

File No. 220841

Committee Item No. 7

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date September 28, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

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Completed by: Brent Jalipa Date September 22, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Refund of Homelessness Gross Receipts Tax Overpayments for 2020 Tax Year]

2

3 **Ordinance authorizing the Tax Collector, through April 30, 2023, to refund**  
4 **overpayments of Homelessness Gross Receipts Tax to taxpayers who paid estimated**  
5 **Homelessness Gross Receipts Taxes to the City for the 2020 tax year and reported**  
6 **\$50,000,000 or less in total taxable gross receipts for the 2020 tax year on a timely filed**  
7 **original Gross Receipts Tax return.**

8

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

13

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

15

16 Section 1. Definitions.

17 For purposes of this ordinance, the following terms shall have the following meanings:

18 “City” means the City and County of San Francisco.

19 “Combined Group” has the meaning set forth in Section 956.3 of Article 12-A-1 of the  
20 Business and Tax Regulations Code.

21 “Gross Receipts Tax Return” means the Return required to be filed under  
22 Article 12-A-1 of the Business and Tax Regulations Code in accordance with Section 6.9-1 of  
23 Article 6 of that Code.

24 “Homelessness Gross Receipts Tax” means the tax imposed under Article 28 of the  
25 Business and Tax Regulations Code.

1           “Homelessness Gross Receipts Tax Return” means the Return required to be filed  
2 under Article 28 of the Business and Tax Regulations Code in accordance with Section 6.9-1  
3 of Article 6 of that Code.

4           “Person” has the meaning set forth in Section 6.2-15 of Article 6 of the Business and  
5 Tax Regulations Code.

6           “Qualified Estimated Tax Payments” means the payments of Homelessness Gross  
7 Receipts Tax for the 2020 Tax Year under Section 6.9-1(c)(3) of Article 6 of the Business and  
8 Tax Regulations Code.

9           “Qualified Gross Receipts Tax Return” means the last Gross Receipts Tax Return for  
10 the 2020 Tax Year filed on or before the due date for filing that Return, including any  
11 applicable extensions, in which a Person or Combined Group reported that its total Taxable  
12 Gross Receipts were \$50,000,000 or less and that it did not engage in business within the  
13 City as an administrative office as defined in Section 953.8 of Article 12-A-1 of the Business  
14 and Tax Regulations Code. A Qualified Gross Receipts Tax Return does not include any  
15 Gross Receipts Tax Return for the 2020 Tax Year that has been amended to reflect total  
16 Taxable Gross Receipts in excess of \$50,000,000.

17           “Qualified Person or Combined Group” means a Person or Combined Group that, for  
18 the 2020 Tax Year, both made Qualified Estimated Tax Payments and filed a Qualified Gross  
19 Receipts Tax Return.

20           “Return” has the meaning set forth in Section 6.2-17 of Article 6 of the Business and  
21 Tax Regulations Code.

22           “Tax Collector” has the meaning set forth in Section 6.2-19 of Article 6 of the Business  
23 and Tax Regulations Code.

24           “Tax Year” has the meaning set forth in Section 6.2-20 of Article 6 of the Business and  
25 Tax Regulations Code.

1           “Taxable Gross Receipts” has the meaning set forth in Section 2804(e) of Article 28 of  
2 the Business and Tax Regulations Code.

3  
4           Section 2. Refund of Overpayments of Homelessness Gross Receipts Tax.

5           (a) Notwithstanding Section 6.15-1 of Article 6 of the Business and Tax Regulations  
6 Code, the Tax Collector, until April 30, 2023, inclusive, may authorize the Controller to refund  
7 to a Qualified Person or Combined Group all or any portion of the amount of the Qualified  
8 Estimated Tax Payments made by the Qualified Person or Combined Group without a refund  
9 claim having been filed and without review by the City Attorney, if the Tax Collector  
10 determines that the amount paid exceeds the tax, penalties, and interest due.

11           (b) The authorization in Section 2(a) shall not extend the time periods within which any  
12 person or combined group is entitled to file a claim for refund or suit for refund of the Qualified  
13 Estimated Tax Payments against the City.

