

S202037

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CLERK SUPREME COURT

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

JOHN W. MCWILLIAMS
Plaintiff and Appellant,

v.

CITY OF LONG BEACH,
Defendant and Respondent.

**NOTICE OF MOTION
AND MOTION FOR JUDICIAL NOTICE
IN SUPPORT OF THE CITY OF LONG BEACH'S REPLY BRIEF**

After Decision of the Second Appellate District of the
Court of Appeal
Case No. B200831

Appeal from the Superior Court of
the State of California for the County of Los Angeles, Case No. BC361469
Honorable Anthony J. Mohr, Presiding

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**To the Honorable Chief Justice and Associate Justices of the
Supreme Court:**

Please take notice that, pursuant to California Rules of Court, rule 8.252 and Evidence Code section 452, subds. (b) and (h), Defendant and Respondent the City of Long Beach hereby submits this Notice of Motion and Motion for Judicial Notice In Support of its Reply Brief, and moves this Court to take judicial notice for the purposes of the Reply Brief filed concurrently herewith of the following true and correct documents, Exhibits A through I to the Declaration of Tiana J. Murillo attached hereto:

- A. City of Long Beach Ordinance No. Ord-06-0035, adopted on September 12, 2006.
- B. Long Beach Municipal Code §§ 3.64.030 and 3.64.055
- C. Los Angeles Municipal Code §§ 21.7.3, 21.7.12, 21.1.3 and 21.1.12 and 21.07.
- D. San Jose Municipal Code §§ 4.72.040, 4.72.130, 4.70.700 and chapter 4.82
- E. Sacramento City Code §§ 3.28.030, 3.28.150, 3.32.030, 3.32.160 and 3.04.070
- F. Oakland City Code of Ordinances §§ 4.24.030, 4.24.120, 4.28.030 and 4.28.180
- G. San Francisco Business & Tax Regulations Code §§ 502 and 6.15-1
- H. San Diego Municipal Code §§ 35.0103 and 35.0122
- I. Fresno Municipal Code §§ 7-603 and 7-613.

This motion is based on the attached Memorandum of Points and Authorities, which contains the information as stated in Rule of Court 8.252(a), true and correct copies of the above documents, which are attached as Exhibits A through I to the Declaration of Tiana J. Murillo, and the proposed order granting this motion.

DATED: November 14, 2012 ROBERT E. SHANNON
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ATTORNEYS FOR DEFENDANT /
RESPONDENT

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant and Respondent the City of Long Beach (the "City") moves the Court to take judicial notice of the documents attached to this Motion. The new materials constitute relevant City of Long Beach ordinances and municipal code sections from other California cities which inform the underlying dispute.

II. THE REQUESTED JUDICIAL NOTICE IS APPROPRIATE

A. General Principles of Judicial Notice

Courts may judicially notice duly enacted municipal resolutions and ordinances. (Cal. Evid. Code § 452, subds. (b) and (h); see also, *Jordan v. Los Angeles County* (1968) 267 Cal.App.2d 794, 798 [Evidence Code § 452(b) "permits judicial notice of legislative enactments of 'any public entity in the United States.'"]); *Shapiro v. Board of Directors of Centre City* (2005) 134 Cal.App.4th 170, 174, fn. 2 [judicial notice of municipal resolution].) A reviewing court may take judicial notice of any matter listed in Evidence Code section 452. (Cal. Evid. Code § 459.)

"Judicial notice is the recognition and acceptance by the court, for use by ... the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4th

875, 882 [citations and quotations omitted]; Cal. Evid. Code § 454). The underlying theory is that a matter judicially noticed is a law or fact that is not reasonably subject to dispute. (*Lockley v. Law Office of Cantrell, Green, et al.* (2001) 91 Cal.App.4th at 882; Cal. Evid. Code § 452(h).)

III. THE COURT SHOULD NOTICE THE RELEVANT MUNICIPAL ORDINANCES

The Court should take notice of the documents attached as Exhibits A through I. These are duly enacted municipal ordinances and are subject to notice pursuant to Evidence Code section 452, subs. (b) and (h). Pursuant to Evidence Code section 459, this Court may notice these matters on appeal.

Each of the documents proposed for notice in Exhibits A through I is relevant to this appeal, as each will aid the Court's understanding of the City's arguments regarding the legislative intent reflected in Government Code section 905, subd. (a). Specifically, Appellant John W. McWilliams' ("Appellant" or "McWilliams") Answer Brief on the Merits questions the applicability of one of the City's ordinances to this appeal. Thus, Long Beach Ordinance No. Ord-06-0035 — attached as Exhibit A — is relevant to this Court's understanding of that ordinance and whether it allows class claims, as more fully explained in the City's Opening Brief on the Merits and its Reply Brief.

Moreover, the documents attached as Exhibits B through I will aid this Court's understanding of whether the Legislature left to cities the task of establishing refund claiming procedures for local taxes, as the City

contends. This argument is more fully explained in the City's briefs in this Court.

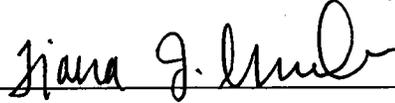
IV. THE CITY'S MOTION FOR JUDICIAL NOTICE COMPLIES WITH RULE 8.252

The Court should likewise take judicial notice of the documents in Exhibits A through I because the City's Motion complies with California Rules of Court, rule 8.252.

First, as discussed in Sections II A. and B., *supra*, this motion is relevant to the City's Reply Brief (and, by extension, its Opening Brief) because Exhibits A through I are municipal ordinances, and notice of them will help the Court interpret Government Code section 905, subd. (a) and whether it uses the term "statute" so as to encompass such ordinances. Notice of Exhibit A will help the Court more fully understand arguments raised in Appellant's Answer Brief and the City's Reply Brief. Moreover, Exhibits B through I evidence that various large cities around California have legislated claiming procedures for refunds of local taxes while the Legislature has not.

Finally, the documents provided as Exhibits A through I were not presented to the trial court because they are cited here to respond to arguments raised in Appellant's Answer Brief, which plainly were not made until well after the trial stage. Moreover, the trial court sustained the City's demurrer in this case several years ago, before the decisions in *County of Los Angeles v. Superior Court (Oronoz)* (2008) 159 Cal.App.4th 353, and *Ardon v. City of Los Angeles* (2011) 52 Cal.4th 241, which frame the

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A handwritten signature in black ink, appearing to read "Tiana J. Murillo", is written over a horizontal line.

