NOTICE OF TAX COLLECTOR HEARING

Friday, August 12, 2016 2:00PM
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:

2016-1
2016-2
2016-3

The hearing will be on Friday, August 12, 2016 at 2:00PM 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 5:00PM on Thursday, August 11, 2016 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:

Greg Kato, Gross Receipts Tax Director
Email: greg.kato@sfgov.org

Posted: July 27, 2016

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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.

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CITY AND COUNTY OF SAN FRANCISCO

Tax Collector Regulation 2016-2

GROSS RECEIPTS TAX – PAYMENTS TO CONSTRUCTION SUBCONTRACTORS

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 953.5(c) of the Business and Tax Regulations Code permits construction contractors to reduce their taxable gross receipts by any amounts that were included in the construction contractor's gross receipts within the City under Section 956.1 of the Business and Tax Regulations Code, and which the construction contractor paid to a subcontractor possessing a valid business registration certificate with the City during the tax year. 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) Reduction for Payments to Subcontractors. After allocating and apportioning its gross receipts under Section 953.5(c), a construction contractor may reduce its San Francisco gross receipts for the business activity of construction by any amounts paid to a subcontractor for work performed with respect to property in the City if the subcontractor possesses a valid business registration certificate with the City during the tax year. No reduction is permitted for any other costs, such as materials, fees, equipment or other services, and the reduction may not reduce the construction contractor's taxable gross receipts for the business activity of construction below $0. To support the reduction, the contractor must provide to the Tax Collector upon request an itemized schedule of payments to the subcontractors and information sufficient to enable the Tax Collector to verify that the subcontractors possessed valid business registration certificates with the City during the tax year.

(e) Example. Able is a construction contractor that does work in San Francisco and Oakland. He received $10,000,000 of gross receipts in Year 1, $6,000,000 of which was from properties in San Francisco and $4,000,000 of which was from properties in Oakland. Able has 5 employees whom he paid a total of $400,000 in Year 1, $250,000 of which was for work performed at the San Francisco properties, and $150,000 of which was for work performed at the Oakland properties. Able paid 3 construction subcontractors in Year 1: (1) He paid Baker, who had a valid San Francisco business registration certificate during the tax year, $300,000 in Year 1 exclusively for work done for the San Francisco properties; (2) He paid Cook, who did not have a valid San Francisco business registration certificate during the tax year, $200,000 in Year 1 exclusively for work done for the San Francisco properties; and (3) He paid Douglas, who had a valid San Francisco business registration certificate during the tax year, $500,000 in Year 1,

$400,000 for work done for the San Francisco properties and $100,000 for work done for the Oakland properties. Under these facts, Able has $6,125,000 of San Francisco gross receipts before any reduction under Section 953.5(c) (half of the amount determined under Section 956.1 (50% x $6,000,000) plus half of the amount determined under Section 956.2 (50% x $10,000,000 x ($250,000/$400,000))). Able may reduce this amount by $700,000 ($300,000 for the amount paid to Baker and $400,000 for the amount paid to Douglas for work done for the San Francisco properties). Able may not exclude the $200,000 paid to Cook because Cook did not have a valid San Francisco business registration certificate during the tax year, and may not exclude $100,000 of the amount paid to Douglas for work done for properties not located in San Francisco.

CITY AND COUNTY OF SAN FRANCISCO

Tax Collector Regulation 2016-3

PAYROLL EXPENSE TAX AND GROSS RECEIPTS TAX – DEADLINES FOR TAX INCENTIVES

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. This regulation consolidates into a single location various existing deadlines related to certain payroll expense tax and gross receipts tax incentives. Nothing in this regulation provides any additional tax incentives beyond those provided in the Business and Tax Regulations Code, or removes any existing requirement to obtain any tax incentive.