14           (c) The payment of any refunds under Section 2(a) shall not preclude the Tax Collector  
15 from making a deficiency or other determination under Article 6 of the Business and Tax  
16 Regulations Code, including without limitation any determination of a Person or Combined  
17 Group’s Homelessness Gross Receipts Tax liability and related penalties and interest for the  
18 2020 Tax Year.

19  
20           Section 3. Undertaking for the General Welfare. In enacting and implementing this  
21 ordinance, the City is assuming an undertaking only to promote the general welfare. It is not  
22 assuming, nor is it imposing on its officers and employees, an obligation for breach of which it  
23 is liable in money damages to any person who claims that such breach proximately caused  
24 injury.

1 Section 4. Effective Date. This ordinance shall become effective 30 days after  
2 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the  
3 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board  
4 of Supervisors overrides the Mayor's veto of the ordinance.

5  
6 APPROVED AS TO FORM:  
7 DAVID CHIU, City Attorney

8 By:  /s/  
9 KERNE H. O. MATSUBARA  
Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Refund of Homelessness Gross Receipts Tax Overpayments for 2020 Tax Year]

**Ordinance authorizing the Tax Collector, through April 30, 2023, to refund overpayments of Homelessness Gross Receipts Tax to taxpayers who paid estimated Homelessness Gross Receipts Taxes to the City for the 2020 tax year and reported \$50,000,000 or less in total taxable gross receipts for the 2020 tax year on a timely filed original Gross Receipts Tax return.**

### **Background Information and Existing Law**

The City imposes a Gross Receipts Tax on the taxable gross receipts of most businesses engaged in business in the City, a Commercial Rents Tax on the taxable gross receipts from the lease of taxable commercial space in the City, and a Homelessness Gross Receipts Tax on the taxable gross receipts of most businesses with over \$50 million in taxable gross receipts during the tax year. All three taxes are generally due on the last day of February of the year following the calendar year, or the last day of April if filed on extension. But taxpayers also must make estimated tax payments each quarter during the calendar year, which most taxpayers calculate using 25% of their prior year's liability.

For many taxpayers, the onset of the global COVID-19 pandemic in 2020, along with stay-at-home orders and an expansion of employees working from home, resulted in a significant reduction in their San Francisco tax liabilities. Nonetheless, many such taxpayers continued to make estimated tax payments to San Francisco throughout 2020 using 25% of their 2019 tax liability.

For ease of tax compliance, the Office of the Treasurer & Tax Collector (the "Tax Collector") developed an online tax application (the "SF Annual Business Tax Application") that permits taxpayers to report all three taxes through a single filing process. The Tax Collector's 2020 SF Annual Business Tax Application did not automatically process refunds for taxpayers who reported \$50 million or less in taxable gross receipts for 2020 (and who therefore were not liable for the Homelessness Gross Receipts Tax for 2020), but who had made estimated payments of Homelessness Gross Receipts Taxes throughout 2020. In addition, the Tax Collector's Office delayed notifying such taxpayers that they had made estimated payments but reported no liability due to staff being deployed as Disaster Service Workers and work efforts redirected to defer taxes and waive fees. The normally scheduled communications would have identified the taxpayers who were owed refunds more quickly.

Under current law, the Tax Collector may authorize the Controller to refund overpaid taxes without a claim for refund, review by the City Attorney's Office, or approval of the Board of Supervisors within one year of the later of the overpayment or the taxpayer's timely filed request for refund (including a reported overpayment on a return). If the Tax Collector does not authorize issuance of the refund within that one-year period following a timely filed request

for refund, taxpayers that file a timely claim for refund of overpaid taxes may still receive a refund, but such refunds must be made through the claims process, including approval by the Board of Supervisors if the refund exceeds \$25,000.

For taxpayers that paid estimated Homelessness Gross Receipts Taxes for tax year 2020 but reported \$50 million or less in taxable gross receipts such that they are entitled to a refund of their estimated tax payments, the one-year period for the Tax Collector to authorize the refund has passed, but taxpayers generally have until April 30, 2023 to file a claim for a refund of those amounts. Thus, under current law, the refunds for these taxpayers would need to go through the claims process, including Board of Supervisors approval for the refunds in excess of \$25,000.

