

BOARD of SUPERVISORS



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MEMORANDUM

TO: Jeff Kositsky, Director, Department of Homelessness and Supportive Housing

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: December 19, 2018

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by the Office of the Treasurer and Tax Collector:

File No. 181110

Ordinance amending the Business and Tax Regulations Code to add provisions to administer the Homelessness Gross Receipts Tax; and to make conforming non-substantive changes.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org.

c: Emily Cohen, Department of Homelessness and Supportive Housing

1 [Business and Tax Regulations Code - Administration of Homelessness Gross Receipts Tax]

2
3 **Ordinance amending the Business and Tax Regulations Code to add provisions to**
4 **administer the Homelessness Gross Receipts Tax; and to make conforming non-**
5 **substantive changes.**

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

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

14 Section 1. Article 6 of the Business and Tax Regulations Code is hereby amended by
15 revising Sections 6.1-1, 6.2-12, 6.2-17, 6.8-1, 6.9-1, 6.9-3, 6.9-5, 6.15-1, 6.15-2, and 6.17-1,
16 to read as follows:

17 **SEC. 6.1-1. COMMON ADMINISTRATIVE PROVISIONS.**

18 (a) These common administrative provisions shall apply to Articles 6, 7, 8, 9, 10, 10B,
19 11, 12, 12-A, 12-A-1, 12-B, ~~and 21,~~ and 28 of this Code and to Chapter 105 of the
20 Administrative Code, unless the specific language of either Code otherwise requires. Any
21 provision of this Article 6 that references or applies to Article 10 shall be deemed to also
22 reference or apply to Article 10B. Any provision of this Article 6 that references or applies to a
23 tax shall be deemed to also reference or apply to a fee administered pursuant to this Article,
24 and shall be deemed to also reference or apply to an assessment levied pursuant to the
25 Property and Business Improvement District Law of 1994 (California Streets and Highways

1 Code sections 36600 *et seq.*) or Article 15 of this Code. A fee administered pursuant to
2 Article 6 or an assessment levied pursuant to the Property and Business Improvement District
3 Law of 1994 or Article 15 of this Code shall for purposes of this Article be deemed to be
4 imposed pursuant to the provisions of the Business and Tax Regulations Code.

5 (b) Unless expressly provided otherwise, all statutory references in this Article 6 and
6 the Articles set forth in subsection (a) shall refer to such statutes as amended from time to
7 time and shall include successor provisions.

8 (c) For purposes of this Article 6, a domestic partnership established pursuant to
9 Chapter 62 of the Administrative Code shall be treated the same as a married couple.

10
11 **SEC. 6.2-12. NEXUS: "ENGAGING IN BUSINESS WITHIN THE CITY."**

12 The taxes imposed by Article 12-A (Payroll Expense Tax Ordinance), Article 12-A-1
13 (Gross Receipts Tax Ordinance), Article 21 (Early Care and Education Commercial Rents Tax
14 Ordinance), Article 28 (Homelessness Gross Receipts Tax Ordinance), and Article 30 (Cannabis
15 Business Tax Ordinance), and the registration fee imposed by Article 12 (Business
16 Registration Ordinance) shall apply to any person engaging in business within the City unless
17 exempted therefrom under said Articles. A person is "engaging in business within the City,"
18 within the meaning of this Article 6, if that person meets one or more of the following
19 conditions:

20 (a) The person maintains a fixed place of business within the City; or

21 (b) An employee, representative, or agent of the person maintains a fixed place of
22 business within the City for the benefit or partial benefit of the person; or

23 (c) The person or one or more of the person's employees, representatives, or agents
24 owns, rents, leases, or hires real or personal property within the City for business purposes for
25 the benefit or partial benefit of the person; or

1 (d) The person or one or more of the person's employees, representatives, or agents
2 regularly maintains a stock of tangible personal property within the City, for sale in the
3 ordinary course of the person's business; or

4 (e) The person or one or more of the person's employees, representatives, or agents
5 employs or loans capital on property within the City for the benefit or partial benefit of the
6 person; or

