[Business and Tax Regulations Code - Former Transfer Tax Review Board]

Ordinance amending the Business and Tax Regulations Code to remove provisions that refer to the former Transfer Tax Review Board that expired by operation of law on January 1, 2013.

NOTE: Additions are single-underline italics Times New Roman; deletions are strike-through italics Times New Roman. Board amendment additions are double-underlined; Board amendment deletions are strikethrough normal.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Purpose.

(a) Ordinance 20-09 enacted two versions of Sections 1115, 1115.1, 1115.2, and 1115.3 of Article 12-C of the Business and Tax Regulations Code, known as the Real Property Transfer Tax Ordinance. One version of the texts was operative until January 1, 2013, at which time that version expired by operation of law, with the effect of abolishing the Transfer Tax Review Board for the future. The other version became operative on January 1, 2013, reflecting the abolition of the Transfer Tax Review Board as of that date.

(b) This ordinance removes from the Business and Tax Regulations Code the versions of Sections 1115, 1115.1, 1115.2, and 1115.3 that are no longer operative. This ordinance also repeals that part of Section 1111 that requires the Transfer Tax Review Board to review and approve the form of the Transfer Tax Affidavit, since the Transfer Tax Review Board no longer exists. And it repeals not only the version of Section 1115.2 that became inoperative on January 1, 2013 but also the version that became operative on that date, because the
latter version governs appeals pending at the Transfer Tax Review Board as of January 1, 2013, and there were no pending appeals as of that date.

Section 2. The Business and Tax Regulations Code is hereby amended by amending Sections 1111, 1115, 1115.1, and 1115.3 of Article 12-C, and deleting Section 1115.2, to read as follows:

SEC. 1111. RECORDING PAYMENT OF TAX.

The Recorder shall collect the tax hereby imposed and deposit the same to the General Fund. The Recorder shall not record any deed, instrument or writing subject to the tax imposed by this ordinance unless the tax is paid.

A declaration of the amount of the tax due, signed by the party determining the tax or his agent, shall appear on the face of every document subject to tax hereunder which is submitted for recordation, or if the party submitting the document for recordation so requests, the declaration may be placed on a separate paper. The declaration shall include a statement that the consideration or value on which the tax due was computed was, or that it was not, exclusive of the value of liens or encumbrances remaining on the interest or property conveyed at the time of sale. If the party submitting the document for recordation has requested that the declaration be placed upon a separate paper, the separate paper shall be affixed to the document by the Recorder after the permanent record is made and before the original is returned as specified in Section 27321 of the Government Code.

With every document subject to tax hereunder which is submitted for recordation, there shall also be submitted a separate affidavit stating all relevant information that is necessary for the determination of the proper transfer tax. A form for such affidavit shall be prepared by the County Recorder within 30 days of the effective date of this ordinance and promptly thereafter.
submitted to the Transfer Tax Review Board for review and approval. The affidavit form shall include the following notice: "NOTICE: Any material misrepresentation of fact in this affidavit is a misdemeanor under Section 1116 of the Real Property Transfer Tax Ordinance. Any person who makes such a misrepresentation is subject to prosecution for such offense."—Any subsequent revisions of this form shall also be approved by the Transfer Tax Review Board before becoming effective.

In accepting a document for recordation, the County Recorder shall rely upon the declaration of the amount of Tax due and upon the affidavit of relevant information accompanying the document.

Every document subject to tax hereunder which is submitted for recordation shall show on the face of the document, or in a separate document the location of the lands, tenements or other Realty described in the document.

SEC. 1115. DELINQUENCY TAXES.