#### Amendments to Current Law

This ordinance would extend the period within which the Tax Collector could authorize the refunds for these taxpayers through April 30, 2023, thereby avoiding unnecessary review by the City Attorney's Office and Board of Supervisors for refunds that are not disputed and would otherwise have been processed automatically.

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<p><b>Item 7</b> <b>File 22-0841</b></p>	<p><b>Department:</b> Office of the Treasurer and Tax Collector</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed ordinance authorizes the Treasurer and Tax Collector to refund overpayments of the Homelessness Gross Receipts Tax to businesses who reported \$50 million or less in taxable gross receipts for the 2020 tax year, but mistakenly paid the tax to the City. The ordinance would extend the period within which the Tax Collector could authorize these refunds to these taxpayers through April 2023 without further review by the City Attorney or Board of Supervisors.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The economic impact of COVID-19 in the 2020 tax year resulted in reduced revenues for 59 businesses who previously earned over \$50 million in taxable gross receipts and were required to pay the Homelessness Gross Receipts Tax. These taxpayers made payments to the Office of the Treasurer and Tax Collector in 2020 based on their 2019 tax liability.</li> <li>• While the Tax Collector may process refunds if requests are filed within a one-year period after the due date for business tax returns, the one-year period has passed, and the Board of Supervisors and the City Attorney are required to approve each refund over \$25,000. Rather than a separate legislative action to approve each refund, the proposed ordinance would allow the Tax Collector to issue refunds to these taxpayers through April 2023 without further review by the City Attorney or Board of Supervisors.</li> <li>• Businesses are normally automatically refunded accidental tax overpayments after the filing period ends. However, issues with the online tax filing system, combined with delays in standard tax compliance activities that would have normally caught the mistake, resulted in 59 businesses who accidentally paid the tax and will need to be refunded.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• \$2.7 million (excluding estimated interest of \$40,000) will need to be refunded to 59 businesses, which is an average total of \$45,762 per business.</li> <li>• Homeless Gross Receipt Tax revenues are projected to be \$369.3 million in FY 2022-23. However, the revenue forecast supporting the FY 2022-23 budget did not account for the proposed refunds. Therefore, the budget may need to be reduced by the refunded total of approximately \$2.7 million (from \$365.6 million to \$362.8 million). The Controller’s Office will work with the Public Health and Homelessness &amp; Supportive Housing departments to reduce expenditures to the extent that revenues are below budget.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution</li> </ul>	



## MANDATE STATEMENT

The San Francisco Business and Tax Regulation Code 6.15-1 states that tax refund claims made more than a year after which tax are due and that exceed \$25,000 require Board of Supervisors approval.

## BACKGROUND

### Proposition C

Proposition C passed by 61 percent of voters in November 2018. The proposition allowed for a Homelessness Gross Receipts Tax of 0.175 to 0.69 percent on businesses earning over \$50 million in gross annual receipts. The measure also imposed a tax of 1.5 percent of payroll expenses for certain businesses earning over \$1 billion in gross annual receipts and with administrative offices in San Francisco. The measure designated funding to be used towards homelessness services including permanent supportive housing, rental subsidies, homelessness prevention, and mental health programs.

### Revenue Generated from the Homelessness Gross Receipts Tax

According to the Controller's Office, \$394 million in Homelessness Gross Receipts Tax revenue was generated in FY 2019-20 and \$217.9 million was generated in FY 2020-21, which is an approximate 45 percent decrease in revenue. The FY 2021-22 budget included \$888.2 million in Homelessness Gross Receipts Tax spending. However, according to the Controller's FY 2021-22 Nine Month Budget Status Report, actual revenues for the Homelessness Gross Receipt Tax were projected to be \$41.3 million less than budget, requiring a commensurate reduction in spending. Final FY 2021-22 revenue estimates will be available in December 2022.

Exhibit 1 below shows the number of San Francisco businesses paying the Homelessness Gross Receipts tax since FY 2019-10.