7 (f) The person or one or more of the person's employees, representatives, or agents
8 solicits business within the City for all or part of any seven days during a tax year; or

9 (g) The person or one or more of the person's employees, representatives, or agents
10 performs work or renders services within the City for all or part of any seven days during a tax
11 year; or

12 (h) The person or one or more of the person's employees, representatives, or agents
13 utilizes the streets within the City in connection with the operation of motor vehicles for
14 business purposes for all or part of any seven days during a tax year; or

15 (i) The person or one or more of the person's employees, representatives, or agents
16 exercises corporate or franchise powers within the City for the benefit or partial benefit of the
17 person; or

18 (j) The person or one or more of the person's employees, representatives, or agents
19 liquidates a business when the liquidators thereof hold themselves out to the public as
20 conducting such business; or

21 (k) The person has more than \$500,000 in total gross receipts, as the term "gross
22 receipts" is used in Article 12-A-1 of the Business and Tax Regulations Code, in the City
23 during the tax year, using the rules for assigning gross receipts under Section 956.1 of
24 Article 12-A-1.
25

1 **SEC. 6.2-17. RETURN.**

2 The term "return" means any written statement required to be filed under Articles 6, 7,
3 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, ~~or 21~~, or 28, or under laws applicable to a fee administered
4 pursuant to Article 6, or under laws applicable to an assessment levied pursuant to the
5 Property and Business Improvement District Law of 1994 (California Streets and Highways
6 Code sections 36600 *et seq.*) or Article 15 of this Code.

7
8 **SEC. 6.8-1. CITY, PUBLIC ENTITY, AND CONSTITUTIONAL EXEMPTIONS.**

9 (a) Nothing in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, ~~or 21~~, or 28 shall be
10 construed as imposing a tax upon:

11 (1) The City;

12 (2) The State of California, or any county, municipal corporation, district, or
13 other political subdivision of the State, except where any constitutional or statutory immunity
14 from taxation is waived or is not applicable;

15 (3) The United States of America, or any of its agencies or subdivisions, except
16 where any constitutional or statutory immunity from taxation is waived or is not applicable; or

17 (4) Any person exempted from the particular tax by the Constitution or statutes
18 of the United States or the Constitution or statutes of the State of California.

19 (b) The foregoing exemption from taxation does not relieve an exempt party from its
20 duty to collect, report, and remit third-party taxes.

21
22 **SEC. 6.9-1. DETERMINATIONS, RETURNS AND PAYMENTS; DUE DATE OF TAXES.**

23 Except for jeopardy determinations under Section 6.12-2, and subject to remittances
24 required under Sections 6.9-2 and 6.9-3, all amounts of taxes and fees imposed by Articles 6,
25

1 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-1, ~~and 21~~, and 28 are due and payable, and shall be
2 delinquent if not paid to the Tax Collector on or before the following dates:

3 (a) For the hotel tax (Article 7) and the parking tax (Article 9), for each month, on or
4 before the last day of the following month;

5 (b) For the payroll expense tax (Article 12-A), the gross receipts tax (Article 12-A-1)
6 (including the tax on administrative office business activities imposed under Section 953.8 of
7 Article 12-A-1), ~~and~~ the Early Care and Education Commercial Rents Tax (Article 21), and the
8 Homelessness Gross Receipts Tax (Article 28) (including the homelessness administrative office tax
9 imposed under Section 2804(d) of Article 28), on or before the last day of February of each year;

10 (c) For the utility users tax (Article 10) and the access line tax (Article 10B), for each
11 monthly period, on or before the last day of the following month;

12 (d) For the stadium operator admission tax (Article 11), within 5 days after the event,
13 subject to the provisions of Section 804 of Article 11;

14 (e) For the business registration certificate (Article 12), on or before the last day of
15 May preceding the registration year commencing July 1 of that year; and

16 (f) For the sugary drinks distributor tax (Article 8), for each quarterly period, on or
17 before the last day of the month immediately following each calendar quarter.

