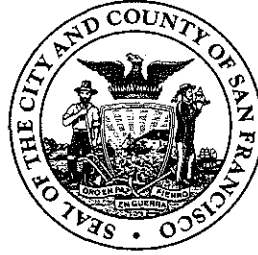


BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
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TDD/TTY No. 554-5227

MEMORANDUM

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

FROM: Linda Wong, Assistant Clerk
Board of Supervisors

DATE: November 16, 2017

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. 171133

Ordinance amending the Business and Tax Regulations Code to raise the thresholds above which persons are required to file gross receipts tax and payroll expense tax returns, so that persons who qualify for the small business exemption from either tax are exempt from filing returns for that tax, other than persons taking certain tax exclusions.

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 - Minimum Filing Thresholds for Gross Receipts Tax
2 and Payroll Expense Tax]

3 **Ordinance amending the Business and Tax Regulations Code to raise the thresholds**
4 **above which persons are required to file gross receipts tax and payroll expense tax**
5 **returns, so that persons who qualify for the small business exemption from either tax**
6 **are exempt from filing returns for that tax, other than persons taking certain tax**
7 **exclusions.**

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. The Business and Tax Regulations Code is hereby amended by revising
17 Sections 6.9-2, 6.9-3, 905-A, and 954.1, to read as follows:

18 **SEC. 6.9-2. DETERMINATIONS, RETURNS AND PAYMENTS; RETURNS.**

19 (a) **Returns.** Except as provided in subsection (b) below, on or before the due date, or
20 in the event of a cessation of business within 15 days of such cessation, each taxpayer shall
21 file a return for the subject period on a form provided by the Tax Collector, regardless of
22 whether there is a tax liability owing. A person subject to any tax or required to remit any
23 third-party tax who has not received a return form or forms from the Tax Collector is
24 responsible for obtaining such form(s) and filing a return or returns on or before the due date,
25 or upon the cessation of business. Returns shall show the amount of tax and any third-party

1 tax paid or otherwise due for the related period and such other information as the Tax
2 Collector may require. Each person subject to any tax or required to remit any third-party tax
3 and required to file the return shall transmit the return, together with the remittance of the
4 amount of tax or third-party tax due, to the Tax Collector at the Tax Collector's Office on or
5 before the due date specified in Section 6.9-1.

6 (b) ~~Minimum Filing Amount~~**Exemption From Filing.** ~~Notwithstanding any other provision~~
7 ~~of this Section, and e~~Commencing with tax years beginning on or after January 1, 2017, ~~4-~~

8 ~~(1) a~~A person who qualifies for the small business tax exemption in Section 905-A of
9 Article 12-A shall be exempt from filing a payroll expense tax return, and a person or combined group
10 who qualifies for the small business exemption in Section 954.1 of Article 12-A-1 shall be exempt from
11 filing a gross receipts tax return. Notwithstanding the preceding sentence, any person taking any of the
12 following exclusions must file a payroll expense tax return and a gross receipts tax return regardless of
13 whether such person qualifies for the small business tax exemption from the payroll expense tax or the
14 small business exemption from the gross receipts tax after claiming the exclusion:

15 (1) the Biotechnology Exclusion in Section 906.1;

16 (2) the Clean Technology Business Exclusion in Section 906.2;

17 (3) the Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion in
18 Section 906.3; or

19 (4) the Stock-Based Compensation Exclusion in Section 906.4, whose combined taxable
20 payroll expense in the City under the Payroll Expense Tax Ordinance (Article 12-A), computed without
21 regard to the small business exemption set forth in Section 905-A of Article 12-A, is less than \$150,000,
22 shall be exempt from filing a payroll expense tax return.

23 ~~(2) A person, other than a lessor of residential real estate as that term is used in Section~~
24 ~~954.1 of Article 12-A-1, whose combined taxable gross receipts in the City under the Gross Receipts~~
25 ~~Tax Ordinance (Article 12-A-1), computed without regard to the small business tax exemption set forth~~

1 ~~under Section 954.1 of Article 12-A-1, is less than \$500,000, shall be exempt from filing a gross~~
2 ~~receipts tax return.~~

3 ~~(3) A lessor of residential real estate, as that term is used in Section 954.1 of Article 12-~~
4 ~~A-1, who leases fewer than 4 units in any individual building, shall be exempt from filing a gross~~
5 ~~receipts tax return.~~

7 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS; REMITTANCES.**

8 (a) **Remittances.** Notwithstanding the due dates otherwise provided in Section 6.9-1,
9 taxpayers shall make remittances of taxes and third-party taxes to the Tax Collector as
10 follows:

