

CITY AND COUNTY OF SAN FRANCISCO

Tax Collector Regulation 2016-1

GROSS RECEIPTS TAX – EXCLUSION OF CERTAIN SALES OF REAL PROPERTY

San Francisco Business and Tax Regulations Code

(a) Authority. The Tax Collector promulgates this regulation pursuant to the Tax Collector’s authority to adopt rules and regulations under San Francisco Business and Tax Regulations Code Section 6.16-1.

(b) Purpose. Section 954(e) of the Business and Tax Regulations Code excludes from the definition of “gross receipts” for purposes of the gross receipts tax “receipts from any sales of real property with respect to which the Real Property Transfer Tax imposed by Article 12-C has been paid to the City.” This regulation clarifies the application of this provision.

(c) Definitions. For purposes of this regulation, all terms are as defined in Articles 6 and 12-A-1 of the Business and Tax Regulations Code.

(d) Real Property Transfer Tax Paid. A person may only exclude from gross receipts those receipts from the sale of real property where the Real Property Transfer Tax imposed by Article 12-C of the Business and Tax Regulations Code was paid with respect to that particular sale by December 31 of the tax year in which the gross receipts at issue would otherwise be subject to the gross receipts tax in Article 12-A-1.

(e) Examples.

(1) A Corp. sells a building to B Corp. for \$10,000,000 on July 1 of Year 1. Under Section 954(e), if Real Property Transfer Taxes were paid in Year 1 on the July sale of the building, A could exclude any receipts from the sale from its gross receipts for purposes of the gross receipts tax in Year 1 to the extent that those receipts were subject to the Real Property Transfer Tax.

(2) On August 15 of Year 1, C Corp. agrees to purchase for \$50 million a building that D Corp. is building. The building is scheduled to be completed by Year 3. As part of the agreement, C makes a deposit with D of \$2 million in Year 1, with the remaining \$48 million due in Year 3. Title and possession to the building will transfer to C in Year 3, at which time the Real Property Transfer Tax will be paid on the full \$50 million. Because the Real Property Transfer Tax was paid in Year 3, D may only exclude under Section 954(e) the receipts from the sale it recognized as gross receipts in Year 3 (determined under the Business and Tax Regulations Code), and only to the extent that those receipts were subject to the Real Property Transfer Tax.

(3) E Corp. owns 100% of a corporation that owns a building. In each of Years 1 through 10, E sells 10% of its shares in the corporation to F Corp. for \$10,000,000. No Real Property Transfer Tax is paid in Years 1 through 5 because no real property was transferred or

sold for purposes of the Real Property Transfer Tax. In Year 6, Real Property Transfer Taxes are paid on the \$100 million fair market value of the entire building at that time because F's acquisition of a controlling interest in the corporation constitutes "realty sold" under Section 1114 of the Business and Tax Regulations Code because it is a "change in ownership" of the building under Section 64 of the California Revenue and Taxation Code. In Years 7 through 10 no Real Property Transfer Tax is paid because no real property is being transferred or sold in those years. In this case, E may only exclude under Section 954(e) the gross receipts it recognized in Year 6 because the only sale with respect to which Real Property Transfer Tax was paid was the sale of \$10 million in stock in Year 6 that triggered the "change in ownership" of the entire building.

(4) G Corp. purchases a building from H Corp. in Year 1 for \$40,000,000. G takes title to and possession of the building in Year 1, and agrees to pay H \$40,000,000, payable in four annual installments. Real Property Transfer Taxes are paid on the entire \$40,000,000 in Year 1. H may exclude under Section 954(e) the gross receipts it recognized in each of Years 1 through 4 to the extent that those receipts were subject to the Real Property Transfer Tax in Year 1 because the Real Property Transfer Tax was paid with respect to H's sale of the property prior to December 31 of each of Years 1 through 4.