(a) Delinquency Penalties. The tax imposed by this ordinance is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid thirty days later. In the event that tax is not paid prior to becoming delinquent, a delinquency penalty of 25 percent of the amount of tax due shall accrue. In the event only a portion of the tax is unpaid prior to becoming delinquent, the penalty shall accrue only as to the portion remaining unpaid. An additional penalty of 10 percent shall accrue if the tax remains unpaid in the ninetieth day following the date of the original delinquency except that the additional penalty shall not accrue during the pendency of a taxpayer's appeal before the Transfer Tax Review Board and, in such event, the additional penalty shall accrue if the tax remains unpaid on the ninetieth day following service or mailing of notice of the ruling of the Review Board. Interest shall accrue at the rate of one percent a
month, or fraction thereof, on the amount of delinquent tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalties accrued shall become part of the tax.

(b) Audits. The County Recorder may audit any documents transferring an interest in real property before or after any transfer, to determine if the transfer is exempt from the tax under this Article or is unpaid or underpaid. The rules, procedures and criteria for conducting such audits shall be prepared by the County Recorder within 90 days of the effective date of this ordinance and promptly thereafter submitted to the Transfer Tax Review Board for review and approval.

(c) Delinquency Determination. Whenever the County Recorder has reason to believe that the full amount of tax due under this ordinance was not paid, the County Recorder may, by notice served upon any person liable therefor, require him to furnish affidavits, true copies of relevant records or other documentary proof sufficient to establish the amount of the consideration or value of the interest or property conveyed including the amount of any lien or encumbrance remaining thereon at the time of sale; and, if it was claimed that the deed, instrument or other writing was not subject to this tax or was exempt therefrom, the County Recorder may, by such notice, require any person liable for the tax to furnish affidavits, true copies of relevant records or other documentary proof to substantiate such claim. On the basis of the proof so submitted and any other available evidence, the County Recorder shall determine whether the full amount of tax due under this ordinance was paid before recordation and, if it was not, the County Recorder shall determine the amount of tax which was not paid and is delinquent.

(d) Delinquency Notices. Promptly after making his or her delinquent tax determination, the County Recorder shall record a notice of delinquent tax which shall include:

(1) The amount of delinquent tax;

(2) The interest that shall accrue on the delinquent tax;

(3) The delinquency penalty then due;

(4) The additional penalty that shall accrue if the tax is not promptly paid;
(5) A description of the real property that was transferred by the document recorder without full payment of tax;

(6) A notice that if the tax, penalties and interest are not paid within 30 days, proceeding will be taken at a noticed hearing before the Board of Supervisors to impose a lien for the unpaid tax, together with penalties and interest, against the real property described in the delinquency notice; and

(7) A notice of the taxpayer's right to appeal the delinquency tax determination to the Transfer Tax Review Board.

The County Recorder shall also serve or mail copies of the notice of delinquent tax to the person liable for the tax and to the owner or owners of the real property described in the notice, as said owners are shown on the records of the County Tax Collector.

(e) The provisions of this Section shall only apply until January 1, 2013, when the alternate version of Section 1115 adopted in Ordinance No. 20-09 shall take effect.

(a) Delinquency Penalties. The tax imposed by this ordinance is due and payable at the time the deed, instrument or writing effecting a transfer subject to the tax is delivered, and is delinquent if unpaid thirty days later. In the event that tax is not paid prior to becoming delinquent, a delinquency penalty of 25 percent of the amount of tax due shall accrue. In the event only a portion of the tax is unpaid prior to becoming delinquent, the penalty shall accrue only as to the portion remaining unpaid. An additional penalty of 10 percent shall accrue if the tax remains unpaid in full the ninetieth day following the date of the original delinquency. Interest shall accrue at the rate of one percent a month, or fraction thereof, on the amount of delinquent tax, exclusive of penalties, from the date the tax becomes delinquent to the date of payment. Interest and penalties accrued shall become part of the tax.

(b) Audits. The County Recorder may audit any documents transferring an interest in real property before or after any transfer, to determine if the transfer is exempt from the tax.
under this Article or is unpaid or underpaid. The County Recorder may adopt and implement necessary and appropriate audit procedures.

