



July 29, 2020

Via email to: [publications@sfgov.org](mailto:publications@sfgov.org)

Attn: Peter Stevens and Members of the Ballot Simplification Committee  
1 Dr. Carlton B. Goodlett Place City Hall, Room 48  
San Francisco, CA 94102

**Re: File No. 200629 Appeal of Ballot Simplification Language for Overpaid Executive Tax Initiative Ordinance - Business and Tax Regulations Code - Tax on Businesses With Disproportionate Executive Pay**

Dear Chair Packard and Ballot Simplification Committee Members,

Thank you for taking the time to consider our item on Tuesday. The time and work that you spent reviewing the measure is a true testament to your commitment to this process. In drafting the tax with the City Attorney's office our goal was to keep it a simple and straightforward tax measure that is rooted in addressing the inequality between a company's overpaid executive and the wages earned by the company's median worker.

The committee has adopted some changes that we would like for the committee to reconsider, as we feel they are misleading. We respectfully request the amendments set forth below:

**Suggested Amendments**

**Current Language Adopted by Committee:**

*For a business that pays the Gross Receipts Tax, if its Top Executive Pay is more than 100 times Employee Pay, the business would pay an additional tax from 0.1% to 0.6% of its San Francisco gross receipts. Some small businesses would be exempt from this additional tax.*

**Suggested Amendment 1:**

*For a business that pays the Gross Receipts Tax, if its Top Executive Pay is more than 100 times Employee Pay, the business would pay an additional tax from 0.1% to 0.6% of its San Francisco gross receipts. **Small businesses would be exempt from this additional tax.***

## OR

### **Suggested Amendment 2:**

*For a business that pays the Gross Receipts Tax, if its Top Executive Pay is more than 100 times Employee Pay, the business would pay an additional tax from 0.1% to 0.6% of its San Francisco gross receipts. ~~Small businesses that make under one million annually would be exempt from this additional tax.~~*

## OR

### **Suggested Amendment 3:**

*For a business that pays the Gross Receipts Tax, if its Top Executive Pay is more than 100 times Employee Pay, the business would pay an additional tax from 0.1% to 0.6% of its San Francisco gross receipts. ~~Some small businesses would be exempt from this additional tax.~~*

## **Reasoning**

### **Small Business is Defined in the Administrative Tax Code**

The language as it is currently written “some small businesses would be exempt...” strongly implies that there are small businesses that would not be exempt. That is misleading as the Administrative Tax Code has defined the term “small business” for the purpose of the Gross Receipt Tax in Sec 954.1 and states that all “small business enterprises” will be exempt from the Gross Receipts Tax and therefore exempt from the Disproportionate Executive Pay Tax :

*“For purposes of this the term “small business enterprise” shall mean and include any person or combined group, except for a lessor of residential real estate, whose gross receipts within the City for the preceding tax year did not exceed \$1,000,000, adjusted annually in accordance with the increase in the Consumer Price Index: All Urban Consumers for the San Francisco/Oakland/San Jose Area for All Items as reported by the United States Bureau of Labor Statistics, or any successor to that index, as of December 31 of the preceding year, beginning with December 31, 2014.”*

While Sec 954.1 does further clarify that that the \$1 million in gross receipts threshold will be increased to account for the Consumer Price Index, the ceiling for the “small businesses exemption” can never drop below \$1 million.

This threshold was noted during the Committee Hearing during the hypothetical that Member Patterson raised with Deputy City Attorney Maldonado. See transcript below from ***Ballot Simplification Meeting July 28, 2020 Hearing Video found [here](#) which begins at 1:23:39 and ends at 1:25:35.***

*Member Patterson:* “I run a business with 5 employees in San Francisco and I am an extremely successful business person and I have gross receipts for my business of \$100 million dollars a year and the median salary for my employees is really low and my compensation is 100 times those extremely low employee median compensation. Is my business subject to this new tax?”

*Deputy City Attorney Maldonado:* “Yes, yes, you are.”

*Member Patterson:* “So there is no small business exemption?”

*Deputy City Attorney Maldonado:* “Yes, there is but you don’t clear it because you make \$100 million in gross receipts. You need to be **underneath the threshold** for the gross receipts tax. You need to make **below the \$1.17 million** I believe or right around there for the gross receipts **threshold**. If you as a small business qualify under the exemption for gross receipts then you won’t pay. But under the hypothetical you posed, you would pay because of the gross receipts amount you proposed.”

*Member Patterson:* “But there is a circumstance, admittedly rare, where someone could run a business who’s gross receipts are below the **threshold** but the compensation for the top executive is 100 times the median compensation of the employees.”

*Deputy City Attorney Maldonado:* “If the overall gross receipts are below the **threshold** then the ratio doesn’t matter.”

*Member Patterson:* “Ok, thank you, thank you. I was getting lost, we’re fine”

## **Minimum Wage Allows Us to Calculate a Floor for the Overpaid Executive Tax**

Small businesses will not be subject to the Overpaid Executive Tax because the lowest salary that is legally allowable under minimum wage laws for one year of full-time [minimum wage](#) work is \$32,400. The Overpaid Executive Tax only applies to businesses who’s Top Executive Pay is more than 100 times Employee Pay. That means that the lowest Executive pay that will be subject to the tax will be [3.24 million](#).

The example that San Francisco Chief Economist Egan provides is as follows:

1. According to the Bureau of Labor Statistics in the Bay Area the average pay for a Chief Executive was \$236,060, across businesses in every industry and of every size.

2. A full-time minimum wage worker in San Francisco, working for a full year, would earn about \$32,400. Of course the median worker for a business is likely to make more than that, but this is the absolute minimum. For a business to be subject to the tax, the executive pay would have to be a minimum of 100 times that, which is \$3.24 million, which is still more than 13 times the average CEO pay for the region.
3. The average wage in the retail industry in San Francisco was \$58,759. If a retail business's median worker earned that much, the highest-paid executive would have to make \$5.9 million a year, or nearly 25 times the average CEO salary in the region.

The analysis from our Chief Economist further supports clarifying that the tax does not apply to small businesses as defined in the Administrative Tax Code.

Thank you for your time and consideration on this matter and for your public service.

Sincerely,



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