18
19 **SEC. 6.9-3. DETERMINATIONS, RETURNS AND PAYMENTS; REMITTANCES.**

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

23 * * * *

24 (3) **Payroll Expense Tax, Gross Receipts Tax, ~~and~~ Early Care and**
25 **Education Commercial Rents Tax, and Homelessness Gross Receipts Tax: Estimated Tax**

1 **Payments.** Except as provided in Section 6.9-3(a)(3)(~~GF~~) with respect to estimated tax
2 payments of the gross receipts tax, every person or combined group liable for payment of the
3 payroll expense tax (Article 12-A), the gross receipts tax (Article 12-A-1) (including the tax on
4 administrative office business activities imposed under Section 953.8 of Article 12-A-1), ~~or~~ the
5 Early Care and Education Commercial Rents Tax (Article 21), or the Homelessness Gross
6 Receipts Tax (Article 28) (including the homelessness administrative office tax imposed under
7 Section 2804(d) of Article 28) shall make three estimated tax payments, in addition to the annual
8 payments in Section 6.9-3(a)(4), as follows:

9 (A) **Due Dates.** The first, second, and third estimated tax payments for a
10 tax year shall be due and payable, and shall be delinquent if not paid on or before, April 30,
11 July 31, and October 31, respectively, of that tax year. Estimated tax payments shall be a
12 credit against the person or combined group's total annual payroll expense tax, gross receipts
13 tax (including the tax on administrative office business activities imposed under Section 953.8
14 of Article 12-A-1), ~~or~~ Early Care and Education Commercial Rents Tax liability, or Homelessness
15 Gross Receipts Tax liability (including liability for the homelessness administrative office tax imposed
16 under Section 2804(d) of Article 28), as applicable, for the tax year in which such estimated tax
17 payments are due.

18 (B) **Payroll Expense Tax Estimated Tax Payments.** For purposes of
19 this Section 6.9-3, a person's estimated tax payments of payroll expense tax for any tax year
20 shall each equal the lesser of:

21 (i) 25% of the payroll expense tax liability shown on the person's
22 return for the tax year (or, if no return is filed, 25% of the person's actual payroll expense tax
23 liability for the tax year); or

24 (ii) 25% of the payroll expense tax liability shown on the person's
25 return for the preceding tax year. If the person did not file a return for the preceding tax year,

1 the person shall be deemed to have filed a return showing no liability for purposes of this
2 Section 6.9-3(a)(3)(B)(ii), and no estimated tax payments of payroll expense taxes shall be
3 due for the current tax year.

4 (C) **Gross Receipts Tax Estimated Tax Payments.** For purposes of
5 this Section 6.9-3, a person or combined group's estimated tax payments of gross receipts
6 tax, including the tax on administrative office business activities imposed under Section 953.8
7 of Article 12-A-1, for any tax year shall each equal the lesser of:

8 (i) 25% of the gross receipts tax liability (including any liability for
9 the tax on administrative office business activities imposed under Section 953.8 of Article 12-
10 A-1) shown on the person or combined group's return for the tax year (or, if no return is filed,
11 25% of the person or combined group's actual gross receipts tax liability for the tax year); or

12 (ii) 25% of the gross receipts tax liability (including any liability for
13 the tax on administrative office business activities imposed under Section 953.8 of Article 12-
14 A-1) shown on the person or combined group's return for the preceding tax year. If the
15 person or combined group did not file a return for the preceding tax year, the person or
16 combined group shall be deemed to have filed a return showing no liability for purposes of this
17 Section 6.9-3(a)(3)(C)(ii), and no estimated tax payments of gross receipts taxes shall be due
18 for the current tax year.

