



NOTICE OF TAX COLLECTOR HEARING

April 5, 2019 – 10:00 a.m.
City Hall, Room 400
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Pursuant to authority granted under Section 6.16-1 of the San Francisco Business and Tax Regulations Code (hereinafter "BTRC"), the San Francisco Tax Collector invites the public to comment on the following proposed regulations:

2019-1
2019-2

The hearing will be on April 5, 2019 at 10:00 a.m. in Room 400 of City Hall. The proposed regulations are attached to this notice and available at www.sftreasurer.org.

You may comment at the hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Tax Collector's Office no later than 5:00 p.m. on April 3, 2019 so that they may be reviewed prior to the hearing. Written comments may also be submitted at the hearing. You will be able to address the Tax Collector during the public comments period at the hearing.

To submit written comments, or for any questions, please contact:

David Augustine, Tax Collector
Email: david.augustine@sfgov.org

Posted: March 8, 2019

CITY AND COUNTY OF SAN FRANCISCO

Tax Collector Regulation 2019-1

GROSS RECEIPTS TAX – TREATMENT OF REIMBURSED TAXES

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. The gross receipts tax is a tax on persons engaging in business within the City that is measured by the person’s gross receipts attributable to the City. Section 952.3(c) of the Business and Tax Regulations Code excludes from gross receipts any federal, state, or local tax imposed upon a person for which that person is reimbursed by means of a separately stated charge to a purchaser, lessee, licensee, or customer. 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) Reimbursed Taxes. No federal, state, or local tax reimbursement shall be excluded from gross receipts under Section 952.3(c) of the Business and Tax Regulations Code to the extent the amount claimed as a reimbursement exceeds the actual amount of the tax paid or payable to the applicable federal, state, or local taxing authority.

(e) Separately Stated Charge. For purposes of Section 952.3(c) of the Business and Tax Regulations Code, a “separately stated charge” means a description on the invoice or other billing statement issued to a purchaser, lessee, licensee, or customer that separately identifies the tax by tax type, the taxing authority imposing the tax, and the amount and the period of the tax for which reimbursement is made.

(f) Documentation. Persons claiming an exclusion of reimbursed taxes under Section 952.3(c) of the Business and Tax Regulations Code must maintain a reasonable method of documentation that can reviewed or verified objectively that shows that the reimbursement claimed as an exclusion was imposed by means of a separately stated charge and did not exceed the actual amount of tax paid or payable to the federal, state, or local taxing authority, and provide such documentation to the Tax Collector upon request.

(g) Example 1. Landlord owns two buildings in San Francisco, with respect to which the Landlord pays \$100,000 in annual real property taxes. Landlord leases one building to Tenant 1 and the second building to Tenant 2, each under a 25-year triple net lease without renewal options. Landlord receives \$2,000,000 from the tenants, including separately stated real property tax charges of \$75,000 to Tenant 1 and \$50,000 to Tenant 2, in both cases listing the tax type, taxing authority, and amount and period of tax on the invoices provided to the tenants.

Landlord's exclusion for real property tax reimbursement is limited to \$100,000, the amount of real property taxes paid by the Landlord. Landlord's taxable gross receipts from the two buildings is therefore \$1,900,000, which is \$2,000,000 less \$100,000 of real property tax reimbursement.

(h) Example 2. The facts are the same as in Example 1, except that the real property tax charge to Tenant 2 is \$25,000. The \$75,000 collected from Tenant 1 and the \$25,000 collected from Tenant 2 may be excluded from Landlord's gross receipts, resulting in taxable gross receipts from the two buildings of \$1,900,000.

CITY AND COUNTY OF SAN FRANCISCO

Tax Collector Regulation 2019-2

EARLY CARE AND EDUCATION COMMERCIAL RENTS TAX – COSTS PASSED ON TO
TENANTS UNDER A LEASE

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. The Early Care and Education Commercial Rents Tax is a tax on persons engaging in business in the City that receive gross receipts from the lease of commercial space in properties in the City. This regulation clarifies the application of the Early Care and Education Rents Tax to certain leasing activities.
- (c) Definitions. For purposes of this regulation, all terms are as defined in Articles 6 and 21 of the Business and Tax Regulations Code.
- (d) Leases Passing on Costs to Tenants. All amounts received from the lease of commercial space in properties in the City, including without limitation, property taxes, insurance premiums, maintenance costs, and other charges passed on to tenants, are gross receipts that are subject to the Early Care and Education Commercial Rents Tax, to the extent not excluded from the definition of “gross receipts” under Article 12-A-1 of the Business and Tax Regulations Code.
- (e) Example. Landlord owns several buildings in San Francisco, with respect to which the City assesses the Landlord \$500,000 in annual real property taxes. Under a triple net lease, Landlord annually charges a tenant on the bottom floor of one of its buildings \$200,000 of base rent, and passes on charges of \$20,000 for real property taxes, \$10,000 in insurance premiums, and \$30,000 of maintenance costs. The billing statement separately states the real property tax charge by identifying the tax as “California real property tax,” in the amount of \$20,000, for the 2019 property tax year. The sum of the real property tax charges that Landlord passes on to all tenants does not exceed \$500,000. Landlord’s receipt of \$240,000 for rent, insurance, and maintenance are gross receipts subject to the Early Care and Education Commercial Rents Tax. Landlord’s receipt of \$20,000 for real property tax is a reimbursement excluded from “gross receipts” under Section 952.3(c) of Article 12-A-1 of the Business and Tax Regulations Code and is not subject to the Early Care and Education Commercial Rents Tax.