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

(d) Biotechnology Exclusion. In addition to meeting all of the requirements in Section 906.1 of the Business and Tax Regulations Code, to claim the Biotechnology Exclusion and any related "Payroll Expense Tax Exclusion" Credit a taxpayer must:

> (1) After approval by the Director of the Department of Public Health, file an annual affidavit with the Department of Public Health by January 31 of every year after the year the application was first approved that affirms that the taxpayer continues to meet the eligibility criteria as determined by the Department of Public Health.
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> (2) File annual affidavits with the Office of Economic and Workforce Development by January 31 of every year after the year the application was first approved that detail the total number of individuals hired, the number of individuals hired who were referred by the San Francisco Workforce Development System, and the duration of employment for each individual hired.
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> (3) File a timely annual payroll expense tax return with the Tax Collector, regardless of the amount of tax liability shown on the return after claiming the Biotechnology Exclusion and any related "Payroll Expense Tax Exclusion" Credit.

(e) Clean Technology Business Exclusion. In addition to meeting all of the requirements in Section 906.2 of the Business and Tax Regulations Code, to claim the Clean Technology Business Exclusion and any related "Payroll Expense Tax Exclusion" Credit a taxpayer must:

(1) Complete and submit for review and evaluation an initial application to the Director of the Department of the Environment by December 31 of the first year that the taxpayer is claiming the exclusion or any related "Payroll Expense Tax Exclusion" Credit.

(2) After approval by the Director of the Department of the Environment, file an annual affidavit with the Department of the Environment by January 31 of every year after the year the application was first approved that affirms that the taxpayer continues to meet the eligibility criteria established by the Department of the Environment.

(3) For clean technology businesses in business sectors eligible for Green Business recognition from the City under Chapter 15 of the Environment Code and implementing regulations, qualify as a Green Business, and complete and submit all required applications for Green Business recognition at least ninety days prior to the close of the tax year for which the taxpayer is claiming the exclusion or any related "Payroll Expense Tax Exclusion" Credit.

(4) File a timely annual payroll expense tax return with the Tax Collector, regardless of the amount of tax liability shown on the return after claiming the Clean Technology Business Exclusion and any related "Payroll Expense Tax Exclusion" Credit.

(f) Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion. In addition to meeting all of the requirements in Section 906.3 of the Business and Tax Regulations Code, to claim the Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion and any related Central Market Street Limit a taxpayer must:

(1) Complete and submit for review and evaluation an initial application and a First Source hiring form to the Office of Economic and Workforce Development by the deadline provided in the instructions issued by the Office of Economic and Workforce Development.

(2) File an annual affidavit with the Office of Economic and Workforce Development and the Tax Collector by December 31 of each year subsequent to the Office of Economic and Workforce Development's initial approval of the application. The affidavit must affirm that the taxpayer continues to meet the eligibility criteria as determined by the Office of Economic and Workforce Development. The affidavit must also detail the total number of individuals hired during the year, the number of individuals who were referred by the San Francisco Workforce Development System during the year, and the duration of employment for each individual hired during the year.

(3) File an annual First Source hiring form with the Office of Economic and Workforce Development by December 31 of each year subsequent to the Office of Economic and Workforce Development's initial approval of the application.

(4) File a declaration in support of the Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion with the Tax Collector by the later of: (i) February 1 of the year following the year for which the exclusion is being claimed; and (ii) within 10 days of receiving notice of eligibility from the Office of Economic and Workforce Development.

(5) File a timely annual payroll expense tax return with the Tax Collector regardless of the amount of tax liability, if any, shown on the return after claiming the Central Market Street and Tenderloin Area Payroll Expense Tax Exclusion and any related Central Market Street Limit.

(h) Stock-Based Compensation Exclusion. In addition to meeting all of the requirements in Section 906.4 of the Business and Tax Regulations Code, to claim the Stock-Based Compensation Exclusion a taxpayer must:

(1) File an annual affidavit with the Tax Collector by January 31 following the tax year for which the taxpayer is claiming the exclusion attesting to the facts establishing entitlement to the tax exclusion.

(2) File a timely annual payroll expense tax return with the Tax Collector regardless of the amount of tax liability shown on the return after claiming the Stock-Based Compensation Exclusion.

(i) The failure to meet the deadlines provided in this regulation will result in the denial of the requested exclusion, credit, or limit. Any deadlines that fall on a weekend or holiday will be extended to the next business day.