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ATTORNEYS FOR DEFENDANT /
RESPONDENT

DECLARATION OF COUNSEL

[CRC 8.54, subd. (a)(2)]

1. I am an attorney in good standing licensed to practice before the Courts of this state and counsel of record for Respondent City of Long Beach.

2. Attached hereto as Exhibit A is a true and correct copy of City of Long Beach Ordinance No. Ord-06-0035, adopted on September 12, 2006.

3. Attached hereto as Exhibit B is a true and correct copy of Long Beach Municipal Code §§ 3.64.030 and 3.64.055.

4. Attached hereto as Exhibit C is a true and correct copy of Los Angeles Municipal Code §§ 21.7.3, 21.7.12, 21.1.3, 21.1.12 and 21.07.

5. Attached hereto as Exhibit D is a true and correct copy of San Jose Municipal Code §§ 4.72.040, 4.72.130, 4.70.700 and chapter 4.82.

6. Attached hereto as Exhibit E is a true and correct copy of Sacramento City Code §§ 3.28.030, 3.28.150, 3.32.030, 3.32.160 and 3.04.070.

7. Attached hereto as Exhibit F is a true and correct copy of Oakland City Code of Ordinances §§ 4.24.030, 4.24.120, 4.28.030 and 4.28.180.

8. Attached hereto as Exhibit G is a true and correct copy of San Francisco Business & Tax Regulations Code §§ 502 and 6.15-1.

9. Attached hereto as Exhibit H is a true and correct copy of San Diego Municipal Code §§ 35.0103 and 35.0122.

10. Attached hereto as Exhibit I is a true and correct copy of Fresno Municipal Code §§ 7-603 and 7-613.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct. Executed on this 14th day of November 2012.

By: Tiana J. Murillo
Tiana J. Murillo

[Proposed]
**ORDER TAKING JUDICIAL NOTICE OF
MUNICIPAL ORDINANCES**

Good cause appearing, IT IS HEREBY ORDERED that the Motion for Judicial Notice in Support of the City of Long Beach's Reply Brief is granted. IT IS ORDERED that this Court shall take judicial notice of the following:

1. City of Long Beach Ordinance No. Ord-06-0035, adopted on September 12, 2006.
2. Long Beach Municipal Code §§ 3.64.030 and 3.64.055.
3. Los Angeles Municipal Code §§ 21.7.3, 21.7.12, 21.1.3, 21.1.12 and 21.07.
4. San Jose Municipal Code §§ 4.72.040, 4.72.130, 4.70.700 and chapter 4.82.
5. Sacramento City Code §§ 3.28.030, 3.28.150, 3.32.030, 3.32.160 and 3.04.070.
6. Oakland City Code of Ordinances §§ 4.24.030, 4.24.120, 4.28.030 and 4.28.180.
7. San Francisco Business & Tax Regulations Code §§ 502 and 6.15-1.
8. San Diego Municipal Code §§ 35.0103 and 35.0122.

9. Fresno Municipal Code §§ 7-603 and 7-613.

Dated: _____

Chief Justice Tani Cantil-Sakauye

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1 administered. Therefore the changes made by this Ordinance describing the tax base
2 of the telephone users tax, and clarifying certain administrative requirements, are not
3 intended to constitute a change in methodology or a tax increase for purposes of
4 Proposition 218 and shall be interpreted in light of that intent;

5 NOW, THEREFORE, the City Council of the City of Long Beach ordains
6 as follows:

7
8 Section 1. Section 3.68.050 of the Long Beach Municipal Code is hereby
9 amended to read as follows:

10 3.68.050 Telephone users tax.

11 A. There is imposed a tax upon every person in the City using
12 telephone communication services including services for intrastate,
13 interstate, or international calls, and using any teletypewriter exchange
14 services in the City or mobile or cellular telephone communication when
15 the owner or lessee of the telephone has a billing address in the City. The
16 term "telephone communication services" includes all voice transmission
17 services, regardless of the technology employed, including voice
18 transmission services provided in combination with other services,
19 included but not limited to voice transmission services provided in
20 combination with image transmission services, regardless of when the
21 media or technology utilized in providing such services is developed or put
22 into commercial use. Except as otherwise provided in Section 3.68.010
23 above, the tax imposed by this Section shall be at the rate of ten percent
24 (10%) of the charges made for such services and shall be paid by the
25 person paying for such services. Interstate calls shall be deemed to
26 include calls to the District of Columbia.

27 B. The following shall be exempt from the tax imposed by this
28 Section:

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1 1. Charges paid for by inserting coins in coin-operated
2 telephones available to the public with respect to local telephone service,
3 or with respect to toll telephone service if the charge for such toll
4 telephone service is less than twenty-five (25) cents; except that where
5 such coin-operated telephone service is furnished for a guaranteed
6 amount, the amounts paid under such guarantee plus any fixed monthly
7 or other periodic charge shall be subject to the tax.

8 2. Except with respect to local telephone service, on any
9 charges for services used in the collection of news for the public press, or
10 a news ticker service furnishing a general news service similar to that of
11 the public press, or radio broadcasting, or in the dissemination of news
12 through the public press, or a news ticker service furnishing a general
13 news service similar to that of the public press, or by means of radio
14 broadcasting, if the charge for such service is billed in writing to such
15 person.

16 3. Charges for services furnished to an international
17 organization or to the American National Red Cross.

18 4. Charges for any toll telephone service which originates
19 within a combat zone, as defined in Section 112 of the Internal Revenue
20 Code, from a member of the Armed Forces of the United States
21 performing service in such combat zone, as determined under such
22 section, provided a certificate, setting forth such facts as the Secretary of
23 the U.S. Treasury may by regulations prescribe, is furnished to the person
24 receiving such payment.

25 5. Charges for any long distance telephone service to the
26 extent that the amount so paid is for use by a common carrier, telephone
27 or telegraph company, or radio broadcasting station or network in the
28 conduct of its business as such.

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1 6. Amounts paid by a nonprofit hospital for services
2 furnished to such organization. For purposes of this Subsection, the term
3 "nonprofit hospital" means a hospital referred to in Internal Revenue Code
4 section 170(b)(1)(A)(iii) which is exempt from income tax under Internal
5 Revenue Code Section 501(a).

6 7. Charges for services or facilities furnished to the
7 government of any state, or any political subdivision thereof, or the District
8 of Columbia.

