

BOARD of SUPERVISORS



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## MEMORANDUM

TO: Katy Tang  
Small Business Commission, City Hall, Room 448

FROM: Brent Jalipa, Assistant Clerk  
Budget and Finance Committee

DATE: June 6, 2023

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS  
Budget and Appropriations Committee

The Board of Supervisors' Budget and Appropriations Committee has received the following proposed legislation, introduced by Mayor London Breed, which is being referred to the Small Business Commission for comment and recommendation.

**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.**

Please return this cover sheet with the Commission's response to Brent Jalipa, Budget and Appropriations Clerk, by email to: [brent.jalipa@sfgov.org](mailto:brent.jalipa@sfgov.org).

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**RESPONSE FROM SMALL BUSINESS COMMISSION - Date: \_\_\_\_\_**

\_\_\_\_\_ **No Comment**

\_\_\_\_\_ **Recommendation Attached**

\_\_\_\_\_  
**Chairperson, Small Business Commission**

[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.**

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

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

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

**SEC. 2106.2. SUBLESSOR DEDUCTION.**

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

17  
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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