

LEGISLATIVE DIGEST

(Amended in Committee - Third Draft – 7/12/18)

[Initiative Ordinance - Business and Tax Regulations Code - Gross Receipts Tax on Transportation Network Company Services, Private Transit Vehicle Services, and Autonomous Vehicle Passenger Services; Economic Nexus]

Motion ordering submitted to the voters at an election to be held on November 6, 2018 an ordinance amending the Business and Tax Regulations Code to add a new gross receipts tax category for transportation network company services, private transit vehicle services, and autonomous vehicle passenger services; revise the application of the gross receipts tax for persons engaged in multiple business activities; and expand the activities that subject a person to certain business taxes by including persons with more than \$500,000 in annual gross receipts in the City; and increasing the City's appropriations limit each year by the increase in the amount of those business taxes collected compared to the prior year for four years from November 6, 2018.

Existing Law

Persons engaged in business in the City, including transportation network companies ("TNCs"), companies providing private transit vehicle ("PTV") services, and providers of autonomous vehicle ("AV") passenger services, currently pay a gross receipts tax to the City. Rates vary by line of business and the amount of the person's taxable gross receipts, and range from 0.075% to 0.65%. If a business conducts multiple lines of business that cross multiple rate schedules, special rules apply depending on whether a business activity accounts for more than 80% of the business's total gross receipts (the "80-20 Rule"), and whether a business activity accounts for less than 20% of the business's total gross receipts (the "20% Rule").

Persons are subject to certain business taxes, including but not limited to business registration, payroll expense, and gross receipts taxes, if they are engaging in business within the City. Persons are considered to be engaging in business in the City if they meet at least one of ten conditions, including maintaining a fixed place of business within the City or soliciting business or providing services in the City for all or part of any seven days during the tax year.

Amendments to Current Law

Effective January 1, 2019, this ordinance would increase the gross receipts tax for TNC services, PTV services, and AV passenger services, by adding a new industry category for such services. The gross receipts tax rates for this industry category would be:

- .625% for taxable gross receipts between \$0 and \$1,000,000;

- .705% for taxable gross receipts between \$1,000,000.01 and \$2,500,000;
- .87% for taxable gross receipts between \$2,500,000.01 and \$25,000,000;
- .975% for taxable gross receipts between \$25,000,000.01 and \$50,000,000; and
- 1% for taxable gross receipts above \$50,000,000.

The existing gross receipts tax rules and procedures, as amended by this ordinance, would apply to taxpayers in this new industry category. The gross receipts tax from this new industry category may be used for the City's general purposes.

Also effective January 1, 2019, this ordinance would replace the 80-20 Rule and the 20% Rule with a *de minimis* rule, by which taxpayers may combine the gross receipts from any business activity that generates less than \$10,000 in total gross receipts with the gross receipts that generate the highest amount of the taxpayer's total gross receipts. The Tax Collector would have the authority to raise the \$10,000 threshold prior to the beginning of a tax year, if the Tax Collector determines that doing so would improve filing simplicity without significantly reducing tax revenues.

On June 21, 2018, the United States Supreme Court in *South Dakota v. Wayfair, Inc.* held that a person no longer needs to have physical presence in a taxing jurisdiction to be subject to that jurisdiction's tax. This ordinance would expand the conditions under which persons are subject to certain business taxes in the City, by also including persons with annual gross receipts in the City exceeding \$500,000, irrespective of physical presence.

This ordinance would increase the City's appropriations limit under Article XIII B each fiscal year by the increase in the amount of those business taxes collected compared to the prior fiscal year, for four years from November 6, 2018.

Background Information

This legislative digest reflects amendments made in committee on May 17, 2018. The amendments added AV passenger services to the new industry category, modified the definition of TNC services, and made other, non-substantive changes.

This legislative digest also reflects amendments made in committee on July 12, 2018. The amendments added a fifth rate tier for the new industry category, expanded the conditions that will subject persons to certain business taxes, removed the proposed elimination of the Central Market Street and Tenderloin Area exclusion, increased the Article XIII B appropriations limit, and made other, non-substantive changes.

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