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 a statement issued at least annually 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 San Francisco 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 San Francisco 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 statements provided to the tenants. Landlord's exclusion for San Francisco real property tax reimbursement is limited to $100,000, the amount of San Francisco 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 San Francisco real property tax reimbursement.

(h) Example 2. The facts are the same as in Example 1, except that the San Francisco 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.