19 (D) **Early Care and Education Commercial Rents Tax Estimated Tax**
20 **Payments For Tax Years Commencing On or After January 1, 2020.** For purposes of this
21 Section 6.9-3, a person or combined group's estimated tax payments of Early Care and
22 Education Commercial Rents Tax for any tax year beginning on or after January 1, 2020, shall
23 each equal the lesser of:

24 (i) 25% of the Early Care and Education Commercial Rents Tax
25 liability shown on the person or combined group's return for the tax year (or, if no return is

1 filed, 25% of the person or combined group's actual Early Care and Education Commercial
2 Rents Tax liability for the tax year); or

3 (ii) 25% of the Early Care and Education Commercial Rents Tax
4 liability shown on the person or combined group's return for the preceding tax year. If the
5 person or combined group did not file a return for the preceding tax year, the person or
6 combined group shall be deemed to have filed a return showing no liability for purposes of this
7 Section 6.9-3(a)(3)(D)(ii), and no estimated tax payments of Early Care and Education
8 Commercial Rents Taxes shall be due for the current tax year.

9 (E) **Early Care and Education Commercial Rents Tax Estimated Tax**
10 **Payments for Tax Years Ending On or Before December 31, 2019.** For purposes of this
11 Section 6.9-3, a person or combined group's estimated tax payments of Early Care and
12 Education Commercial Rents Tax for tax years ending on or before December 31, 2019, shall
13 each equal the person or combined group's taxable gross receipts from the lease of
14 commercial space in properties in the City (as defined in Article 21) for each quarter multiplied
15 by the appropriate tax rate in Section 2104(b) of Article 21.

16 (F) Homelessness Gross Receipts Tax Estimated Tax Payments. For purposes
17 of this Section 6.9-3, a person or combined group's estimated tax payments of Homelessness Gross
18 Receipts Tax, including the homelessness administrative office tax imposed under Section 2804(d) of
19 Article 28, for any tax year shall each equal the lesser of:

20 (i) 25% of the Homelessness Gross Receipts Tax liability (including any
21 liability for the homelessness administrative office tax imposed under Section 2804(d) of Article 28)
22 shown on the person or combined group's return for the tax year (or, if no return is filed, 25% of the
23 person or combined group's actual Homelessness Gross Receipts Tax liability for the tax year); or

24 (ii) 25% of the Homelessness Gross Receipts Tax liability (including any
25 liability for the homelessness administrative office tax imposed under Section 2804(d) of Article 28)

1 shown on the person or combined group's return for the preceding tax year. If the person or combined
2 group did not file a return for the preceding tax year, the person or combined group shall be deemed to
3 have filed a return showing no liability for purposes of this Section 6.9-3(a)(3)(F)(ii), and no estimated
4 tax payments of Homelessness Gross Receipts Taxes shall be due for the current tax year.

5 **(~~FG~~) Lessor of Residential Real Estate; Exemption.** Notwithstanding
6 anything else in this Section 6.9-3(a)(3), a lessor of residential real estate, as defined in
7 Section 954.1 of Article 12-A-1, shall not be required to make estimated tax payments of
8 gross receipts tax, but shall pay its full gross receipts tax liability and Homelessness Gross
9 Receipts Tax liability on or before the last day of February following the tax year, if the lessor's
10 gross receipts within the City shown on the lessor's return for either the current tax year or the
11 preceding tax year did not exceed the threshold in Section 954.1(b) of Article 12-A-1.

12 **(~~GH~~) Estimated Tax Penalties.**

13 (i) Every person or combined group who fails to pay any estimated
14 tax payment required under this Section 6.9-3(a)(3) before the relevant delinquency date shall
15 pay an "Estimated Tax Penalty" in the amount of 5% of the amount of the underpayment. For
16 purposes of this Section 6.9-3(a)(3)(~~GH~~), the amount of the underpayment shall be the
17 required estimated tax payment less the amount, if any, of the estimated tax payment paid on
18 or before the delinquency date. The Estimated Tax Penalty provided under this Section 6.9-
19 3(a)(3)(~~GH~~) shall not apply if the sum of the payroll expense tax estimated tax payments,
20 gross receipts tax estimated tax payments (including estimated tax payments of the tax on
21 administrative office business activities imposed under Section 953.8 of Article 12-A-1), and
22 Early Care and Education Commercial Rents Tax estimated tax payments, and Homelessness
23 Gross Receipts Tax estimated tax payments (including estimated tax payments of the homelessness
24 administrative office tax imposed under Section 2804(d) of Article 28) for the quarter is equal to or
25 greater than the sum of the estimated tax payments due for these taxes.

