

[Business and Tax Regulations Code – Excluding Stock Compensation from Payroll Expense, Tax Years 2011 through 2013]

**Ordinance amending Article 12-A of the San Francisco Business and Tax Regulations Code by adding Section 906.4 to establish a payroll expense tax exclusion for that portion of an Eligible Person's payroll expense that is attributable to stock compensation.**

NOTE: Additions are *single-underline italics Times New Roman*;  
deletions are ~~*strike-through italics Times New Roman*~~.  
Board amendment additions are double-underlined;  
Board amendment deletions are ~~strike through normal~~.

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

Section 1. Findings. The Board of Supervisors hereby finds that:

(a) San Francisco is the only city in California to levy a payroll expense tax. The San Francisco Payroll Expense Tax is levied against businesses on its annual compensation expense, to which stock compensation can be subject.

(b) According to the California Employment Development Department, at the beginning of 2011 the City and County of San Francisco had an estimated 32,000 non-government technology jobs. Stated differently, about 17.4 percent of non-government office workers in San Francisco are employed in the technology sector.

(c) In a March 15, 2011 report issued by the Office of the Controller, its Office of Economic Analysis found that it is common practice in the technology industry to compensate employees with stock options. It also found that future payroll expense tax liability associated with stock options appears to be a significant incentive for successful technology companies to relocate outside of San Francisco. As a result, the report suggests that San Francisco consider modifying its payroll expense tax ordinance to reduce this incentive.

1 (d) It is widely believed that several local technology companies will undertake an  
2 initial public offering within the next few years. If so, shares of these companies will trade on  
3 a public stock exchange and potentially subject the companies to greater payroll expense tax  
4 liabilities. City leaders are concerned that faced with potentially greater payroll expense tax  
5 liabilities, these companies may move out of San Francisco as the Office of Economic  
6 Analysis suggested.

7 (e) San Francisco leaders currently are undertaking a comprehensive review of the  
8 San Francisco business tax code. Excluding stock compensation from the payroll expense tax  
9 through 2013 will allow the City time to complete its assessment. Also, it will provide a level of  
10 certainty regarding future tax liability for the technology companies who take their companies  
11 public so that such companies will not feel compelled to relocate outside San Francisco.

12 (f) Attracting and retaining growing businesses in San Francisco through thoughtful  
13 business tax reform is a key component to maintaining a strong local economy and tax base.  
14 Therefore,  
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16 Section 2. The San Francisco Business and Tax Regulations Code is hereby amended  
17 by adding Section 906.4, to read as follows:

18 **SEC. 906.4. STOCK COMPENSATION EXCLUSION.**

19 **(a) Definitions.**

20 **(1) "Eligible Person" shall mean a person who as of January 1, 2011: (i) is a**  
21 **Technology Business, (ii) employs at least 100 employees in San Francisco, (iii) was founded**  
22 **after 2001, and (iv) undertakes an initial public offering on a public stock exchange during the**  
23 **period this exclusion is in effect.**  
24  
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1                   (2)     "Technology Business" shall mean a Web-based company whose core mission,  
2                   business plan and revenues are developed through services or goods accessed by way of the  
3                   Internet.

4                   (3)     "Stock Compensation" shall mean any stock option granted prior to the person's  
5                   date of initial public offering.

6                   (b)     An Eligible Person may exclude from its payroll expense all compensation related to  
7                   Stock Compensation for the tax years 2011, 2012 and 2013.

8                   (c)     No exclusion shall be allowed under this Section to the extent that such exclusion  
9                   reduces an Eligible Person's payroll expense tax liability below \$1,500 for any individual employee. In  
10                  such case, the Eligible Person's payroll expense tax liability shall be fixed for such individual  
11                  employees at \$1,500.

12                  (d)     In order to be eligible for the payroll expense tax exclusion authorized under this  
13                  Section, persons wishing to claim the exclusion must:

14                         (1)     File with the Tax Collector, on a form prescribed by the Tax Collector, an  
15                         affidavit attesting to the facts establishing entitlement to the tax exclusion. The affidavit shall  
16                         be supported by such other documentation as the Tax Collector shall prescribe.

17                         (2)     Maintain records and documents in a manner acceptable to the Tax Collector.  
18                         Such records and documents must objectively substantiate any exclusion claimed under this  
19                         Section and be provided to the Tax Collector upon request.

20                         (3)     File an annual payroll expense tax return with the Tax Collector regardless of  
21                         the amount of tax liability shown on the return after claiming the exclusion provided for in this  
22                         Section.

23                   (e)     A person may not use or claim any unused portion of the exclusion available under this  
24                   Section after the expiration date of this Section.

1           (f)     The Office of the Treasurer and Tax Collector may adopt rules and regulations  
2 regarding the exclusion provided under this Section.

3           (g)     The Tax Collector shall verify that any exclusion claimed pursuant to this Section is  
4 appropriate.

5           (h)     A misrepresentation or misstatement by any person regarding eligibility for the  
6 exclusion authorized by this Section that results in the underpayment or underreporting of the payroll  
7 expense tax shall be subject to penalties.

8           (i)     The Stock Compensation Exclusion in this Section may not be claimed concurrently with  
9 any other payroll expense tax exclusion.

10          (j)     This Section 906.4 shall expire by operation of law on December 31, 2013, unless  
11 extended by the Board of Supervisors or the voters, and the City Attorney shall cause it to be removed  
12 from future editions of the Business and Tax Regulations Code.

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14 APPROVED AS TO FORM:  
15 DENNIS J. HERRERA, City Attorney

16 By: \_\_\_\_\_  
17 STEPHANIE PROFITT  
18 Deputy City Attorney  
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