(c) **Delinquency Determination.** Whenever the County Recorder has reason to believe that the full amount of tax due under this ordinance was not paid, the County Recorder may, by notice served upon any person liable therefor, require him to furnish affidavits, true copies of relevant records or other documentary proof sufficient to establish the amount of the consideration or value of the interest or property conveyed including the amount of any lien or encumbrance remaining thereon at the time of sale; and, if it was claimed that the deed, instrument or other writing was not subject to this tax or was exempt therefrom, the County Recorder may, by such notice, require any person liable for the tax to furnish affidavits, true copies of relevant records or other documentary proof to substantiate such claim. On the basis of the proof so submitted and any other available evidence, the County Recorder shall determine whether the full amount of tax due under this ordinance was paid before recordation and, if it was not, the County Recorder shall determine the amount of tax which was not paid and is delinquent.

(d) **Delinquency Notices.** Promptly after making his or her delinquent tax determination, the County Recorder shall record a notice of delinquent tax which shall include:

- (1) The amount of delinquent tax;
- (2) The interest that shall accrue on the delinquent tax;
- (3) The delinquency penalty then due;
- (4) The additional penalty that shall accrue if the tax is not promptly paid;
- (5) A description of the real property that was transferred by the document recorded without full payment of tax; and
- (6) A notice that if the tax, penalties and interest are not paid within 30 days, proceeding will be taken at a noticed hearing before the Board of Supervisors to impose a lien
for the unpaid tax, together with penalties and interest, against the real property described in
the delinquency notice.

The County Recorder shall also serve or mail copies of the notice of delinquent
tax to the person liable for the tax and to the owner or owners of the real property described in
the notice, as said owners are shown on the records of the County Tax Collector.

SEC. 1115.1. LIEN PROCEEDINGS.

(a) Initiating Lien Proceedings. If the full amount of the delinquent tax, penalties and interest
is not paid within 30 days following mailing of the delinquency notice or, in the event of an appeal to
the Transfer Tax Review Board, within 10 days following service or mailing of the Review Board's
ruling, the County Recorder, within one year of when the tax became delinquent, shall report the
delinquency to the Board of Supervisors ("the Board") and request the Board to initiate proceedings to
impose a lien for the total unpaid balance against the real property that was transferred by the
document delivered without full payment of tax. Said report shall, for each delinquent account, contain
the names of the persons liable for the tax, the total amount due, including delinquent taxes, penalties
and interest, and a description of the real property that was transferred by the document delivered
without full payment of tax. Upon receipt of such report the Board shall fix a time and place for
hearing the report and any protests or objections thereto and shall cause notice of the hearing to be
mailed not less than 10 days prior to the date of hearing to each person liable for the tax and to the
owner or owners of the real property described in the recorded notice of delinquent tax.

(b) Hearing. At the time so fixed, the Board shall meet to hear the report and any protests or
objections thereto. The Board may make such revisions, corrections or modifications of the report as it
may deem just; and in the event that the Board is satisfied with the correctness of the report (as
submitted or as revised, corrected or modified), it shall be confirmed. The decision of the Board on the
report and on all protests or objections thereto shall be final and conclusive; provided, however, any
delinquent account may be removed from the report by payment in full at any time prior to
confirmation of the report. The Clerk of the Board shall cause the confirmed report to be verified in
form sufficient to meet recording requirements.