### Exhibit 1: Number of Businesses Paying the Homelessness Gross Receipts Tax

Fiscal Year	Number of Businesses	Change from Prior FY
2019-20	518	N/A
2020-21	489	(29)
2021-22	465	(24)
2022-23	Due 2/29/2023	N/A
<i>Total Change</i>		<i>(53)</i>

Source: Received from Treasurer and Tax Collector

As shown in Exhibit 1, the number of businesses required to pay the tax has decreased from 518 to 465 since FY 2019-20, or by approximately 10 percent.

**Tax Collection**

Business taxes are due February of each tax year (the calendar year) and paid quarterly throughout the year. The quarterly payments are typically 25 percent of the prior year's tax payment with a true-up in the final quarter.

The COVID-19 pandemic in 2020 resulted in reduced revenues for 59 businesses who normally earn over \$50 million in taxable gross receipts each year and would consequently be required to pay the Homelessness Gross Receipts Tax. These taxpayers continued to make estimated quarterly payments to the Office of the Treasurer and Tax Collector throughout 2020 based on their 2019 tax liability.

The Tax Collector may issue a refund if a request is filed within a one-year period following the due date for business tax returns. Since the one-year period has passed, the refunds would need to go through an approval process that would require the Board of Supervisors and the City Attorney to approve refunds over \$25,000. Rather than a separate legislative action to approve each refund, the proposed ordinance would allow the Tax Collector to issue refunds to these taxpayers through April 2023 without further review by the City Attorney or Board of Supervisors.

**DETAILS OF PROPOSED LEGISLATION**

The proposed ordinance authorizes the Tax Collector to refund overpayments of the Homelessness Gross Receipts Tax to businesses who reported \$50 million or less in total taxable gross receipts for the 2020 tax year, but mistakenly paid the Homelessness Gross Receipts Tax to the City. The ordinance would extend the period within which the Tax Collector could authorize these refunds to these taxpayers through April 30, 2023.

**Reason for Need to Refund Homelessness Gross Receipts Tax Overpayments**

Typically, if a business overpays their taxes, they are automatically refunded the overpayment after the filing period ends in February of the following year. The affected taxpayers made estimated quarterly payments towards the Homelessness Gross Receipts Tax for the 2020 year based on their 2019 tax liabilities, but they were not prompted to file the Homelessness Gross Receipts Tax for 2020 on the final payment deadline (February 28, 2021) in the online tax filing system. According to the Treasurer and Tax Collector staff, this issue occurred because the online tax filing system (the "SF Annual Business Tax Application") only shows the Homelessness Gross Receipts Tax filing option to taxpayers who report more than \$50 million in taxable San Francisco gross receipts. According to the Treasurer and Tax Collector, this is done to avoid confusion for the majority of taxpayers who do not have to pay the Homelessness Gross Receipts Tax.

According to Treasurer and Tax Collector staff, in a typical year, the error would have been noticed earlier through regular compliance and collection processes. However, Treasurer and Tax Collector staff state that employees were activated as Disaster Service Workers, which delayed tax compliance activities that would have caught the mistake and identified taxpayers who were owed refunds. Overall, 59 businesses will be issued a refund due to overpayment.

**FISCAL IMPACT****Total Amount of Homelessness Gross Receipts Tax to be Refunded**

\$2.7 million (excluding interest of an estimated \$40,000) of Homelessness Gross Receipts Tax revenue collected in FY 2019-20 will need to be repaid to approximately 59 businesses, which is an average total of \$45,762 per business.

**Budget Impact of the Proposed Refunding**

The refunding of the overpayments will occur in the current fiscal year, FY 2022-23. Homeless Gross Receipt Tax revenues are projected to be \$369.3 million in FY 2022-23 and \$365.6 million in FY 2023-24, according to the Controller's FY 2022-23 & FY 2023-24 Revenue Letter. However, the revenue forecast supporting the FY 2022-23 budget did not account for the proposed refunds. Therefore, the budget may need to be reduced by the refunded total of approximately \$2.7 million (from \$365.6 million to 362.8 million). According to the Controller, who oversees administration of Proposition C revenues, it is not yet known specifically how the budget will be impacted by the refunding process. Controller's Office staff have stated that they will work with the Public Health and Homelessness & Supportive Housing departments to reduce expenditures in accordance with Proposition C allocation requirements to the extent that revenues are below budget.<sup>1</sup>

**RECOMMENDATION**

Approve the proposed ordinance.

