

BOARD of SUPERVISORS



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MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Linda Wong, Assistant Clerk
Board of Supervisors

DATE: December 22, 2016

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Budget and Finance Committee

The Board of Supervisors' Budget and Finance Committee has received the following legislation, which is being referred to the Small Business Commission for comment and recommendation. The Commission may provide any response it deems appropriate within 12 days from the date of this referral.

File No. 161225

Ordinance amending the Business and Tax Regulations Code to remove the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector; and to remove the fee and administrative requirements for obtaining a duplicate registration certificate.

Please return this cover sheet with the Commission's response to Linda Wong, Assistant Clerk, Budget and Finance Committee, at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

_____ **No Comment**

_____ **Recommendation Attached**

Chairperson, Small Business Commission

c: Menaka Mahajan, Small Business Commission

1 [Business and Tax Regulations Code - Business Registration with Tax Collector]

2
3 **Ordinance amending the Business and Tax Regulations Code to remove the \$100**
4 **minimum penalty from one of the penalties for failing to register with the Tax Collector;**
5 **and to remove the fee and administrative requirements for obtaining a duplicate**
6 **registration certificate.**

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

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

15 Section 1. The Business and Tax Regulations Code is hereby amended by revising
16 Section 6.17-3, to read as follows:

17 **SEC. 6.17-3. NEGLIGENCE PENALTIES FOR FAILURE TO REGISTER,**
18 **MISSTATEMENTS IN REGISTRATION, FAILURE TO TIMELY UPDATE REGISTRATION,**
19 **FAILURE TO ALLOW INSPECTION OF RECORDS UPON REQUEST, AND FAILURE TO**
20 **FILE A RETURN; SANCTION FOR FAILURE TO PRODUCE REQUESTED RECORDS.**

21 (a) Any person who fails to register *in a timely manner shall pay, in addition to any other*
22 *liability that may be imposed under the provisions of this Article 6, a penalty assessed pursuant to*
23 *Section 6.17-1.*

24 (b) *Any person who* fails to amend a registration within ~~7~~*seven* days of a material
25 change, or who makes a material misrepresentation in a registration, or who fails to comply
with a rule or regulation promulgated by the Tax Collector in a timely manner, shall pay, in

1 addition to any other liability that may be imposed under the provisions of this Article 6, a
2 penalty in an amount equal to either \$100 or the penalty assessed pursuant to Section 6.17-1,
3 whichever is greater.

4 (~~b~~c) The Tax Collector may impose a penalty upon any person who fails to file a return
5 or returns required under this Article 6 on or before the date prescribed for filing up to \$500 for
6 each such failure. The penalty under this provision shall be in addition to any other liability
7 that may be imposed under the provisions of this Article. Filing a return that the Tax Collector
8 determines to be incomplete in any material aspect may be deemed failure to file a return in
9 violation of this Section 6.17-3. Any return required to be filed on a combined basis, and which
10 is not filed on that basis, is an incomplete return. In addition, any return required to report
11 worldwide gross receipts and payroll of a person or combined group under Section 956.2,
12 which does not report gross receipts and payroll on a worldwide basis, is an incomplete
13 return.

14 (~~e~~d) Any person who fails to allow a full inspection of records pursuant to a request
15 made by the Tax Collector within the time prescribed by the Tax Collector shall pay, in
16 addition to any other liability that may be imposed under the provisions of this Article 6, a
17 penalty in the amount of \$500 for each such failure.

18 (~~e~~e) Unless the failure to allow inspection was due to reasonable cause and not willful
19 neglect, any person who fails to provide records pursuant to a written request made by the
20 Tax Collector may not contest the Tax Collector's decision regarding the amount of such
21 person's liability for any taxes, administrative collection costs, interest, penalties, or other
22 costs and charges imposed under the Business and Tax Regulations Code, or oppose the
23 collection of such amount, in any subsequent administrative or judicial proceeding, on the
24 basis of any record the Tax Collector previously requested in writing that such person failed to
25 make available to the Tax Collector on or before the earliest to occur of the following:

1 (1) The conclusion of the hearing on a petition for redetermination held pursuant
2 to Sections 6.12-5 or 6.13-2;

3 (2) The date the jeopardy determination became final under Section 6.12-5 if
4 such person did not request hearing thereon;

5 (3) The date the deficiency determination became final under Section 6.13-4 if
6 such person did not request a hearing thereon.