9 8. Charges paid by a nonprofit educational organization for
10 services or facilities furnished to such organization. For purposes of this
11 Subsection, the term "nonprofit educational organization" means an
12 educational organization described in Internal Revenue Code Section
13 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue
14 Code Section 501(a). The term also includes a school operated as an
15 activity of an organization described in Internal Revenue Code Section
16 501(c)(3) which is exempt from income tax under Internal Revenue Code
17 Section 501(a), if such school normally maintains a regular faculty and
18 curriculum and normally has a regularly enrolled body of pupils or
19 students in attendance at the place where its educational activities are
20 regularly carried on.

21 9. Charges for maritime mobile services as defined in
22 Section 2.1 of title 47 of the Code of Federal Regulations as such section
23 existed on January 1, 1970.

24 C. The tax imposed in this Section shall be collected from the
25 service user by the person providing the telephone communications
26 services or the teletypewriter exchange services. The amount of tax
27 collected from the twenty sixth (26th) day of each month through the
28 twenty fifth (25th) day of the following month shall be remitted to the City

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1 Clerk on or before the twenty sixth (26th) day of such following month, or,
2 at the option of the person required to collect and remit the tax, an
3 estimated amount of tax collected, measured by billings of the previous
4 month, shall be remitted to the Clerk on or before the twentieth (20th) day
5 of each month.

6
7 Sec. 2. Section 3.68.160 of the Long Beach Municipal Code is hereby
8 amended to read as follows:

9 3.68.160 Refunds.

10 A. Whenever the amount of any tax has been overpaid or paid
11 more than once or has been erroneously or illegally collected or received
12 by the City Clerk or City Treasurer-City Tax Collector under this Chapter, it
13 may be refunded as provided in this Section.

14 B. A service supplier may claim a refund or take as credit against
15 taxes collected and remitted the amount overpaid, paid more than once,
16 or erroneously or illegally collected or received, when it is established in a
17 manner prescribed by the City Treasurer-City Tax Collector that the
18 service user from whom the tax has been collected did not owe the tax;
19 provided, however, that neither a refund nor a credit shall be allowed
20 unless the amount of the tax so collected has either been refunded to the
21 service user or credited to charges subsequently payable by the service
22 user to the person required to collect and remit.

23 C. No refund shall be paid under the provisions of this Section
24 unless the claimant established his right thereto by written records
25 showing entitlement thereto.

26 D. No refund shall be paid under the provisions of this Section
27 unless the claimant has submitted a claim pursuant to Section 3.68.160 of
28 this Chapter.

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1 Sec. 3. Section 3.68.065 of the Long Beach Municipal Code is hereby
2 added to read as follows:

3 3.68.065 Segregation of non-taxable charges.

4 As used in this Chapter, the term "charges" shall include the value
5 of all consideration provided by the service user in exchange for utility
6 services. If a non-taxable service and a taxable service are billed together
7 under a single charge, the entire charge shall be deemed taxable unless
8 the service supplier identifies, by verifiable data, based upon its books
9 and records that are kept in the regular course of business, in a manner
10 that is consistent with generally accepted accounting principles, the non-
11 taxable component of the charge. The service supplier has the burden of
12 proving the proper apportionment of taxable and non-taxable charges.

13
14 Sec. 4. Severability. Should any provision of this Ordinance, or its
15 application to any person or circumstance, be determined by a court of competent
16 jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall
17 have no effect on any other provision of this Ordinance or the application of this
18 Ordinance to any other person or circumstance and, to that end, the provisions hereof
19 are severable.

20
21 Sec. 5. Construction. Sections 1 and 2 of this Ordinance are declaratory
22 of existing law and express the intent of the City in the adoption of the utility users tax
23 on telephones by Ordinance No. C-6897 in 1990 and the adoption of this Ordinance
24 therefore does not constitute a revision in the methodology by which the City calculates
25 the tax and this Ordinance shall be interpreted in light of that intent.

26
27 Sec. 6. Effective Date; Transitional Clause. This Ordinance shall take
28 effect on the thirty-first day after adoption as provided by Section 210 of the Charter of

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1 the City. However, any claim that would have been timely if presented on the day
2 before this Ordinance becomes effective which claim would be untimely under the
3 requirements of Section 3.68.160 of the Long Beach Municipal Code adopted hereby
4 may, notwithstanding this Ordinance; be presented not later than the forty-fifth (45th)
5 day after the adoption of this Ordinance.

6
7 Sec. 7. The City Clerk shall certify to the passage of this Ordinance by
8 the City Council and cause it to be posted in three conspicuous places in the City of
9 Long Beach, and it shall take effect on the thirty-first day after it is approved by the
10 Mayor.

11 I hereby certify that the foregoing ordinance was adopted by the City
12 Council of the City of Long Beach at its meeting of September 12, 2006, by the
13 following vote:

14 Ayes: Councilmembers: B. Lowenthal, S. Lowenthal, DeLong,
15 O'Donnell, Schipske, Richardson,
16 Reyes Uranga, Gabelich, Lerch.

17
18 Noes: Councilmembers: None.

19
20 Absent: Councilmembers: None.

21
22
23 [Signature]
City Clerk

24
25 Approved: 9-18-06
(Date)

26
27 [Signature]
(Mayor)

28 HAM:fl
8/29/06
L:\APPS\CityLaw\32\WPDOCS\15\VP005\00092978.WPD
#06-04108

3.64.030 - Imposed.

Every transient shall pay a tax of six percent of the rent for his or her occupancy of a guestroom and the tax shall be collected by the operator from such transient at the time and in the manner provided in this chapter. The tax is imposed for revenue purposes and is needed for the special advertising and promotion fund of the city.

(Prior code § 2451).

3.64.055 - Refunds.

- A. Where a tax has been collected based on rent for a period of thirty (30) days or less and the occupant subsequently completes thirty-one (31) consecutive days of occupancy, thereby qualifying as a permanent lodger, the operator shall return to such occupant an amount equivalent to the amount of the tax so collected either in cash or by crediting his or her account unless, however, the tax has been paid over to the business license section. In the latter case, the operator who collected the tax may within one year after the date of the payment to the business license section, provided the operator has returned the equivalent amount of the tax to the permanent lodger or credited the lodger's account with that amount, either take credit for the amount so reimbursed on a subsequent return or file a claim for refund of the tax. Refund of the tax shall be made from the fund mentioned in Sections 3.64.035 and 3.64.100 in this chapter in the same percentage.
- B. Whenever the amount of tax has been overpaid, it shall be refunded or credited provided a claim is submitted in writing signed under penalty of perjury stating the specific grounds upon which the claim is founded and filed with the business license section upon forms furnished by the business license section within one year of the date of payment to the city.
- C. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the business license section that the individual from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- D. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the business license section, or when the transient having paid the tax to the operator, establishes to the satisfaction of the business license section that the transient has been unable to obtain a refund from the operator who collected the tax.
- E. No refund shall be paid under this section unless the claimant establishes claimant's right to the refund by written records showing entitlement to the refund and unless claimant files the claim for refund within one year after the date of payment of the tax to the city. Section 3.48.040 of this title relating to the conditions of payment of refunds shall apply.