1 (ii) An Estimated Tax Penalty imposed under this Section 6.9-
2 3(a)(3)(~~GH~~) may be waived by the Tax Collector, in whole or in part, upon a finding that the
3 person or combined group meets the requirements under Section 6.17-4.

4 (iii) The Estimated Tax Penalties imposed under this Section 6.9-
5 3(a)(3)(~~GH~~) shall not apply to estimated tax payments of the Early Care and Education
6 Commercial Rents Tax for tax periods ending on or before December 31, 2019, as described
7 in Section 6.9-3(a)(3)(E).

8 **(~~H~~) Estimated Tax Filings.**

9 (i) Every person or combined group engaged in business in the
10 City must submit estimated tax filings for payroll expense taxes, gross receipts taxes
11 (including taxes on administrative office business activities imposed under Section 953.8 of
12 Article 12-A-1), ~~and~~ Early Care and Education Commercial Rents Taxes, and Homelessness
13 Gross Receipts Taxes (including homelessness administrative office taxes imposed under Section
14 2804(d) of Article 28), as applicable, before the delinquency dates for each estimated tax
15 payment of those taxes, if either of the following are true:

16 a. the person or combined group owes payroll expense tax,
17 gross receipts tax (including the tax on administrative office business activities imposed under
18 Section 953.8 of Article 12-A-1), ~~or~~ Early Care and Education Commercial Rents Tax, or
19 Homelessness Gross Receipts Tax (including the homelessness administrative office tax imposed under
20 Section 2804(d) of Article 28) estimated tax payments; or

21 b. the person or combined group reported payroll expense
22 taxes, gross receipts taxes (including taxes on administrative office business activities
23 imposed under Section 953.8 of Article 12-A-1), ~~or~~ Early Care and Education Commercial
24 Rents Taxes, or Homelessness Gross Receipts Taxes (including homelessness administrative office
25

1 taxes imposed under Section 2804(d) of Article 28) on their return for the preceding tax year,
2 regardless of whether the person owes any estimated tax payments for the current tax year.

3 (ii) If a person or combined group fails to make an estimated tax
4 filing under this Section 6.9-3(a)(3)(~~HI~~), the Tax Collector shall deem the estimated tax
5 payment due to be the amount calculated under Sections 6.9-3(a)(3)(B)(ii), 6.9-3(a)(3)(C)(ii),
6 ~~or 6.9-3(a)(3)(D)(ii), or 6.9-3(a)(3)(F)(ii)~~, as applicable, until the person or combined group files
7 an annual return for the tax year (or, if no annual return is filed, until the person or combined
8 group's actual tax liability for the tax year is known), at which time the estimated tax payments
9 due shall be recalculated under Sections 6.9-3(a)(3)(B), (C), ~~and (D)~~, and (F), as applicable.

10 This subsection (a)(3)(~~HI~~)(ii) shall not apply to estimated tax filings of the Early Care and
11 Education Commercial Rents Tax for tax periods ending on or before December 31, 2019.

12 (4) **Payroll Expense Tax, Gross Receipts Tax, ~~and~~ Early Care and**
13 **Education Commercial Rents Tax, and Homelessness Gross Receipts Tax: Computation of**
14 **Annual Liability; Payments.**

