with respect to the same amount. Specifically, the proposed amendments would:

- Allow taxpayers to file requests for refund of business taxes within one year of the later of the payment of the amount being requested as a refund or the date the return accompanying such payment was due;
- Allow the Tax Collector to issue refunds of business taxes in any case in which the amount paid exceeds the tax, penalties, and interest due;
- Deem a request for refund of business taxes to have been denied by the Tax Collector if the Tax Collector does not act on the request for refund within one year of the date the request was filed; and
- Allow taxpayers to file claims for refund of business taxes with the Controller within one year of the later of: (1) payment of the amount being requested as a refund; (2) the date the return accompanying such amount was due; or (3) the date on which such amount requested on a request for refund was denied.

These amendments would not affect the refund processes currently applicable with respect to real property transfer taxes.

Additionally, the proposed amendments would amend the claim for refund provisions applicable to business taxes and real property transfer taxes so that they are consistent with state law, and would make several other nonsubstantive changes to the provisions relating to refunds of business taxes and real property transfer taxes.