(ORD-06-0011 §§ 2, 3, 2006; ORD-05-0010 § 14, 2005).

Los Angeles Municipal Code

SEC. 21.7.3. TAX IMPOSED.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of four percent (4%) of the rent charged by the operator on or after August 1, 1964, to and including October 31, 1967; and at the rate of five percent (5%) from that date to and including February 28, 1971; and at the rate of six percent (6%) from that date to and including June 30, 1978; and at the rate of seven and one-half percent (7.5%) from that date to and including June 30, 1983; and at the rate of ten percent (10%) from that date to and including December 31, 1985; and at the rate of eleven percent (11%) from that date to and including December 31, 1987; and at the rate of twelve percent (12%) from that date to and including August 31, 1990; and at the rate of twelve and one-half percent (12.5%) from that date to and including July 31, 1993; and at the rate of fourteen percent (14%) thereafter. (Amended by Ord. No. 168,850, Eff. 8/1/93.) Said tax constitutes a debt owed by the transient to the City which is extinguished by the payment to the operator or to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, or if an amount paid is less than the full amount of rent and tax accrued at the time of payment, a proportionate share of the tax shall be deemed to have been paid with each such payment or installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax is not paid to the operator of the hotel, the Director of Finance may require that such tax shall be paid directly to the City.

SEC. 21.7.12. REFUNDS.

(a) Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the City under this article it may be refunded as provided in this section. Except as otherwise provided in this section, refunds of overpaid taxes shall be made in the same manner as is provided in Sec. 21.07 of this chapter for refunds of overpayments in Business Taxes.

(b) An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Director of Finance that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

(c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in Sec. 21.07 of this chapter, but only when the tax was paid by the transient directly to the Director of Finance, or when the transient having paid the tax to the operator, establishes to the satisfaction of the Director of Finance that the transient has been unable to obtain a refund from the operator who collected the tax.

(d) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

Los Angeles Municipal Code

SEC. 21.1.3. COMMUNICATIONS USERS TAX.

(Title and Section Amended by Ord. No. 179,686*, Eff. 3/15/08.)

(a) There is hereby imposed a tax upon every Person with a billing or service address in the City of Los Angeles who uses Communications Services, including services for intrastate, interstate or international Communications Services, to the extent permitted by state and federal law. The tax imposed by this section shall be at the rate of nine percent of the charges made for those Communications Services and shall be paid by the Person paying for those services. However, as to the charges made for services to any independent telemarketing agency, as defined in Section 21.47(b) of this Code, incurred solely in performing the functions of an independent telemarketing agency, the tax imposed by this section shall be at the rate of five percent of the charges made for those services.

(b) The tax imposed in this section shall be collected from the Service User by the Person providing the Communications Services. The amount of tax collected from the 26th day of each Month through the 25th day of the following Month shall be remitted to the Director of Finance on or before the 26th day of the following Month, or, at the option of the Person required to collect and remit the tax, an estimated amount of tax collected, measured by the billings of the previous Month, shall be remitted to the Director of Finance on or before the 20th day of each Month.

(c) Charges subject to the Communications Users Tax include, but are not limited to, the following: connection, reconnection, termination, movement, or change of telecommunications services; late payment fees; detailed billing; voice mail and other messaging services; directory assistance; access and line charges; universal service charges; and regulatory, administrative and other cost recovery charges.

(d) **Exemptions.** Except as otherwise provided in this article, Communications Services shall include all Communications Services for which there is a charge, regardless of the means or technology used to provide those services. Notwithstanding the provisions of Subsection (a), the tax imposed under this section shall not be imposed upon any Person for using Communications Services under the circumstances set forth below:

1. **News services.** No tax shall be imposed under this section, except with respect to local telephone service, on any payment received from any Person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for that service is billed in writing to that Person.

2. **International, etc., organizations.** No tax shall be imposed under this section on any payment received for services furnished to a public international organization in which the United States participates pursuant to treaty or Act of Congress, or to the American National Red Cross.

3. **Servicemen in combat zone.** No tax shall be imposed under this section on any payment

received for any toll telephone service, which originates within a combat zone, as defined in Section 112 of Title 26 of the United States Code, from a member of the Armed Forces of the United States performing service in the combat zone, as determined under Section 112 of Title 26 of the United States Code.

4. **Items otherwise taxed.** Only one payment of tax under this section shall be required with respect to the tax on any service.

5. **Common carriers and communications companies.** No tax shall be imposed under this section on the amount paid for any Communications Services to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business.

6. **Installation charges.** No tax shall be imposed under this section on any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to the installation.

7. **Nonprofit hospitals.** No tax shall be imposed under this section on any amount paid by a nonprofit hospital for services furnished to that organization. For purposes of this exemption, the term "nonprofit hospital" means a hospital referred to in Section 170(b)(1)(A)(iii) of Title 26 of the United States Code, which is exempt from federal income tax under Section 501(a) of Title 26 of the United States Code.

8. **State and local governments.** No tax shall be imposed under this section upon any payment received for services or facilities furnished to the government of any State, or any of its political subdivisions, or the District of Columbia.

9. **Nonprofit educational organizations.** No tax shall be imposed under this section on any amount paid by a nonprofit educational organization for services or facilities furnished to that organization. For purposes of this exemption, the term "nonprofit educational organization" means an educational organization described in Section 170(b)(1)(A)(ii) of Title 26 of the United States Code, which is exempt from federal income tax under Section 501(a) of Title 26 of the United States Code. The term also includes a school operated as an activity of an organization described in Section 501(c)(3) of Title 26 of the United States Code, which is exempt from federal income tax under Section 501(a) of Title 26 of the United States Code, if that school normally maintains a regular facility and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

(e) To prevent actual multiple taxation of any Communications Services that are subject to tax under Subsection (a) of this section, any Service User, upon proof that the Service User owed and has paid a tax in another taxing jurisdiction on the Communications Services, shall be allowed a credit against the tax imposed in Subsection (a) to the extent of the amount of the tax properly due and paid in the other taxing jurisdiction. However, no credit may be allowed for any tax paid to another taxing jurisdiction on any call to the extent that the call may not, under the Constitution and statutes of the United States, be made the subject of taxation by the other taxing jurisdiction. Nor shall the amount of credit exceed the tax owed to the City under this section.

