FILE NO. 161264

LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Estimated Payments, Filing Extensions, and Refunds]

Ordinance amending the Business and Tax Regulations Code to modify the quarterly filing and payment requirements for payroll expense taxes and gross receipts taxes, to clarify the requirements for obtaining a return filing extension, and to expressly permit taxpayers to apply refunds of the business registration fee, the payroll expense tax, and the gross receipts tax to subsequent tax periods.

Existing Law

Existing law requires taxpayers to make quarterly payments of their current year's payroll expense taxes and gross receipts taxes calculated as the person's taxable payroll expense and taxable gross receipts for that quarter multiplied by tax rates specified in the code. Failure to pay such amounts subjects the taxpayer to a penalty of 5% per month (up to 20%), plus interest. However, such penalty and interest does not apply if the sum of the payroll expense tax and gross receipts tax quarterly payments made equals or exceeds 26% of the person's tax liability for the prior year.

Additionally, existing law permits taxpayers to obtain an extension of the date by which they must file their tax returns if they pay 90% of their estimated tax liability by the original due date for the return. Failure to make this 90% payment results in the denial of the extension and the application of penalties and interest under the code.

Finally, existing law does not address the ability of taxpayers to request that an overpayment of taxes be applied to a future tax liability, other than indicating that interest will be paid on such overpayment only through the date of the election to apply that overpayment to a future liability.

Amendments to Current Law

For tax years commencing on or after January 1, 2017, this ordinance would modify the quarterly payments that taxpayers must make of their current year's payroll expense tax and gross receipts tax liabilities in several ways:

- Rather than calculating the quarterly payments based on the person's taxable payroll expense and taxable gross receipts for the quarter, this ordinance would generally require that the payments be calculated as the lower of 25% of the tax liability shown on the person's return for the current year or 25% of the tax liability shown on the person's return for the prior year.

- Lessors of residential real estate would be exempt from making the gross receipts tax quarterly payments if the gross receipts within the City shown on their current or prior year's tax return did not exceed $1,000,000, as adjusted for inflation under the code.

- The penalty for failing to pay these quarterly amounts would be lowered to 5% of the underpayment, with no interest. This penalty would be subject to waiver if: (1) the failure to pay occurred notwithstanding the exercise or ordinary care and in the absence of willful neglect; (2) the taxpayer made an inadvertent error in the amount of payment made, as long as the inadvertent error was corrected within 10 days of the Tax Collector issuing a notice of deficiency; or (3) waiver is ordered by a court of competent jurisdiction.

- Taxpayers would be required to make quarterly filings if they owe a quarterly payment, or if they reported a tax liability on their return for the prior tax year. Failure to make such filings would result in the Tax Collector temporarily deeming the required quarterly payment to be 25% of the tax liability reported on the person's return for the prior tax year. This temporary liability would be revised to reflect the person's actual quarterly payment obligation once the person makes the required quarterly filing or once the person files an annual tax return for the current tax year or the person's annual tax liability for the current tax year is known.

This ordinance would clarify that the required 90% payment to obtain an extension to file is 90% of the person's actual tax liability for the period. It would also clarify the consequences of failing to make such 90% payment.

Finally, this ordinance would specify that taxpayers could make a binding election to apply overpayments of business registration fees, payroll expense taxes, and gross receipts taxes to future liabilities of these taxes. If such election is made, this ordinance would repeal the provision granting the taxpayer interest through the date of the election, and would instead specify that no interest would be paid on such overpayments. This amendment would apply to all pending and future overpayments of business registration fees, payroll expense taxes, and gross receipts taxes, regardless of whether the overpayments relate to tax periods ending before or after the effective date of this ordinance.

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