Buchalter

55 SECOND STREET
SUITE 1700
SAN FRANCISCO, CA 94105
415.227.0900 PHONE
415.227.0770 FAX

415.227.3504 Direct
mfishman@buchalter.com

April 3, 2019

David Augustine
Tax Collector
Office of the Treasurer & Tax Collector
City & County of San Francisco
City Hall - Room 140
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Proposed Tax Collector Regulation 2019-1 (Gross Receipts Tax ["GRT"]) and 2019-2 (Early Care and Education Commercial Rent Tax ["CRT"]) to Clarify (i) the Application of an Exclusion from Gross Receipts Contained in the GRT, and (ii) the Application of the CRT to Certain Leasing Activities

Dear Mr. Augustine:

In response to your Request for Comments notice dated March 9, 2019 concerning the above proposed Regulations, we submit this letter on behalf of Building Owners and Managers Association of San Francisco (BOMA SF) for inclusion in the record of your office's deliberations of the proposed regulations. BOMA SF is the voice of the commercial real estate industry in the San Francisco Bay Area and represents more than 72 million square feet of office space in San Francisco, San Mateo, Marin and Sonoma counties. BOMA SF members generate over 21,000 employment opportunities and lease space to companies that create thousands of jobs helping to propel the San Francisco Bay Area's prominence as an economic powerhouse.

We appreciate this opportunity to be able to express the views of BOMA SF.[1]

[1] The legality of the Commercial Rents Tax is being challenged in court (see Howard Jarvis Taxpayers Assn., et al. vs. City and County of San Francisco, et al., San Francisco Superior Court Case No. GC-18-568657. BOMA SF is

With respect to Proposed Tax Collector Regulation 2019-1, the Tax Collector proposes to define the "separately stated charge" by which a lessor may claim that certain taxes imposed on it and for which it is reimbursed by a lessee, as being "an invoice or other billing statement" issued to a lessee "that separately identifies" at least four data points: (i) the type of tax being reimbursed, (ii) the taxing authority imposing the tax, and (iii) the amount of the tax for which the reimbursement is being made, and (iv) the period of time for which the reimbursement is being made

We note that the Tax Collector also provides guidance to lessors as to the method and type of documentation that must be maintained to claim this exclusion from gross receipts: "]Persons] ... must maintain a reasonable method of documentation that can be reviewed and verified objectively that shows that the reimbursement claimed as an exclusion was imposed by means of a separately stated charge."

We appreciate the guidance by the Tax Collector on the documentation that should be maintained by lessors claiming an exclusion, and can support this. However, we believe that the Tax Collector's requirement that the separately stated charge must contain the four noted data points is both practically and administratively burdensome, and when coupled with the required documentation that must be maintained by the lessor, is unnecessary. Practically, many commercial office building owners DO NOT issue monthly or annual rent statements, so as to avoid providing a tenant with a defense to payment of rent due to the vagaries of the U.S. mail or even email not being sent to a correct address. Most commercial leases governing the tenant's occupancy require the tenant to pay both base rent and additional rent (which the Tax Collector refers to in Proposed Regulation 2019-2 as "Costs Passed on to Tenants") based on a fixed rent chart contained in the lease, together with estimated payments that are disclosed to a tenant by means of a separate statement issued to a tenant annually in advance, without the necessity of a monthly rent statement. It is true that many landlords provide a courtesy monthly rent statement, in particular when there is a charge for certain "special tenant services" that are invoiced directly to a tenant.