(f) Any person claiming to be an independent telemarketing agency, which has charges subject to tax at the

five percent rate, shall file an application for rate adjustment with the Director of Finance. This application shall be made on forms provided by the Director of Finance and shall recite facts under oath which qualify the applicant for the five percent tax rate. Notwithstanding any other provision of this article, the five percent rate shall apply only to charges for services that were necessarily incurred solely and exclusively for telemarketing activities. The burden of maintaining records and establishing that this charge is subject to tax at the five percent rate shall be on the applicant. Charges for all other services shall be subject to tax at the nine percent rate.

(g) For purposes of imposing a tax or establishing a duty to collect and remit a tax under this section, "substantial nexus" and "minimum contacts" shall be construed broadly in favor of the imposition, collection and/or remittance of the communications users tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any Communications Services used by a Person with a service or billing address in the City shall be subject to a rebuttable presumption that "substantial nexus / minimum contacts" exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this section. For communications services for which there is no billing address or primary physical location for the provision of services, the service address shall mean the point of sale of the services.

(h) If a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier or taxpayer reasonably identifies actual charges for services not subject to the tax. The service supplier or taxpayer seeking a reduction has the burden of proving the proper valuation and apportionment of taxable and non-taxable charges based upon books and records that are kept in the regular course of business and in a manner consistent with generally accepted accounting principles.

* Note: Pursuant to the passage of Proposition S in a Special Election held on February 5, 2008, Ordinance No. 179,686 was adopted by the Council of the City of Los Angeles at its meeting of March 5, 2008.

SEC. 21.1.12. EXEMPTIONS AND REFUNDS.

(Title and Section Amended by Ord. No. 179,686*, Eff. 3/15/08.)

(a) The tax imposed by this article shall not apply to any individual 62 years of age or older or any disabled individual who uses Communications Services, electric, or gas services in or upon any premises occupied by that individual, provided the combined adjusted gross income (as used for purposes of the California Personal Income Tax Law) of all members of the household in which the individual resided was less than the figure in effect on the preceding first day of April as the "very low income" limitation for a family of two persons in the City of Los Angeles under the Section 8 housing programs of the United States Housing Act of 1937, as amended, as published by the United States Department of Housing and Urban Development.

For the purposes of this section, an individual shall be considered to be disabled if he or she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, which can be expected to result in death, or to be of long-continued and indefinite duration.

The exemption granted by this section shall not eliminate the duty of the service supplier from collecting taxes from the exempt individuals or the duty of the exempt individuals from paying those taxes to the service supplier unless the Service User applies for an exemption and the Director of Finance grants the exemption in accordance with the provisions of Subsection (b).

For each fiscal year, the Director of Finance is directed to determine, and utilize as the prior calendar year's adjusted gross income limitation, the figure in effect on the preceding first day of April as the "very low income" limitation for a family of two persons in the City of Los Angeles under the Section 8 housing programs of the United States Housing Act of 1937, as amended, as published by the United States Department of Housing and Urban Development.

(b) Any Service User exempt from the taxes imposed by this article because of the provisions of Subsection (a) above or any other applicable exemption, may file an application with the Director of Finance for an exemption. The applications shall be made upon forms supplied by the Director of Finance and shall recite facts under oath, which qualify the applicant for an exemption. The Director of Finance shall review all applications and certify as exempt those applicants determined to qualify and shall notify all service suppliers affected that the exemption has been approved, stating the name of the applicant, the address to which the exempt service is being supplied, the account number, if any, and any other information as may be necessary for the service supplier to remove the exempt Service User from its tax billing procedure. Upon receipt of this notice, the service supplier shall not be required to continue to bill any further tax imposed by this article from the exempt Service User until further notice by the Director of Finance is given. The service supplier shall eliminate the exempt Service User from its tax billing procedure no later than 60 days after the receipt of the notice from the Director of Finance.

All applications for exemption for any given fiscal year shall be filed with the Director of Finance on or before the 30th day of April preceding the fiscal year. All exemptions shall continue and be renewed automatically by the Director of Finance so long as the prerequisite facts supporting the initial qualification for exemption shall continue. Upon any change in the service address or residence of the exempt individual, the service supplier, at its option, may either terminate the exemption immediately or continue the exemption until notified by the Director of Finance that the exempt individual has not filed an application for continuation of exemption within 90 days after the change in the service address or residence. Each individual exempt from the tax may apply to the Director of Finance for a new or continued exemption with each change of address or residence. Any individual exempt from the tax shall notify the Director of Finance within ten days of any change of fact or circumstance, which might disqualify the individual from receiving the exemption. It shall be a misdemeanor for any Person to knowingly receive the benefits of the exemption provided by this section when the basis for the exemption does not exist or ceases to exist.

Notwithstanding any of the provisions of this subsection, however, any service supplier who determines by any means that a new or nonexempt Service User is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection, that service supplier shall immediately notify the Director of Finance of that fact and the Director of Finance shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and where appropriate, order the service supplier to commence collecting the tax from the nonexempt Service User.

Applications for exemptions may be filed during any given fiscal year, for the remaining portion of the fiscal year, provided the application is filed not later than the 60th day prior to the commencement of the billing period for the affected utility companies for which the exemption is to commence and shall be valid through the remainder of that fiscal year, as set forth above.

(c) Individuals 62 years of age or older and disabled individuals, any individual entitled to be exempt from the taxes imposed by this article pursuant to Subsection (a) who used telephone, electric or gas services and paid

more than \$3.00 in those taxes may, within 12 Months of the date of payment, apply for a refund on forms provided by the Director of Finance. The refund application shall contain a declaration of those facts, under oath that qualify the applicant for a refund, and shall also be accompanied by the customer's original bills showing the amount of the taxes billed by service suppliers during the preceding year. Likewise, refund claims may be filed by an individual who used telephone, electric and gas service and paid the taxes prescribed by this article either directly or indirectly to the Service User rather than the service supplier.

In the event the applicant has lost or destroyed any relevant billings or statements showing the amount of tax paid, or if the applicant indirectly paid the taxes in conjunction with the occupation of any premises without receiving a specific billing from the Service User, or if the applicant has been granted an exemption during the year preceding the filing of the refund claim, the maximum refund shall be \$18.00, or \$1.50 for each full Month of service received by the applicant, whichever is less.

