



Advance Written Determinations Program Proposal

The San Francisco Office of the Treasurer & Tax Collector (TTX) proposes a program to provide Advanced Written Determinations (AWDs) to taxpayers as follows:

1. The AWD program would be authorized for a three year period.
2. The subject matter of AWDs would be limited to apportionment and classification issues.
3. The program would allow any business subject to tax in San Francisco to apply for an AWD by stating relevant facts and proposing a resolution.
4. There will be an application window each year (March 1 to June 30).
5. TTX anticipates selecting no more than 30 cases each year to issue AWDs. Criteria for TTX selection include, but are not limited to: businesses currently doing business in San Francisco as opposed to planning to do business, issues that pertain to many taxpayers or a class of taxpayers, issues with a significant tax/monetary consequence, and first-time applicants.
6. TTX will issue AWDs on a rolling basis and no later than January 31 the following year. AWDs will be issued for the tax year in which the business applied. TTX does not anticipate issuing AWDs prior to June 30.
7. TTX may accept a request for AWD, reject a request, or decline to issue an AWD if TTX has no capacity to respond to the request.
8. Requests that will be rejected include: hypothetical scenarios (planned behavior ok), issues that have been audited by TTX for the taxpayer, issues outside of the subject matter scope, issues that are clear in the law, and issues that other published AWDs cover.
9. For accepted applications, TTX will issue an AWD based on the facts submitted by the taxpayer and any AWD will apply expressly to the facts as submitted. TTX will also publish redacted AWDs on TTX's website, but will remove identifying information about the taxpayer (TTX will send the redacted AWD to the taxpayer at least five days prior to publishing). The application signed by the taxpayer/representative will consent to allow TTX to publish with business name redactions.
10. There will be an application fee of \$250 to recover a portion of the costs of the AWD program.

Background

An advance written determination (AWD) is a determination issued by a tax agency to a taxpayer regarding an area where there may be a lack of clarity, in many cases before a taxpayer has taken a position in a tax filing. Any AWD made is binding on the taxpayer and the tax agency assuming the facts and circumstances do not materially change. Many AWDs are published (with redactions to protect taxpayer identity) so that others may understand the tax agency position.

The federal government, many states and some large cities have AWD processes in place, including the IRS, the State of California and New York City. San Francisco does not have such a program.

Throughout the Business Tax Reform process in San Francisco, taxpayers from across the spectrum have asked that San Francisco develop such a program.

The benefits of AWDs are clarity and predictability for both taxpayers and the government. They establish the tax consequences of specific transactions before they occur, reducing uncertainties and ensuring informed decision-making.

AWDs also promote cost savings and efficiency. The AWD procedure aims to ease the cost burden and expense of resolving tax controversies. Lengthy administrative appeals and litigation are costly for both taxpayers and the City and County of San Francisco.

Finally, AWDs also allow for discretion and evaluation. TTX would retain discretion in considering AWD requests and issuing AWDs.