(e) Special Assessment Lien.—Upon confirmation of the report by the Board, the unpaid
balance reported therein, including tax, penalties and interest, shall constitute a special assessment
against the real property that was transferred by the document delivered without full payment of tax;
provided, however, that the special assessment, and the lien created thereby, shall attach only to
interests in the property that were held, on the date the notice of delinquent tax was recorded, by
persons liable for the tax. Each such assessment shall be subordinate to all existing special assessment
liens previously imposed upon such parcels and paramount to all other liens except those for State,
County and municipal taxes with which it shall be in parity. The lien shall continue until the
assessment and all interest and penalties due and payable thereon are paid. All laws applicable to the
levy, collection and enforcement of municipal taxes shall be applicable to said special assessment. The
Clerk of the Board shall give notice of the confirmation of the report to each person liable for the tax
and to the owner or owners of the real property described in the recorded notice of delinquent tax and
shall cause the confirmed and verified report to be recorded in the County Recorder's office and the
special assessment lien on each parcel of property described in the report shall thereupon secure an
additional charge for administrative expenses of $50 or 10 percent of the unpaid balance, whichever is
higher. An action to set aside the special assessment and the lien created thereby shall be commenced
within one year from and after the date that notice of the confirmation of the report was given to the
persons liable for the tax and to the property owners.

(d) Filing with Controller and Tax Collector.—The Clerk of the Board shall file a certified copy
of each confirmed report with the Controller and Tax Collector within 10 days after confirmation of the
report, whereupon it shall be the duty of said officers to add the amount of each special assessment to
the next regular bill for taxes levied for municipal purposes against the respective parcels of property
described in the confirmed report.

(e) Payment of Special Assessment. On payment to the Tax Collector of the special
assessment, including delinquent taxes, accrued penalties, interest and the administrative expense
charge authorized by Subdivision (c) above, the Tax Collector shall cause a Release of Lien to be
recorded with the County Recorder and shall pay the statutory recording fee from the administrative
expense charge. Except for the fee paid to record the Release of Lien, all sums collected by the Tax
Collector pursuant to this ordinance shall be deposited to the General Fund.

(f) The provisions of this Section shall only apply until January 1, 2013, when the alternative
version of Section 1115.1 adopted in Ordinance No. 2009 shall take effect.

(a) Initiating Lien Proceedings. If the full amount of the delinquent tax, penalties and
interest is not paid within 30 days following mailing of the delinquency notice the County
Recorder, within one year of when the tax became delinquent, shall report the delinquency to
the Board of Supervisors ("the Board") and request the Board to initiate proceedings to
impose a lien for the total unpaid balance against the real property that was transferred by the
document delivered without full payment of tax. Said report shall, for each delinquent
account, contain the names of the persons liable for the tax, the total amount due, including
delinquent taxes, penalties and interest, and a description of the real property that was
transferred by the document delivered without full payment of tax. Upon receipt of such report
the Board shall fix a time and place for hearing the report and any protests or objections
thereto and shall cause notice of the hearing to be mailed not less than 10 days prior to the
date of hearing to each person liable for the tax and to the owner or owners of the real
property described in the recorded notice of delinquent tax.

(b) Hearing. At the time so fixed, the Board shall meet to hear the report and any
protests or objections thereto. The Board may make such revisions, corrections or
modifications of the report as it may deem just; and in the event that the Board is satisfied with
the correctness of the report (as submitted or as revised, corrected or modified), it shall be
confirmed. The decision of the Board on the report and on all protests or objections thereto
shall be final and conclusive; provided, however, any delinquent account may be removed
from the report by payment in full at any time prior to confirmation of the report. The Clerk of
the Board shall cause the confirmed report to be verified in form sufficient to meet recording
requirements.

(c) **Special Assessment Lien.** Upon confirmation of the report by the Board, the
unpaid balance reported therein, including tax, penalties and interest, shall constitute a
special assessment against the real property that was transferred by the document delivered
without full payment of tax; provided, however, that the special assessment, and the lien
created thereby, shall attach only to interests in the property that were held, on the date the
notice of delinquent tax was recorded, by persons liable for the tax. Each such assessment
shall be subordinate to all existing special assessment liens previously imposed upon such
parcels and paramount to all other liens except those for State, County and municipal taxes
with which it shall be in parity. The lien shall continue until the assessment and all interest
and penalties due and payable thereon are paid. All laws applicable to the levy, collection
and enforcement of municipal taxes shall be applicable to said special assessment. The
Clerk of the Board shall give notice of the confirmation of the report to each person liable for
the tax and to the owner—or owners of the real property described in the recorded notice of
delinquent tax and shall cause the confirmed and verified report to be recorded in the County
Recorder's office and the special assessment lien on each parcel of property described in the
report shall thereupon secure an additional charge for administrative expenses of $50 or 10
percent of the unpaid balance, whichever is higher. An action to set aside the special
assessment and the lien created thereby shall be commenced within one year from and after

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the date that notice of the confirmation of the report was given to the persons liable for the tax
and to the property owners.