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<sup>1</sup> Proposition C requires that revenues be expended in certain proportions: At least 50 percent to permanent housing through the Mayor's Office of Housing and Community Development (MOHCD), at least 25 percent to mental health services for homeless residents through the Department of Public Health (DPH), up to 15 percent to homelessness prevention through MOHCD or the Department of Homelessness and Supportive Housing (HSH), and up to 10 percent to short-term shelters through HSH.

**From:** [Manke, Eric \(TTX\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Fried, Amanda \(TTX\)](#); [MATSUBARA, KERNE \(CAT\)](#)  
**Subject:** FW: 2020 Homelessness Gross Receipts Tax Refund Legislation for Introduction -- ATTORNEY-CLIENT PRIVILEGE/CONFIDENTIAL  
**Date:** Monday, July 18, 2022 9:51:43 AM  
**Attachments:** [ORD Refund 2020 HGRT Overpayments 01614805.docx](#)  
[LEG DIG Refund 2020 HGRT Overpayments 01614869.DOCX](#)

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Good Morning,

Please find a proposed ordinance for the Board of Supervisors approval, which authorizes the Tax Collector to refund overpayments of Homelessness Gross Receipts Tax to taxpayers who paid estimated Homelessness Gross Receipts Taxes. Below is confirmation of City Attorney signature and the accompanying legislative digest is also attached. Feel free to contact me with any questions or concerns. Thank you.

Eric Manke

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**From:** Matsubara, Kerne (CAT) <[Kerne.Matsubara@sfcityatty.org](mailto:Kerne.Matsubara@sfcityatty.org)>  
**Sent:** Friday, July 15, 2022 5:05 PM  
**To:** Cisneros, Jose (TTX) <[jose.cisneros@sfgov.org](mailto:jose.cisneros@sfgov.org)>  
**Cc:** Shah, Tajel <[tajel.shah@sfgov.org](mailto:tajel.shah@sfgov.org)>; Augustine, David (TTX) <[david.augustine@sfgov.org](mailto:david.augustine@sfgov.org)>; Kato, Greg (TTX) <[greg.kato@sfgov.org](mailto:greg.kato@sfgov.org)>; Fried, Amanda (TTX) <[amanda.fried@sfgov.org](mailto:amanda.fried@sfgov.org)>; REIBER, SCOTT (CAT) <[Scott.Reiber@sfcityatty.org](mailto:Scott.Reiber@sfcityatty.org)>; PEARSON, ANNE (CAT) <[Anne.Pearson@sfcityatty.org](mailto:Anne.Pearson@sfcityatty.org)>; ZAREFSKY, PAUL (CAT) <[Paul.Zarefsky@sfcityatty.org](mailto:Paul.Zarefsky@sfcityatty.org)>; BUTA, ODAYA (CAT) <[Odaya.Buta@sfcityatty.org](mailto:Odaya.Buta@sfcityatty.org)>; SAPERSTEIN, ALLIE (CAT) <[Allie.Saperstein@sfcityatty.org](mailto:Allie.Saperstein@sfcityatty.org)>  
**Subject:** 2020 Homelessness Gross Receipts Tax Refund Legislation for Introduction -- ATTORNEY-CLIENT PRIVILEGE/CONFIDENTIAL

PRIVILEGED AND CONFIDENTIAL

José,

Attached please find the Word versions of your proposed homelessness gross receipts tax refund legislation and the accompanying digest, which have been prepared for your introduction to the Board of Supervisors.

Please note that the deadline to submit this to the Clerk's Office is noon Monday, July 18, 2022, for the legislation to be introduced at the Board meeting on Tuesday, July 26, 2022, which is the last meeting scheduled before the summer recess.

This email confirms that my use of the /s/ symbol is intended to have the same effect as my signature and my intent to approve the document as to form.

Regards,

Kerne

**Kerne H. O. Matsubara** (he/him)

Deputy City Attorney

Office of City Attorney David Chiu

(415) 554-4631 Direct

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