11 * * * *

12 (3) **Payroll Expense Tax and Gross Receipts Tax: Estimated Tax**
13 **Payments.** Except as provided in Section 6.9-3(a)(3)(D) with respect to estimated tax
14 payments of the gross receipts tax, every person or combined group liable for payment of the
15 payroll expense tax (Article 12-A) or the gross receipts tax (Article 12-A-1) (including the tax
16 on administrative office business activities imposed under Section 953.8 of Article 12-A-1)
17 shall make three estimated tax payments, in addition to the annual payments in Section 6.9-
18 3(a)(4), as follows:

19 * * * *

20 (D) **Lessor of Residential Real Estate; Exemption.** Notwithstanding
21 anything else in this Section 6.9-3(a)(3), a lessor of residential real estate, as defined in
22 Section 954.1 of Article 12-A-1, shall not be required to make estimated tax payments of
23 gross receipts tax, but shall pay its full gross receipts tax liability on or before the last day of
24 February following the tax year, if the lessor's gross receipts within the City shown on the
25

1 lessor's return for either the current tax year or the preceding tax year did not exceed the
2 threshold in Section 954.1(b)(1) of Article 12-A-1.

3 * * * *

4
5 **SEC. 905-A. SMALL BUSINESS TAX EXEMPTION.**

6 (a) Notwithstanding any other provisions of this Article 12-A, a "small business
7 enterprise" as hereinafter defined, shall be exempt from payment of the payroll expense tax;
8 provided, however, that a small business enterprise shall pay the annual registration fee
9 pursuant to Section 855 of Article 12.

10 (b) The term "small business enterprise" shall mean and include any person taxpayer:

11 ~~(1) Whose tax liability under this Article, but for this exemption provision, would not~~
12 ~~exceed \$2,500 or, effective January 1, 2009 whose taxable payroll expense does not exceed~~
13 ~~\$250,000; and~~

14 ~~(2) Who timely filed a tax return for the tax year, if that person or group had a payroll~~
15 ~~expense in the City of at least \$150,000. If the person is required to file a tax return under this Section,~~
16 ~~and fails to file a return by the due date, the taxpayer shall be subject to a penalty as specified in~~
17 ~~subsection (d).~~

18 (c) For the 2011 tax year, and each second succeeding tax year the Tax Collector
19 shall increase the ceiling for the small business tax exemption (rounded to the nearest
20 \$10,000 increment) to reflect increases in the United States Department of Labor's Bureau of
21 Labor Statistics consumer price index for all urban customers for the San Francisco-Oakland-
22 San Jose area for each of the preceding two tax years.

23 ~~(d) In lieu of the penalty and interest specified in Section 6.17-1 of Article 6 for failure to pay,~~
24 ~~any person who otherwise qualifies for the small business tax exemption set forth in this Section, and~~
25

1 ~~who had payroll expense in the City of at least \$150,000, who fails to timely file a return shall pay a~~
2 ~~penalty as follows:~~

3 ~~(1) The penalty for the first month, or fraction thereof, that the return is delinquent,~~
4 ~~shall be 5 percent of the amount of the tax liability, calculated without regard to the small business~~
5 ~~exemption in this Section. The penalty shall increase by an additional 5 percent each month, or~~
6 ~~fraction thereof, that the return is delinquent, up to a maximum of 20 percent of the tax liability. Any~~
7 ~~penalties remaining unpaid for a period of 90 days or more shall be subject to an additional penalty of~~
8 ~~20 percent of the amount of the tax liability excluding penalties and interest.~~

9 ~~(2) Penalties are due and payable when assessed. Unpaid penalties shall accrue~~
10 ~~interest at the rate of 1 percent per month, or fraction thereof, from the date that they are assessed~~
11 ~~through the date of payment. The total amount of the penalties, interest and fees shall not exceed the~~
12 ~~amount of the person's payroll expense tax liability for the period but for the small business tax~~
13 ~~exemption.~~

14 ~~(e) The Tax Collector may, in his or her discretion, reduce the penalty set forth in subsection~~
15 ~~(d) to not less than \$100 upon a showing that the late filing of the return was due to reasonable cause~~
16 ~~and not due to willful neglect.~~

17
18 **SEC. 954.1. SMALL BUSINESS EXEMPTION.**

19 (a) Notwithstanding any other provision of this Article ~~12-A-1~~, a "small business
20 enterprise," as hereinafter defined for purposes of this Article ~~12-A-1~~, shall be exempt from
21 payment of the gross receipts tax, nevertheless, a small business enterprise shall pay the
22 annual registration fee pursuant to Section 855 of Article 12.