(d) **Filing with Controller and Tax Collector.** The Clerk of the Board shall file a
certified copy of each confirmed report with the Controller and Tax Collector within 10 days
after confirmation of the report, whereupon it shall be the duty of said officers to add the
amount of each special assessment to the next regular bill for taxes levied for municipal
purposes against the respective parcels of property described in the confirmed report.

(e) **Payment of Special Assessment.** On payment to the Tax Collector of the special
assessment, including delinquent taxes, accrued penalties, interest and the administrative
expense charge authorized by Subdivision (c) above, the Tax Collector shall cause a Release
of Lien to be recorded with the County Recorder and shall pay the statutory recording fee from
the administrative expense charge. Except for the fee paid to record the Release of Lien, all
sums collected by the Tax Collector pursuant to this ordinance shall be deposited to the
General Fund.

**SEC. 1115.2. TRANSFER TAX REVIEW BOARD.**

(a) **Review Board.** A Transfer Tax Review Board (the "Review Board"), consisting of the
Controller, the Director of Property and the Tax Collector or their designated representatives, is
hereby created. The Review Board shall select from its members a Chairperson who shall serve at its
pleasure. A majority of the members of the Review Board shall constitute a quorum. The Review
Board shall keep a record of its transactions. The Review Board shall be deemed to be situated in the
office of the Controller, shall meet and keep its files in the Controller’s office and all filing with the
Board relating to appeals or otherwise shall be made at such office. Neither the members of the
Review Board nor their designated representatives shall receive any compensation for their services on
the said Board.

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(b) Appeals Permitted. Provided a Petition for Review is filed with the Review Board within the designated time period, a taxpayer shall have the right to appeal the following actions by the Assessor Recorder to the Review Board:

1. A determination of tax made prior to recording of a document may be appealed if the Petition for Review is filed within 10 days following the Assessor Recorder's determination of tax and refusal to record without payment of such tax.

2. A denial of refund claim may be appealed if the Petition for Review is filed within 10 days following service or mailing of notice of claim denial to the taxpayer.

3. A determination of delinquent taxes may be appealed if the Petition for Review is filed within 10 days following service or mailing of the delinquency notice to the taxpayer.

Rulings of the Review Board on determinations of tax made prior to recording of documents or on denials of refund claims are final and conclusive. An action to set aside such a ruling of the Review Board shall be commenced within one year from and after the date that notice of the Review Board's ruling was personally served upon or mailed to the taxpayer. Rulings of the Review Board on delinquent tax determinations are subject to review by the Board of Supervisors in connection with the Board's hearing of the Assessor Recorder's report of delinquency pursuant to Section 115.1 of this ordinance.

Forms for Petitions for Review shall be provided by the Review Board.

(c) Powers of Review Board. The Review Board shall have power, and it shall be its duty:

1. To conduct public hearings for the purpose of reviewing and making its ruling upon any Petition for Review. As to any question of fact upon which the Assessor Recorder's decision was based, including any questions involving taxability or penalties, the Review Board may modify or revoke the decision of the Assessor Recorder, or it may affirm such decision and dismiss the Petition. The Review Board shall not make any ruling inconsistent with the requirements of this ordinance, nor is the Review Board authorized to relieve any taxpayer by reason of hardship alone from tax properly
due under this ordinance but it may, upon showing of good cause, relieve a taxpayer by reason of hardship from delinquency penalties accrued hereunder. The Review Board shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary. In the review of the Assessor-Recorder's decision, the Review Board shall not be limited to a review of the evidence upon which the Assessor-Recorder made his decision, but may take such evidence and make such investigation as it may be deemed necessary. It shall serve notice of its ruling, personally or by mail, on the petitioning taxpayer, any other person liable for the tax and the owner or owners of the real property described in the recorded notice of delinquent tax and shall file a copy of each such ruling with the Assessor-Recorder with certification thereon of the date and service thereof;