Secondly, it is not practical to include all four of the proposed data points on a billing statement or invoice. Most billing statements are computer generated from "off the shelf" accounting software and unless the landlord uses a robust accounting software program (programs that are generally utilized only by larger or institutional owners), the requirement that these four data points be itemized and included on the rent statement cannot be satisfied without

---

not a party to the lawsuit; however, the Building Owners and Managers Association of California, of which BOMA SF is a member, is a party to the lawsuit. Out of an abundance of caution, we note that nothing in this letter prejudices any position that BOMA SF or any plaintiff in the pending lawsuit may take in challenging the validity of the Early Care and Education Commercial Rent Tax. This letter is not meant to concede the validity of any special tax being challenged in court.

including a separate piece of paper in an invoice or billing statement. The proposed requirement will create a significant administrative burden on many smaller portfolio/non-institutional landlords. Given the documentation that lessors must maintain to support the "separately stated charge", we believe a general entry for "Operating Expense and Tax Reimbursement" (or something of similar effect) should be sufficient, in particular if the landlord's documentation showing the reimbursement paid by the tenant can be made available to the tenant upon request (see recommendation below).

As noted above, most commercial landlords do send out annual reconciliation statements of "Costs Passed on to Tenants" and in those circumstances, and where landlords do invoice tenants monthly for rent, it may be practical to contain a short hand reference to a "Operating Expense and Tax Reimbursement" (or something substantially similar) with an asterisk that provides "Documentation Available Upon Request." Given that the landlord MUST maintain reasonable documentation "that can be reviewed and verified objectively" we think this is a better approach than having the City and County of San Francisco mandate the form and content of a rent statement, and is a procedure that can be complied with by the real estate industry.

We therefore strongly recommend that the Tax Collector clarify subparagraph (e) of Proposed Regulation 2019-1, to state that the proposed invoice or billing statement can be issued "**not less frequently than annually**" and to state that the four data points that the Tax Collector requires to be contained in the "separately stated charge" can be contained "**in a separate writing sent to a lessee where the tenant invoice or billing statement provides that San Francisco Gross Receipts Tax reimbursement documentation is available upon request.**" We note that the example provided by the Tax Collector in subparagraph (g) of Proposed Regulation 2019-1 is based on an "annual" computation; the proposed clarification requested by BOMA SF would avoid any ambiguity in this example.

We recommend that a similar change be made to the example contain in subparagraph (e) of Proposed Regulation 2019-2. In that example, the Tax Collector notes that the billing statement separately states the real property tax that is being reimbursed in a billing statement as "California real property tax."[2] For the reasons noted above, it is impractical and administratively burdensome to identify each type, time period and amount of tax for which reimbursement is being made. We recommend that the sentence in the example contained in the proposed Regulation discussing the billing statement be changed to provide: "**The billing statement (which may be issued not less frequently than annually) includes a line item to "California real property tax" and notes that San Francisco Gross Receipts Tax**

[2] We note that even the Tax Collector, in the example contained in the proposed Regulation, appears to have not complied with the proposed Regulation as the example does not identify the taxing authority imposing the tax. This is further support for the potential for error by commercial landlords.

reimbursement documentation is available upon request." We note that the example provided by the Tax Collector in subparagraph (e) of Proposed Regulation 2019-2 is based on an "annual" computation; the proposed clarification requested by BOMA SF would avoid any ambiguity in this example.

Thank you for this opportunity to make these comments.

Very truly yours,

BUCHALTER,
A Professional Corporation

By

Manuel Fishman

cc: John Bozeman, Director, Government and Industry Affairs, BOMA SF
William Whitfield, President of Board of Directors, BOMA SF

MF:gc

BIOCOM

November 9, 2018

David Augustine, Tax Collector
Office of the Treasurer and Tax Collector
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 140
San Francisco, CA 94102

Dear Mr. Augustine:

I am writing to provide Biocom's input on the Draft Tax Collector Regulation to Clarify the Application of the Early Care and Education Commercial Rents Tax to Certain Leasing Activities.

Biocom is the largest, most experienced leader and advocate for California's life science sector. We work on behalf of over 1,100 members to drive public policy, build a network of industry leaders, create access to capital, introduce cutting-edge STEM education programs, and create value-driven purchasing programs.