7
8 Section 2. The Business and Tax Regulations Code is hereby amended by deleting
9 Section 856.1, to read as follows:

10 ~~SEC. 856.1. APPLICATION FOR DUPLICATE REGISTRATION CERTIFICATE~~

11 ~~(a) A holder of a registration certificate as defined in Section 852.2 shall apply to the Tax~~
12 ~~Collector for a duplicate certificate if the original certificate has been lost or destroyed. The~~
13 ~~registration certificate holder shall give an affidavit to the Tax Collector stating that the affiant is the~~
14 ~~person to whom the Tax Collector has issued the registration certificate and that the registration~~
15 ~~certificate was lost or destroyed. The registration certificate holder shall pay a fee for the issuance of~~
16 ~~the duplicate registration certificate in the amount of Twenty Five Dollars (\$25.00).~~

17 ~~(b) If the Tax Collector determines that the affiant has satisfied all of the requirements of this~~
18 ~~Article, including the payment of all outstanding liabilities owed to the City as enumerated in Section~~
19 ~~856 of this Article, the Tax Collector shall issue a duplicate registration certificate. The duplicate~~
20 ~~registration certificate shall be plainly marked or stamped as a duplicate. The Tax Collector shall~~
21 ~~enter the fact of the duplicate in the Tax Collector's files. The Tax Collector shall maintain a record of~~
22 ~~the alleged loss or destruction, whether or not the duplicate certificate is issued.~~

23
24 Section 3. Effective Date. This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

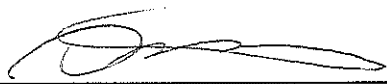
1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
5 of this ordinance, or any application thereof to any person or circumstance, is held to be
6 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
7 shall not affect the validity of the remaining portions or applications of the ordinance. The
8 Board of Supervisors hereby declares that it would have passed this ordinance and each and
9 every section, subsection, sentence, clause, phrase, and word not declared invalid or
10 unconstitutional without regard to whether any other portion of this ordinance or application
11 thereof would be subsequently declared invalid or unconstitutional.

12
13 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the "Note" that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:


23 Scott M. Reiber
24 Deputy City Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Business Registration with Tax Collector]

Ordinance amending the Business and Tax Regulations Code to remove the \$100 minimum penalty from one of the penalties for failing to register with the Tax Collector; and to remove the fee and administrative requirements for obtaining a duplicate registration certificate.

Existing Law

Existing law imposes a penalty for failure to obtain a business registration certificate under Business and Tax Regulations Code ("Code") Section 6.17-3. That penalty is in addition to any other liability imposed under Article 6 of the Code (including administrative penalties), and is either \$100, or a percentage of the amount owed per Code Section 6.17-1, whichever is greater.

Existing law provides procedures and a \$25 fee to obtain a duplicate business registration certificate.

Amendments to Current Law

This ordinance would alter the calculation of the penalty in Code Section 6.17-3 for failure to obtain a business registration certificate so that it is calculated only as the penalty assessed under Code Section 6.17-1. In other words, it would remove the \$100 minimum penalty for failure to obtain a business registration certificate from Code Section 6.17-3 such that Code Section 6.17-3 would only impose a penalty for failure to obtain a business registration certificate based on a percentage of the amount owed.

This ordinance would also delete the required procedures and fee to obtain a duplicate business registration certificate.

Background Information

In addition to the penalty for failure to obtain a business registration certificate in Code Section 6.17-3, existing Code Section 6.19-3 permits the Office of the Treasurer and Tax Collector to impose a \$100 administrative penalty (through the administrative citation process) for the failure to obtain a business registration certificate. Thus, a taxpayer that failed to obtain a business registration certificate but was not subject to a penalty under Code Section 6.17-1 (because, for example, the taxpayer was not required to pay the business registration fee), could still be liable for the \$100 administrative penalty under Code Section 6.19-3.

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