(2) To approve, modify, or disapprove all forms, rules and regulations prescribed by the Assessor-Recorder in the administration and enforcement of this ordinance and such forms, rules and regulations shall be subject to, and become effective only on such approval; provided, however, any rules and regulations adopted by the Assessor-Recorder shall also be approved by the City Attorney, and further provided that any modification determined by the Review Board shall be approved as to legal form by the City Attorney before becoming effective;

(3) To hear and determine in such manner as shall be just, any protest which may be made by any person who may be interested to any form, rule or regulation approved or prescribed by the Review Board:

(d) The provisions of this Section shall only apply until January 1, 2013, when the alternate version of Section 1115.2, adopted in Ordinance No. 20-09 shall take effect.

The Transfer Tax Review Board's authority to accept new Petitions for Review and to review the Recorder's procedural rules and forms expired on January 1, 2013. The Review Board shall promptly determine all petitions pending on January 1, 2013 in accordance with this Section 1115.2 as it read immediately before that date.

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SEC. 1115.3. MANNER OF GIVING NOTICE.

Any notice required to be given hereunder by the County Recorder or the Board of Supervisors, the Transfer Review Board or the Review Board to any person shall be sufficiently given or served if it is personally served upon such person or if it is deposited, postage prepaid, in a post office letter box addressed to the person at the address for such person given on a refund claim form, a Petition for Review or written protests or objections to a report of delinquency filed for or on behalf of the person or, if no such address is available, to the person at the official address maintained by the Tax Collector for mailing of tax bills levied against the real property that was transferred by document recorded without full payment of tax or, if no such address is available, to the person at the address of said real property.

The provisions of this Section shall only apply until January 1, 2013, when the alternate version of Section 1115.3 adopted in Ordinance No. 20-09 shall take effect.

Any notice required to be given hereunder by the County Recorder or the Board of Supervisors to any person shall be sufficiently given or served if it is personally served upon such person or if it is deposited, postage prepaid, in a post office letter box addressed to the person at the address for such person given on a refund claim form, or written protests or objections to a report of delinquency filed for or on behalf of the person or, if no such address is available, to the person at the official address maintained by the Tax Collector for mailing of tax bills levied against the real property that was transferred by document recorded without full payment of tax or, if no such address is available, to the person at the address of said real property.

Section 3. Effective Date. This ordinance shall become effective 30 days after enactment.

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Section 4. In enacting this ordinance, the Board of Supervisors intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Business and Tax Regulations Code that are explicitly shown in this ordinance as additions, deletions, Board amendment additions, and Board amendment deletions in accordance with the "Note" that appears under the official title of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Carole F. Ruwart
Deputy City Attorney

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City and County of San Francisco

Tails

Ordinance

File Number: 130276  Date Passed: September 24, 2013

Ordinance amending the Business and Tax Regulations Code to remove provisions that refer to the former Transfer Tax Review Board that expired by operation of law on January 1, 2013.

September 11, 2013 Budget and Finance Committee - RECOMMENDED

September 17, 2013 Board of Supervisors - PASSED ON FIRST READING
   Ayes: 10 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Mar, Tang, Wiener and Yee
   Absent: 1 - Kim

September 24, 2013 Board of Supervisors - FINALLY PASSED
   Ayes: 10 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang and Wiener
   Absent: 1 - Yee

File No. 130276

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 9/24/2013 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

10/3/2013

Date Approved