In the life science industry, most tenants and landlords operate under what's known as a "triple net" lease, or NNN. The three nets are taxes, insurance, and common area maintenance – these are all paid by the tenant. Most NNN leases allow the landlord to immediately pass through any tax increases to tenants. By contrast, a "gross" lease is a property lease in which the landlord agrees to pay all expenses that are normally associated with ownership, such as utilities, repairs, insurance, and (sometimes) taxes. The tenant pays a fixed amount each month, and nothing more.

Life science landlords prefer to operate under NNN leases because of the volatility of utility costs associated with doing business as a life science tenant. For example, a tenant might need to purchase freezers to keep chemicals stable at minus eighty degrees centigrade, which when purchased could increase utility costs by $20,000 per month in the short or long term. Fifty to seventy percent of operating expenses of these tenants can be utilities, or approximately twenty percent of the total that is paid to a landlord when including base rent. Tech and office tenants typically have gross leases because they have stable operating expenses.

Most of the large landlords developing life science space that oversee NNN leases are Real Estate Investment Trusts, or REITs. In order to maintain corporate income tax exemption, REITs do not apply an administrative fee to these pass-through expenses. Rather, their profit must come from base rent only, or pass a de minimis threshold of <1% in administrative fees.

Because most companies in our industry operate under NNN leases, life science companies will be disproportionally impacted by the pass-through of this tax as an operating expense.

10996 Torreyana Rd. Suite 200, San Diego Ca 92121 Tel 858.455.0300 Fax 858.455.0022 www.biocom.org

BIOCOM

Life science companies operating in the city are typically small and mid-size companies with small margins. Taxes, insurance, and maintenance costs incurred by landlords when operating a tenant occupied building are not landlord income. When this is considered income, and incurs gross receipts tax increases, those increases are immediately passed on to tenants. In San Francisco, these tenants mostly range from a few employees at a bench inside an incubator to a biotech company that does not yet have a commercialized product and is partway through the lengthy clinical trial process.

It is our hope that this issue can be revisited in order to avoid a double taxation – what is paid by tenants for operating expenses, and what is paid by the landlords to utilities, taxation agencies, and maintenance companies. We appreciate the opportunity to be involved in conversations related to gross receipts tax implementation moving forward, and would welcome your questions and concerns. Please feel free to contact me at mcohn@biocom.org or 858-832-4158.

Sincerely,

Melanie Cohn
Director of Regional Policy & Government Affairs
Biocom

SHOWPLACE▶EAST

FINE DESIGN SHOWROOMS

26 March 2019

David Augustine
Tax Collector
OFFICE OF THE TREASURER & TAX COLLECTOR
City Hall – Room 140
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RE: Comments regarding April 5, 2019 Hearing on Proposed Regulations:
2019-1 "Gross Receipts tax – Treatment of Reimbursed Taxes"; and
2019-2 "Early Care and Education Commercial Rents Tax – Costs Passed on to Tenants Under a Lease"

Dear Mr. Augustine:

Thank you for receiving our written comments with regard to the above referenced matters.

Early childhood care and education should be a priority for this City - not an afterthought. It is a shame that a City with our wealth and substantial tax base cannot seem to find a place in its' comprehensive budget, but instead holds forth early childhood care and education as a pawn in its' pursuit of supplemental taxes.

Taxes levied on business and property owners serve to make living, working and/or running a business here more expensive for all. The switch from payroll tax to gross receipts tax has created a huge burden for many businesses. Property owners are an easy target. Punitive fines assessed on property owners already struggling to fill vacant commercial spaces are another hit on those entrepreneurs in our communities who are creating jobs, sales and income tax dollars and absorbing all the risk in an effort to make a positive difference here. There are plenty who stand with a hand out – happy to take but not give. Small business is the engine of the city and should be shown respect. Many of the businesses and property owners taking the hit in this City are not the fantastical big businesses and developers with infinitely deep pockets.