15 (A) The total payroll expense tax liability of a person shall be computed
16 using the rate for that tax year computed, certified, and published by the Controller under
17 Section 903.1 of Article 12-A or as otherwise provided in Article 12-A. The total gross receipts
18 tax liability of a person or combined group, other than a person or combined group subject to
19 tax under Section 953.8 of Article 12-A-1, shall be computed using the rate for that tax year
20 computed, certified, and published by the Controller under Section 959 of Article 12-A-1, or as
21 otherwise provided in Article 12-A-1. The total liability for the tax on administrative office
22 business activities of a person or combined group subject to tax under Section 953.8 of Article
23 12-A-1 shall be computed as provided in Section 953.8, or as otherwise provided in Article 12-
24 A-1. The total Early Care and Education Commercial Rents Tax liability of a person or
25 combined group shall be computed as provided in Section 2104, or as otherwise provided in

1 Article 21. The total Homelessness Gross Receipts Tax liability, including liability for the
2 homelessness administrative office tax imposed under Section 2804(d) of Article 28, of a person or
3 combined group shall be computed as provided in Section 2804, or as otherwise provided in Article 28.

4 Except as otherwise provided, the total payroll expense tax, gross receipts tax (including the
5 tax on administrative office business activities under Section 953.8 of Article 12-A-1), ~~and~~
6 Early Care and Education Commercial Rents Tax, and Homelessness Gross Receipts Tax
7 (including the homelessness administrative office tax imposed under Section 2804(d) of Article 28)
8 liabilities, less any estimated tax payments for the tax year, shall be reported and paid on or
9 before the last day of February of the year immediately following the tax year.

10 (B) Any amounts paid on a person's payroll expense tax liability for a tax
11 year that are in excess of that person's actual payroll expense tax liability for that year shall be
12 credited to that person's gross receipts tax, ~~or~~ Early Care and Education Commercial Rents
13 Tax, or Homelessness Gross Receipts Tax liability for that year, if any. Any amounts paid on a
14 person's gross receipts tax liability for a tax year that are in excess of that person's actual
15 gross receipts tax liability for that year shall be credited to that person's payroll expense tax,
16 ~~or~~ Early Care and Education Commercial Rents Tax, or Homelessness Gross Receipts Tax liability
17 for that year, if any. Any amounts paid on a person's Early Care and Education Commercial
18 Rents Tax liability for a tax year that are in excess of that person's actual Early Care and
19 Education Commercial Rents Tax liability for that year shall be credited to that person's
20 payroll expense tax, ~~or~~ gross receipts tax, or Homelessness Gross Receipts Tax liability for that
21 year, if any. Any amounts paid on a person's Homelessness Gross Receipts Tax liability for a tax year
22 that are in excess of that person's actual Homelessness Gross Receipts Tax liability for that year shall
23 be credited to that person's payroll expense tax, gross receipts tax, or Early Care and Education
24 Commercial Rents Tax liability for that year, if any.

1 (b) **Hotel and Parking Taxes.** Unless otherwise provided, an operator subject to the
2 hotel tax (Article 7) or the parking tax (Article 9) shall make monthly remittances in the amount
3 of the actual tax owed.

4 (c) **Forms and Adjustments.** Tax remittances required under this Section 6.9-3 shall
5 be accompanied by a tax remittance form prepared by the Tax Collector, but failure of the Tax
6 Collector to furnish the taxpayer with a tax remittance form shall not relieve the taxpayer from
7 any tax payment obligation.

8
9 **SEC. 6.9-5. DETERMINATIONS, RETURNS AND PAYMENTS; CREDITS AND**
10 **EXEMPTIONS.**

11 The credits and exemptions set forth in Articles 6, 7, 8, 9, 10, 10B, 11, 12, 12-A, 12-A-
12 1, 12-C, ~~and 21,~~ and 28, in laws applicable to fees administered pursuant to Article 6, and in
13 laws applicable to assessments levied pursuant to the Property and Business Improvement
14 District Law of 1994 (California Streets and Highways Code sections 36600 *et seq.*) or
15 Article 15 of this Code, are provided on the assumption that the City has the power to offer
16 such credits and exemptions. If a credit or exemption is invalidated by a court of competent
17 jurisdiction, the taxpayer must pay any additional amount that the taxpayer would have owed
18 but for such invalid credit or exemption. Amounts owed as a result of the invalidation of a
19 credit or exemption that are paid within three years after the decision of the court becomes
20 final shall not be subject to interest or penalties.