(d) Except as otherwise provided in this section, refunds of overpaid taxes shall be made in the same manner as is provided in Section 21.07 of this chapter for refunds of overpayments in Business Taxes.

(e) A Person required to collect and remit taxes imposed under this article may claim a refund or take as credit against taxes collected and remitted the amounts overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the Director of Finance that the Service User from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the Service User or credited to charges subsequently payable by the Service User to the Person required to collect and remit.

(f) If any application for an exemption or refund as permitted to be filed by this section is determined to be deficient by the Director of Finance for failure to set forth the facts necessary to qualify the applicant for an exemption or refund or if the Director of Finance has reason to believe the applicant has failed to truthfully set forth those facts, the Director may deny the application by giving written notice of the denial and by stating in the notice the grounds for the denial and mailing the notice in a sealed envelope, postage prepaid, addressed to the applicant at the address shown upon the application. The applicant shall thereafter have a right to a hearing with the Director of Finance in accordance with a hearing procedure to be established by the Director.

(g) No exemption or refund shall be granted pursuant to this section with respect to any tax imposed by this article, which is or has been paid by a public agency or where the applicant receives funds from a public agency specifically for the payment of the tax.

(h) If an individual is delinquent in the payment of any utility users tax at the time his claim for refund is filed, the Director of Finance shall apply the refund or as much of the refund as may be necessary to satisfy the delinquency.

(i) The tax imposed by this article shall not apply to communication, electric and gas services acquired by any nonprofit corporation for the use of its tenants in any housing project in which at least 80 percent of the dwelling units are occupied by a person meeting the requirements for exemption under Subsection (a) of this section.

(j) Upon request of the Director of Finance, a service supplier shall provide a list of the names and addresses of those customers that, according to its billing records, are exempt from a tax imposed by this article.

(k) To the extent that the City's authorization to impose or collect the tax imposed in this article is expanded or limited as a result of changes in state or federal law, no amendment or modification of this article shall be required to conform the tax to those changes, and the tax shall be imposed and collected to the full extent of the City's authorization up to the full amount of the tax imposed by the terms of this article.

* Note: Pursuant to the passage of Proposition S in a Special Election held on February 5, 2008, Ordinance No. 179,686 was adopted by the Council of the City of Los Angeles at its meeting of March 5, 2008.

Los Angeles Municipal Code

SEC. 21.07. REFUNDS OF OVERPAYMENTS.

(Amended by Ord. No. 181,051, Eff. 1/31/10.)

No refund of an overpayment of taxes imposed by Article 1 and 1.5 of Chapter 2 of this Code shall be made except under the following procedure

(a) No claim for refund shall be allowed in whole or in part unless filed by the person claiming the overpayment, or his authorized agent on his behalf, with the City Clerk within a period of one year from the date of the claimed overpayment, and all such claims for refund of overpayment must be filed with the City Clerk on forms furnished by the City and in the manner prescribed by the City.

(b) Nothing in this section shall be deemed to bring into being or validate any claim for refund arising from a cause heretofore existent if such claim, whether filed or not, was or would have been invalid because of the then existing statutory term, and nothing in this section shall be deemed to validate, revive, restore or continue any claim for refund heretofore filed and denied.

(c) Insofar as the provisions of this section are in conflict with the provisions of Sections 22.12, 22.13 of this Code, the language of this section shall be construed to control and supersede the language of said sections as to any such conflict.

(d) The City shall pay interest on the amount of each allowed claim for refund of overpayment of tax, from the date of filing the claim for refund or, in the case of a payment under protest or pursuant to a billing from the Office of Finance, from the date of overpayment, until the date the overpayment is paid, during each calendar year at the rate per month determined by dividing by 12 the sum of the average Federal short-term rate during the months of July, August and September of the prior calendar year. Unless the monthly rate is evenly divisible by one-tenth of a percentage point, it shall be rounded up to the next highest one-tenth of a percentage point.

San Jose, CA Code of Ordinances

4.72.040 Imposition - Amount - Payment.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of six percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing occupancy in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the director of finance may require that such tax shall be paid directly to the director of finance.

(Prior code § 13002.)

4.72.130 Refunds and procedures.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in Subsections B. and C. of this section provided a written claim for refund is filed with the director of finance, and the provisions of Chapter 4.82 are satisfied.

B. An operator may obtain a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once, or erroneously or illegally collected or received by the city by filing a claim in the manner provided in Subsection A. of this section, but only when the operator establishes to the satisfaction of the director of finance that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in Subsection A. of this section, but only when the tax was paid by the transient directly to the director of finance, or when the transient having paid the tax to the operator, establishes to the satisfaction of the director of finance that the transient has been unable to obtain a refund from the operator who collected the tax.

(Prior code § 13011; Ord. 27787.)

4.70.500 Telecommunications users tax

A. *Establishment of telecommunications users tax.* There is hereby imposed a tax upon every person with a billing address or service address in the city using telecommunications services, including intrastate, interstate, or international telecommunications services, and which is referred to in this chapter as the telecommunications users tax or the tax. The maximum tax imposed shall be at the rate of four and one-half percent (4.50%) of the charges made for such services and shall be collected from the service user by the service supplier or its billing agent. There is a rebuttable presumption that telecommunications services, which are billed to a billing address or service address in the city, are used, in whole or in part, within the city's boundaries, and such services are subject to taxation under this chapter. If the billing address of the service user is different from the service address, the service address of the service user shall be used for purposes of imposing the tax. As used in this section, the term "charges" shall include the value of any other services, credits, property of every kind or nature, or other consideration provided by the service user in exchange for the telecommunications services.

B. *Sourcing rules.* Mobile telecommunications service shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The director may issue and disseminate to service suppliers, which are subject to the tax collection requirements of this chapter, sourcing rules for the taxation of other telecommunications services, including but not limited to post-paid telecommunication services, prepaid telecommunication services, and private telecommunication services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation.

C. *Authority for administrative rulings.* The director may issue and disseminate to service suppliers, which are subject to the tax collection requirements of this chapter, one or more administrative rulings identifying those telecommunications services, or charges therefore, that are subject to or not subject to the telecommunications users tax.

D. *Specific inclusions in telecommunications services.* As used in this section, telecommunications services shall include, but are not limited to, charges for: connection, reconnection, termination, movement, or change of telecommunications services; late payment fees; detailed billing; central office and custom calling features (including but not limited to call waiting, call forwarding, caller identification and three-way calling); voice mail and other messaging services; directory assistance; access and line charges; universal service charges; regulatory, administrative and other cost recovery charges; local number portability charges; and text and instant messaging.