If our City cannot balance the budget with priorities properly aligned – taking care of our young, elderly, veterans, infirm and the working poor – with the vast tax intake it enjoys, god help us all when the economy recedes – and it will.

111 Rhode Island Street, Suite 4B, San Francisco, CA 94103 • T: 415 474 1700 • F: 415 474 0758
E: info@showplaceeast.com • www.showplaceeast.com

With regard to proposed **Tax Collector Regulation 2019-1 Gross Receipts Tax – Treatment of Reimbursed Taxes:**

Many property owners do not even begin to recoup the total costs of federal, state and local taxes with "pass-throughs". The vast majority of property owners appreciate that they have a vested interest in their tenants succeeding, choosing to pass only a fraction of these total costs on to tenants in order to respectfully maintain affordable conditions.

Proposed **Tax Collector Regulation 2019-2 Early Care and Education Commercial Rents Tax – Costs Passed on to Tenants Under a Lease**

REIMBURSEMENT FOR ESSENTIAL SERVICES -The costs referenced in paragraph (d) "Leases passing on costs to Tenants" are not a profit- making venture but a necessity. Just like Real Property Tax, these costs are reimbursements, not income. The property owner does not add surcharges or profiteer from these charges. Many of these costs are generated through city, state, and federally mandated fees, tests and conditions and, like Real Property Taxes, are not discretionary.

NO INCENTIVE TO PROPERLY MAINTAIN PROPERTY - Escalating property taxes and punitive fines and fees levied on property owners will result in creating an atmosphere where property owners have diminished incentive, and in some cases no fiscal ability to reasonably maintain their properties. This has already played out in the rental housing stock for years and should serve as a bellwether. Refuse, Heat, Water, Electricity, Security, Fire Safety Services, Janitorial, Elevator Maintenance, Restroom Maintenance, and Roof Maintenance are essential to safe and effective building operations.

RESTRICTIVE ZONING - Restrictive zoning for commercial properties diminishes the property owners' ability to create the capital necessary to maintain property and attract tenants. Zoning such as PDR -1-D, by which our property is governed, sees businesses struggling to maintain a brick and mortar presence, since the onset of the internet has crushed their markets forcing them to downsize, economize substantially or go out of business entirely. We understand the City is dedicated to preserving PDR use for the many small businesses who rely on protections afforded them because they cannot afford the top rents that many office use tenants can pay. This taxation serves to further pinch property owners committed to responsible ownership and by default, their tenants trying to stay afloat.

PDR-1-D TENANTS - PDR rents are some of the lowest rents in the city. The tenant pool for PDR-1-D consists of mostly small, independently owned home furnishing showrooms. Our job as the property owner is to provide a safe, well-maintained property for our tenants. We invest in keeping the property in peak shape for the benefit of our tenants and their clients. We maintain beautiful gardens for all to enjoy. It is disappointing to have our contribution as a responsible property owner, put us in the position of having to pay even more taxes.

It is my hope that the City and County of San Francisco reconsiders the increasing tax burden it places on its' small and medium sized businesses and property owners. They will be here long after the high tech -or whatever industry darling of the moment- is long gone. It is the smaller businesses who take the greatest risk without deep pockets to litigate their way out of financial downfall. They have to be accountable or else they fail. Our City stands to learn from its' hardworking businesses and property owners, because there is no safety net for us.

Sincerely,

Celia Shuman
Property Manger
SHOWPLACE EAST

Augustine, David (TTX)

From: Theodore Brown <theodore@costabrown.com>
Sent: Wednesday, April 3, 2019 10:39 AM
To: Augustine, David (TTX)
Subject: 2019-1 & 2019-2

This Tax is a Tax on Gross receipts which means it imposes a tax on other taxes a tax on a tax. This is immoral! We should not have to pay a tax on things we have already paid a tax on. State law requires a 2/3 majority to pass a tax. This does not meet this requirement.