21
22 **SEC. 6.15-1. REFUNDS.**

23 * * * *

24 (g) **Requests for Refund; Refunds Permissible Without a Claim.** The Tax
25 Collector may authorize the Controller to refund tax, interest, or penalty payments, without a

1 refund claim having been filed and without review by the City Attorney, if the Tax Collector
2 determines that the amount paid exceeds the tax, penalties, and interest due. The person
3 that made the overpayment may request such a refund from the Tax Collector on a return,
4 amended return, or request for refund form that is issued by the Tax Collector and that is filed
5 with the Tax Collector within the later of one year of the payment of such amount or the date
6 the return accompanying such payment was due. The Tax Collector may also authorize the
7 Controller to refund the overpaid tax, interest, or penalty payments on its own initiative within
8 this one-year period. A refund requested on a return, amended return, or request for refund
9 form under this subsection (g) shall automatically be deemed denied for purposes of
10 subsections (a), (b), and (d) of this Section 6.15-1 if the Tax Collector does not grant or deny
11 the refund request within one year of the date it was filed. Any action by the Tax Collector
12 after a refund request under this subsection (g) has been deemed denied shall not constitute
13 a denial and shall have no effect on the statute of limitations for filing a claim for refund under
14 subsections (a)-(f) of this Section 6.15-1. In lieu of requesting a refund on a return, amended
15 return, or request for refund form, a taxpayer may elect to apply an overpayment of the
16 business registration fee in Article 12, the payroll expense tax in Article 12-A, the gross
17 receipts tax in Article 12-A-1 (including the tax on administrative office business activities
18 under Section 953.8 of Article 12-A-1), the sugary drinks distributor tax in Article 8, ~~or~~ the
19 Early Care and Education Commercial Rents Tax in Article 21, or the Homelessness Gross
20 Receipts Tax in Article 28 (including the homelessness administrative office tax under Section 2804(d)
21 of Article 28) as a credit against the taxpayer's immediately succeeding payment or payments
22 due of any of these six tax types. Any election to apply an overpayment to the taxpayer's
23 future liability shall be binding and may not later be changed by the taxpayer.

1 **SEC. 6.15-2. REFUNDS; INTEREST.**

2 (a) Any amounts refunded prior to entry of a final judgment in a judicial proceeding
3 shall bear interest at the rate for prejudgment interest on refunds of local taxes or fees
4 provided by Section 3287(c) of the California Civil Code, as amended from time to time, and
5 shall be computed from the date of payment to the date of refund.

6 (b) If the Controller offsets overpayments for a period or periods against another
7 liability or liabilities currently owed to the City, or against penalties or interest on the other
8 liability or liabilities currently owed to the City, the taxpayer will be credited with interest on the
9 amount so applied at the rate of interest set forth above, computed from the date of payment.

10 (c) If a taxpayer elects to apply all or part of an overpayment of the business
11 registration fee in Article 12, the payroll expense tax in Article 12-A, the gross receipts tax in
12 Article 12-A-1 (including the tax on administrative office business activities under
13 Section 953.8 of Article 12-A-1), the sugary drinks distributor tax in Article 8, ~~or~~ the Early Care
14 and Education Commercial Rents Tax in Article 21, or the Homelessness Gross Receipts Tax in
15 Article 28 (including the homelessness administrative office tax under Section 2804(d) of Article 28) as
16 a credit against the taxpayer's immediately succeeding payment or payments due of any of
17 these ~~six~~ tax types, the taxpayer will not be credited with interest on the amount so applied.