E. *Certain exclusions from telecommunications services.* As used in this section, telecommunications services shall not include digital downloads that are not Ancillary telecommunication services, such as music, ringtones, games, and similar digital products.

F. *Multi-jurisdictional taxation.* To prevent actual multi-jurisdictional taxation of telecommunications services subject to tax under this chapter, any service user, upon proof to the director that the service user has previously paid the same tax in another state or local jurisdiction on such telecommunications services, shall be allowed a credit against the tax imposed to the extent of the amount of such tax legally imposed in such other state or local jurisdiction; provided, however, the amount of credit shall not exceed the tax owed to the city under this chapter.

G. *Collection of tax by service supplier.* The tax on telecommunications services imposed by this chapter shall be collected from the service user by the service supplier. The amount of tax collected in

one (1) month shall be remitted by the service supplier to the director, and must be received by the director on or before the twenty-fifth (25th) day of the following month.

H. *Quarterly remittance of tax by service supplier.*

1. A service supplier may elect to remit the taxes to the director on a quarterly basis if the annual amount of taxes collected is less than one hundred thousand dollars (\$100,000.00).

2. A service supplier who qualifies under this subsection is not authorized to remit taxes on a quarterly basis until it has first completed the necessary application forms provided by the director and the director has approved the service supplier's application for quarterly remittance.

3. A service supplier authorized to remit taxes on a quarterly basis shall do so on or before the twenty-fifth (25th) day of the month following the end of a calendar quarter.

(2008 Measure K)

4.70.700 Refunds.

A. *Filing claim.*

1. Any tax imposed by this chapter, including any interest or penalty added thereto, may be refunded by the director as provided in Subsections B and C of this section whenever such tax has been:

a. Overpaid;

b. Paid more than once; or

c. Erroneously or illegally collected or received by the city, including any instance where a service supplier, pursuant to an order by the California Public Utilities Commission or a court of competent jurisdiction, refunds to its service users taxes paid on refunded charges.

2. No refund shall be paid by the director unless a written claim for refund is filed with the director, and the provisions of Chapter 4.82 are satisfied.

B. *Refund or credit to service supplier.* A service supplier may obtain a refund of or take as a credit against taxes remitted any amount overpaid, paid more than once, or erroneously, or illegally collected or received by the city by filing a claim in the manner provided in Subsection A. The director shall not grant a refund or a credit to a service supplier unless the service supplier has refunded the tax to the service user or credited the tax to charges subsequently payable by the service user.

C. *Refund to service user.* A service user may obtain a refund of any tax, interest or penalty by filing a claim in the manner provided in Subsection A when:

1. The service user was required to remit directly to the director a tax imposed by this chapter and the service user establishes to the satisfaction of the director that the amount was overpaid, paid more than once, or erroneously, or illegally collected; or

2. The service user establishes that the amount was overpaid, paid more than once, or erroneously or illegally collected and has paid the tax to the service supplier but is unable to obtain a refund or credit from the service supplier who collected the tax.

(2008 Measure K)

San Jose, CA Code of Ordinances

**Chapter 4.82
TAX REFUND CLAIMS PROCEDURES**

Parts:

- 1 Authority and Application
- 2 Definitions
- 3 Presentation and Processing of Tax Refund Claims

**Part 1
AUTHORITY AND APPLICATION**

Sections:

- 4.82.010 Authority.
- 4.82.020 Application.

4.82.010 Authority.

This chapter is enacted pursuant to Section 935 of the California Government Code.

(Ord. 27787.)

4.82.020 Application.

Except for tax refund claims governed by Chapter 4.79 or other provisions of this Code and tax refund claims governed by state law, the provisions of this chapter shall apply to claims for the refund of taxes imposed by the city.

(Ord. 27787.)

**Part 2
DEFINITIONS**

Sections:

- 4.82.200 Definitions.
- 4.82.210 Director.

4.82.200 Definitions.

The definitions set forth in this part shall govern the application and interpretation of this chapter.

(Ord. 27787.)

4.82.210 Director.

"Director" means the city official charged with the responsibility under this Code for the administration of the tax for which a refund is claimed.

(Ord. 27787.)

**Part 3
PRESENTATION AND PROCESSING OF TAX REFUND CLAIMS**

Sections:

- 4.82.300 Claims required.
- 4.82.305 Payment of disputed amount required.
- 4.82.310 Form of claim.
- 4.82.320 City action on claims.
- 4.82.330 Claim prerequisite to suit.
- 4.82.340 Suit.

4.82.300 Claims required.

A. All tax refund claims, including claims for interest or penalties paid in connection with the payment of a tax, shall be presented to the director within one year of the date of payment, and, except as modified by this chapter, in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this chapter.

B. References in this chapter to specific sections of the California Government Code shall refer to those provisions as they now exist or shall hereafter be amended.

(Ord. 27787.)

4.82.305 Payment of disputed amount required.

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the city or an officer thereof, to prevent or enjoin the collection of taxes sought to be collected pursuant to this code, and payment of all tax, interest and penalties shall be required as a condition precedent to seeking judicial review of any tax liability.

(Ord. 29145.)

4.82.310 Form of claim.

A. All tax refund claims shall be made in writing and verified by the claimant or by his or her guardian, conservator, executor or administrator. Any claim filed on behalf of more than one person shall be verified by each person on behalf of whom the claim is filed or by his or her guardian, conservator, executor or administrator.

B. All tax refund claims shall be filed on the refund claim form prescribed by the director. In the event that the director has not prescribed a form of claim, the tax refund claim shall contain:

1. the information required by California Government Code Section 910; and
2. the specific amount claimed to have been overpaid, paid more than once, or erroneously or illegally collected or received by the city; and
3. the grounds upon which the claim is founded, with specificity sufficient to enable the director and other responsible city officials to understand and evaluate the claim; and
4. documentation supporting the amount of the refund sought.

(Ord. 27787.)

4.82.320 City action on claims.

A. Tax refund claims shall be acted upon by the director within the time and, except as modified by this Chapter, in the manner prescribed by Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with Section 900 thereof) for the claims to which that part applies by its own terms, as those provisions now exist or shall hereafter be amended, and as further provided by this chapter.

B. The director is authorized to allow, compromise or settle a tax refund claim if the claimant has demonstrated that all or a portion of the amount claimed has been overpaid, paid more than once, or has been erroneously or illegally collected or received by the city and the amount to be paid pursuant to the allowance, compromise or settlement is in an amount not to exceed twenty-five thousand dollars (\$25,000.00); and with the written approval of the city attorney, if the amount to be paid exceeds twenty-five thousand dollars (\$25,000.00), but is no more than fifty thousand dollars (\$50,000.00). In the event that the amount to be paid pursuant to an allowance, compromise or settlement of a tax refund claim exceeds fifty Thousand dollars (\$50,000.00), the approval of the city council is required.