Theodore Brown
Costa Brown Architecture
1620 Montgomery Street, Suite 300
San Francisco, CA 94111
415.986.0101
www.costabrown.com

Augustine, David (TTX)

From: mathewsproperties@gmail.com
Sent: Wednesday, April 3, 2019 1:32 PM
To: Augustine, David (TTX)
Subject: San Francisco Tax Collection Hearing on Gross Receipts Tax - Treamtment of Reimbursed Taxes

To whom it may concern,

My family owns a few small buildings south of market in San Francisco. We have many small businesses in our buildings and some larger ones as well who can pay higher rent and reimburse us for part of the building taxes. We have been able to help keep San Francisco a place where small businesses can afford to rent business space. This new gross tax will make landlords raise rents on these small businesses since most are artists or others that fall into the businesses that are not taxed to cover the larger companies that are taxed - raising gross taxable renters rates will just raise the amount of tax we have to pay. The number of taxes, new mandated entrance fixes landlords need to do, and over the top reporting and fees that San Francisco imposes on landlords is already outrageous. These already can not be deducted from the gross receipts of this tax. Now on top of that you want to tax the reimbursement of taxes. This is just wrong.

Sincerely,

Jennifer Mathews

From: Augustine, David (TTX)
To: Buckley, Theresa (TTX)
Subject: FW: Comment on hearing today, April 5, 2019 at 10am
Date: Tuesday, April 09, 2019 8:59:48 AM
Attachments: image001.png

FYI

_____

David Augustine
Tax Collector
Office of the Treasurer & Tax Collector
City Hall, Room 140
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4638
Phone: 415-554-7601
Fax: 415-554-4672
http://www.sftreasurer.org

From: Jeff Johnson <JJohnson@hflp.com>
Sent: Friday, April 5, 2019 11:43 AM
To: Augustine, David (TTX) <david.augustine@sfgov.org>
Subject: Comment on hearing today, April 5, 2019 at 10am

Dear Mr. Augustine,

Thank you for holding the public hearing this morning to allow comment on the Gross Receipts Pass Through and Reimbursements. Although the comment period at the hearing today was short, it was informative to hear an argument from both sides of the coin.

I am an administrator for a small law firm in the Financial District, and appreciated the representative from Biocom and the argument that she submitted to you this morning. However, I would like to clarify that most Class A office spaces in San Francisco are leased under a Triple Net Lease, life sciences or not.

Having negotiated a base year of 2018 for our lease renewal, it is frustrating to see such an exorbitant additional pass through in our first year under what is already a 40% increase in our rent due to the current market, and makes it very hard for small businesses like ours to continue operating in San Francisco. I appreciate that the intent of the proposition was to tax landlords on rents that they receive, but under a triple net lease I see it only as encouragement for landlords to raise base rent for new tenants to an even higher amount, driving the market up and pricing many professional services firms out of the city.

Thank you for your time.

Sincerely,
Jeff Johnson

Jeff Johnson
Firm Administrator

Hersh FamilyLaw Practice, P.C.
456 Montgomery Street
Seventeenth Floor
San Francisco, CA 94104
P: 415-788-2200
F: 415-394-0222
jjohnson@hflp.com
www.hflp.com

FOR GROSS LEASES, ~~WHA~~ WHAT IS THE CALCULATION?

RENT ✓

CAM ✓ BASE YEAR - PRO-RATA SHARE ABOVE BY

PARKING ?

TENANT REIMBURSEMENT FOR MISC CHARGES (IE WORK ORDERS, ELEC OVERAGE ETC) ?

MISC INCOME (EG ANTENNA REVENUE THRU LICENSE AGREEMENT ?

HOW ARE THE FOLLOWING YEAR RECONCILIATIONS HANDLED W/ THE CITY IF THE ESTIMATE ~~WAS~~ WERE TOO HIGH OR LOW?

PHIL RABOIN / CUSHMAN WAKEFIELD EMAIL PHILIP.RABOIN@CUSHWAKE.COM