18
19 **SEC. 6.17-1. PENALTIES AND INTEREST FOR FAILURE TO PAY.**

20 (a) Any person who fails to pay any tax to the City, or any operator or other person
21 who fails to collect and remit any third-party taxes shall pay a penalty of 5% of the tax, if the
22 failure is for not more than one month after the tax became delinquent, plus an additional 5%
23 for each following month or fraction of a month during which such failure continues, up to 20%
24 in the aggregate, until the date of payment. Any taxes remaining unpaid for a period of 90
25 days after notification that the tax is delinquent shall be subject to an additional penalty of

1 20% of the amount of the tax. The penalty and interest provided under this Section 6.17-1
2 shall not apply with respect to the payroll expense tax, the gross receipts tax, ~~and~~ the Early
3 Care and Education Commercial Rents Tax, and the Homelessness Gross Receipts Tax if the sum
4 of the payroll expense tax payments, gross receipts tax payments, ~~and~~ Early Care and
5 Education Commercial Rents Tax, and the Homelessness Gross Receipts Tax payments is equal
6 to or greater than the sum of the payroll expense tax, gross receipts tax, ~~and~~ Early Care and
7 Education Commercial Rents Tax, and the Homelessness Gross Receipts Tax liability for that tax
8 year.

9 (b) If the failure to pay any tax is due to fraud or an intent to evade the Business and
10 Tax Regulations Code or the Tax Collector's rules and regulations, an additional penalty in the
11 amount of 50% of the amount due, in addition to any other penalties and interest, shall be
12 added thereto. A taxpayer or other person against whom a fraudulent failure to pay penalty is
13 asserted is entitled to a notice of such determination to be issued in accordance with the
14 provisions of Sections 6.11-1 *et seq.* and to the appeal rights set forth in Sections 6.13-1 *et*
15 *seq.*

16 (c) Unpaid taxes shall also accrue interest at the rate of 1% per month, or fraction of a
17 month, from the date the taxes become delinquent through the date the taxpayer or operator
18 pays the delinquent taxes, penalties, interest and fees accrued to the date of payment in full.
19

20 Section 2. Effective Date; Retroactivity.

21 (a) Effective Date. This ordinance shall become effective 30 days after enactment.
22 Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance
23 unsigned or does not sign the ordinance within ten days of receiving it, or the Board of
24 Supervisors overrides the Mayor's veto of the ordinance.

25 (b) Retroactive Date. This ordinance shall be retroactive to January 1, 2019.

1 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
2 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
3 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
4 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
5 additions, and Board amendment deletions in accordance with the "Note" that appears under
6 the official title of the ordinance.

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

16
17 APPROVED AS TO FORM:
18 DENNIS J. HERRERA, City Attorney

19 By: 
20 KERNE H. O. MATSUBARA
21 Deputy City Attorney

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LEGISLATIVE DIGEST

[Business and Tax Regulations Code - Administration of Homelessness Gross Receipts Tax]

Ordinance amending the Business and Tax Regulations Code to add provisions to administer the Homelessness Gross Receipts Tax; and to make conforming non-substantive changes.

Existing Law

Existing law provides for the administration of most of the City's taxes. These administrative provisions include definitions; the Tax Collector's audit and collection authority; filing and payment requirements; rules for refunds and lawsuits; penalty, interest, and citation provisions; and taxpayer confidentiality provisions, among others.

Amendments to Current Law

This ordinance would extend these provisions, as applicable, to the Homelessness Gross Receipts Tax, passed by the voters at the November 6, 2018 election. In general, the Homelessness Gross Receipts Tax would be administered in the same manner as the gross receipts tax in Article 12-A-1, including but not limited to the requirement to make estimated tax payments. Persons or combined groups would calculate their estimated Homelessness Gross Receipts Tax payments using the lesser of: (a) 25% of the Homelessness Gross Receipts Tax liability shown on the person or combined group's return for the tax year; and (b) 25% of the Homelessness Gross Receipts Tax liability shown on the person or combined group's return for the preceding tax year. For tax periods ending on or before December 31, 2019, persons or combined groups may make estimated Homelessness Gross Receipts Tax payments, but no estimated tax penalties would apply because the person or combined group's Homelessness Gross Receipts Tax liability for the preceding tax year would be zero.

This ordinance would be operative January 1, 2019, which is the operative date of the Homelessness Gross Receipts Tax.

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