

BOARD of SUPERVISORS



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MEMORANDUM

TO: José Cisneros, City Treasurer, Office of the Treasurer and Tax Collector
Denise Corvino, Deputy Director, Office of Early Care and Education
Ingrid Mezquita, Executive Director, Department of Early Childhood
Maria Su, Director, Department of Children, Youth and Their Families
Derik Aoki, Acting Deputy Director, Children and Families Commission

FROM: Brent Jalipa, Assistant Clerk, Budget and Appropriations Committee

DATE: June 6, 2023

SUBJECT: PROPOSED ORDINANCE INTRODUCED

The Board of Supervisors' Budget and Appropriations Committee has received the following proposed Ordinance, introduced by Mayor London Breed:

File No. 230660

Ordinance amending the Business and Tax Regulations Code to allow a sublessor to deduct rent for commercial space the sublessor pays up to the amount of rent the sublessor receives for that space when determining its Early Care and Education Commercial Rents Tax for the tax years 2023 through and including 2029.

If you have any 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.

c: Amanda Kahn Fried, Office of the Treasurer and Tax Collector
Rebecca Cortez, Department of Children, Youth and Their Families
Jasmine Dawson, Department of Children, Youth and Their Families

1 [Business and Tax Regulations Code - Early Care and Education Commercial Rents Tax
2 Sublessor Deduction]

3 **Ordinance amending the Business and Tax Regulations Code to allow a sublessor to**
4 **deduct rent for commercial space the sublessor pays up to the amount of rent the**
5 **sublessor receives for that space when determining its Early Care and Education**
6 **Commercial Rents Tax for the tax years 2023 through and including 2029.**

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

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

16 Section 1. Article 21 of the Business Regulations and Tax Code is hereby amended by
17 adding Section 2106.2, to read as follows:

18 **SEC. 2106.2. SUBLESSOR DEDUCTION.**

19 (a) For tax years 2023 through and including 2029, a person or combined group that subleases
20 Commercial Space to another person or combined group shall be allowed an annual deduction equal to
21 the amount of any rent such person or combined group pays in the tax year for the Commercial Space
22 of which the subleased Commercial Space is a part, up to the amount of otherwise taxable rent that
23 person or combined group receives for the subleased Commercial Space for that tax year. For
24 purposes of this Section 2106.2, a person or combined group that leases Commercial Space from a
25 related entity and subleases that Commercial Space to another person or combined group shall be

1 deemed not to be a sublessor of that Commercial Space and shall not be allowed any deduction under
2 this Section 2106.2 for any rent paid to the related entity for that Commercial Space. The deduction
3 provided by this Section 2106.2 shall expire by operation of law at the end of the day on
4 December 31, 2029.

5 (b) The Controller shall submit a report to the Board of Supervisors no later than
6 September 1, 2024, that includes information for the tax year ending December 31, 2023 on the number
7 of taxpayers that took the deduction provided by this Section 2106.2, and the aggregate amount of tax
8 foregone due to the use of the deduction in this Section.

9
10 Section 2. Effective Date; Retroactivity.

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

15 (b) Upon the effective date of this ordinance, this ordinance shall be retroactive to
16 January 1, 2023.

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18 APPROVED AS TO FORM:
19 DAVID CHIU, City Attorney

20 By: /s/ Kerne H. O. Matsubara
21 KERNE H. O. MATSUBARA
22 Deputy City Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Early Care and Education Commercial Rents Tax Sublessor Deduction]

Ordinance amending the Business and Tax Regulations Code to allow a sublessor to deduct rent for commercial space the sublessor pays up to the amount of rent the sublessor receives for that space when determining its Early Care and Education Commercial Rents Tax for the tax years 2023 through and including 2029.

Existing Law

Persons that receive gross receipts from the lease of commercial space in properties in the City pay the Early Care and Education Commercial Rents Tax (“Commercial Rents Tax”) at a rate of 1% or 3.5% of those receipts, depending on the type of property. The Commercial Rents Tax generally does not apply to persons exempt from the Gross Receipts Tax and provides for certain other exemptions and exclusions. This tax is dedicated 15% to the General Fund and 85% to fund early care and education for young children.

Amendments to Current Law

This ordinance would allow a sublessor to deduct from the amount it receives from the sublease of all or a portion of commercial space the amount of any rent the sublessor pays for the lease of the entire commercial space during the tax year. The deduction would be limited to the amount of otherwise taxable rent the sublessor receives for the subleased commercial space. A person that leases commercial space from a related entity and subleases that space to another person would not be considered a sublessor and would not be entitled to the deduction for any rent paid to the related entity for that space. The deduction would be an annual deduction for the tax years 2023 through and including 2029. The deduction would be retroactive to January 1, 2023 and would expire on December 31, 2029.

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