23 (b) For purposes of this Article 12-A-1, the term "small business enterprise" shall mean
24 and include any person or combined group, except for a lessor of residential real estate, ~~;~~

1 ~~(1) Wh~~ose gross receipts within the City for the preceding tax year did not
2 exceed \$1,000,000, adjusted annually in accordance with the increase in the Consumer Price
3 Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as
4 reported by the United States Bureau of Labor Statistics, or any successor to that index, as of
5 December 31~~st~~ of the preceding year, beginning with December 31, 2014, ~~and~~

6 ~~(2) Who timely filed a tax return for the tax year, if that person or group had gross~~
7 ~~receipts in the City of at least \$500,000. If a person is required to file a tax return under this Section,~~
8 ~~and fails to file a return by the due date, the taxpayer shall be subject to a penalty as specified in~~
9 ~~subsection (e).~~

10 ~~(e) In lieu of the penalty and interest specified in Section 6.17-1 of Article 6 for failure to pay,~~
11 ~~any person who otherwise qualifies for the small business exemption set forth in this Section, and who~~
12 ~~had gross receipts in the City of at least \$500,000, who fails to timely file a return shall pay a penalty~~
13 ~~as follows:~~

14 ~~(1) The penalty for the first month, or fraction thereof, that the return is delinquent,~~
15 ~~shall be 5 percent of the amount of the tax liability, calculated without regard to the small business~~
16 ~~exemption in this Section. The penalty shall increase by an additional 5 percent each month, or fraction~~
17 ~~thereof, that the return is delinquent, up to a maximum of 20 percent of the tax liability. Any penalties~~
18 ~~remaining unpaid for a period of 90 days or more shall be subject to an additional penalty of 20~~
19 ~~percent of the amount of the tax liability excluding penalties and interest.~~

20 ~~(2) Penalties are due and payable when assessed. Unpaid penalties shall accrue~~
21 ~~interest at the rate of 1 percent per month, or fraction thereof, from the date that they are assessed~~
22 ~~through the date of payment. The total amount of the penalties, interest and fees shall not exceed the~~
23 ~~amount of the person's gross receipts tax liability for the period but for the small business exemption.~~

1 ~~(d) The Tax Collector may, at his or her discretion, reduce the penalty set forth in subsection~~
2 ~~(c) to not less than \$100 upon a showing that the late filing of the return was due to reasonable cause~~
3 ~~and not due to willful neglect.~~

4 (ce) For purposes of this Article 12-A-1, and notwithstanding any other provision of this
5 Section 954.1, a lessor of residential real estate is a "small business enterprise" if and only if
6 the lessor leases fewer than 4 units in any individual building. "Residential real estate" means
7 real property where the primary use of or right to use the property is for the purpose of
8 dwelling, sleeping or lodging other than as part of the business activity of accommodations.
9 For purposes of this Article 12-A-1, Article 12-A, and Article 12, a lessor of residential real
10 estate is treated as a separate person with respect to each individual building in which it
11 leases residential real estate units, notwithstanding Section 6.2-15 of Article 6, or
12 Section 956.3 of this Article 12-A-1. The provisions of this subsection (c) apply only to leasing
13 residential real estate units within a building, and not to any business activity related to other
14 space, either within the same building or other buildings, which is not residential real estate.
15 The Tax Collector is authorized to determine what constitutes a separate building and the
16 number of units in a building.

17
18 Section 2. Effective Date. This ordinance shall become effective 30 days after
19 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
20 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
21 of Supervisors overrides the Mayor's veto of the ordinance.

22
23 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
24 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
25 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal

1 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
2 additions, and Board amendment deletions in accordance with the "Note" that appears under
3 the official title of the ordinance.
4

5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By:


8 Scott M. Reiber
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Minimum Filing Thresholds for Gross Receipts Tax and Payroll Expense Tax]

Ordinance amending the Business and Tax Regulations Code to raise the thresholds above which persons are required to file gross receipts tax and payroll expense tax returns, so that persons who qualify for the small business exemption from either tax are exempt from filing returns for that tax, other than persons taking certain tax exclusions.

Existing Law

Existing law exempts persons whose combined taxable payroll expense in the City is less than \$150,000 from filing a payroll expense tax return, other than persons taking certain tax exclusions. It also exempts persons or combined groups, other than lessors of residential real estate, whose combined taxable gross receipts in the City are less than \$500,000 from filing a gross receipts tax return, other than persons taking certain tax exclusions. Existing law generally exempts lessors of residential real estate from filing a gross receipts tax return if they lease fewer than 4 units in any individual building, other than persons taking certain tax exclusions.

Existing law also penalizes persons who are exempt from paying payroll expense taxes or gross receipts tax because they qualify for the small business exemption if they do not file payroll expense tax returns or gross receipts tax returns when they exceed the minimum filing thresholds described in the paragraph above.

Amendments to Current Law

Commencing with tax year 2017, this ordinance would raise the minimum filing thresholds for the payroll expense tax and the gross receipts tax so that they are the same as the thresholds for tax exemption under the small business exemption. In other words, under this ordinance persons that qualify for the small business exemption for either tax will be exempt from filing returns for that tax, other than persons taking certain tax exclusions.

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