(Ord. 27787.)

4.82.330 Claim prerequisite to suit.

In accordance with California Government Code Sections 935(b) and 945.6, no action against the city may be maintained by a person who has not complied with applicable claims presentation requirements.

(Ord. 27787.)

4.82.340 Suit.

Any action brought against the city upon any claim or demand shall conform to the requirements of Section 940 through and including Section 949 of the California Government Code. Any action brought against any employee of the City shall conform to the requirements of Section 950 through and including Section 951 of the California Government Code.

Sacramento City Code

Title 3 REVENUE AND FINANCE

Chapter 3.28 UNIFORM TRANSIENT OCCUPANCY TAX

3.28.030 Tax imposed—Generally.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of six percent of the rent charged by the operator. On and after August 1, 1976, said tax shall be in the amount of seven percent of such rent. Such tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the assessor-collector may require that such tax be paid directly to the assessor-collector. (Prior code § 41.04.023)

Sacramento City Code

Title 3 REVENUE AND FINANCE

Chapter 3.28 UNIFORM TRANSIENT OCCUPANCY TAX

3.28.150 Refunds.

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter it may be refunded as provided in subsections B and C of this section, provided that a claim in writing therefor is presented in accordance with the provisions of Section 3.04.070 within one year of the date of payment.

B. An operator may request a refund for the amount overpaid, paid more than once or erroneously or illegally collected or received, by establishing a right to a refund. In lieu of refunding an overpayment, the assessor-collector may allow the operator a credit of equal value to be applied against taxes to be remitted by the operator in the future. However, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city, but only if it is established that the tax was not owed. If the transient has paid the tax to the operator the transient may obtain a refund of the overpayment only if the transient establishes that he or she has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement thereto. (Ord. 2010-036 § 5; prior code § 41.04.032)

Sacramento City Code

Title 3 REVENUE AND FINANCE Chapter 3.32 UTILITY USER TAX

3.32.030 Communications user tax.

A. There is imposed a tax upon every person with a billing or service address in the city, other than a public agency, who uses intrastate, interstate or international communications services, to the maximum extent permitted by state and federal law. The tax imposed by this section shall be at the rate of seven percent of the charges for such services and shall be paid by the person paying for such services.

B. The following words and phrases whenever used in this section shall be construed as defined herein:

1. "Ancillary telecommunications services" means services that are associated with or incidental to the provision, use or enjoyment of communications services, including, but not limited to, the following services: conference bridging service, detailed telecommunications billing service, directory assistance service, vertical service and voice mail service.

2. "Communications services" means the transmission, conveyance, or routing of voice, audio, video, data or any other communications information or signals to a point, or between or among points, whatever the technology used, and whether or not that information is transmitted through interconnected service with the public switched network, or through fiber optic, coaxial cable, power line transmission, broadband connections or technologies, digital subscriber line or other wired technology or any wireless transmission. The term "communications services" includes transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether those services are referred to as voice over Internet protocol (VoIP) services or are classified by the Federal Communications Commission as enhanced or value added, and includes video or data services that are functionally integrated with communications services. Communications services include but are not limited to the following services, regardless of the manner or basis on which those services are calculated or billed: central office and custom calling features (including, but not limited to, call waiting, call forwarding, caller identification and three-way calling); local number portability; text messaging; instant messaging; ancillary telecommunications services; prepaid and post-paid telecommunications services (including, but not limited to, prepaid calling cards); mobile telecommunications services; private communications services, paging services; video services; 800 service (or any other toll-free numbers designated by the Federal Communications Commission); and 900 service (or any other similar numbers designated by the Federal Communications Commission for services whereby subscribers call in to pre-recorded or live service). Communications services does not include either digital downloads such as e-mail or digital products such as books, music, ringtones, games and similar digital products, or that portion of cable or video television services subject to a cable or video television franchise fee.

3. "Communications user tax" means the tax imposed by this section.

4. "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

5. "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

6. "Directory assistance service" means an ancillary service of providing telephone number information or address information.

7. "Mobile telecommunications services" shall have the same meaning and usage as set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124) and the regulations thereunder.

8. "Private communications services" means any dedicated communications services that entitle the user to the exclusive or priority use of communications channels.

9. "Tax administrator" means the director of finance of the city of Sacramento or his or her designee.

10. "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

11. "Video programming" means those programming services commonly provided to subscribers by a video service supplier including, but not limited to, basic services, premium services, audio services, video games, pay-per-view services, video on demand, origination programming, or any other similar services, regardless of the content of such video programming, or the technology used to deliver such services, and regardless of the manner or basis on which such services are calculated or billed.

12. "Video services" means video programming and any and all services related to the providing, recording, delivering, use or enjoyment of video programming (including origination programming and programming using Internet protocol, e.g., IP-TV and IP-Video) using one or more channels by a video service supplier, regardless of the technology used to deliver, store or provide such services, and regardless of the manner or basis on which such services are calculated or billed, and includes ancillary video services, data services, telecommunication services, or interactive communications services that are functionally integrated with video services.

13. "Video service supplier" means any person that provides or sells one or more channels of video programming, or provides or sells the capability to receive one or more channels of video programming, including any telecommunications that are ancillary, necessary or common to the provision, use or enjoyment of the video programming, to or from a business or residential address in the city, where some fee is paid, whether directly or included in dues or rental charges for that service, whether or not public rights-of-way are utilized in the delivery of the video programming or telecommunications. A video service supplier includes, but is not limited to, multi-channel video programming distributors (as defined in 47 U.S.C. Section 522(13)); open video systems (OVS) suppliers; and suppliers of cable television; master antenna television; satellite master antenna television; multi-channel multipoint distribution services (MMDS); video services using Internet protocol (e.g., IP-TV and IP-Video), that provide, among other things, broadcasting and video on demand, direct broadcast satellite to the extent federal law permits taxation of its video services, now or in the future; and other suppliers of video services (including two-way communications), whatever their technology.

14. "Voice mail service" means an ancillary service that enables the customer to store, send or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have to utilize the voice mail service.

C. The tax imposed in this section shall be collected from the service user by the person providing the intrastate, interstate or international communication services. The amount of tax collected in one month shall be remitted to the city collector on or before the last day of the following month. The amount on which the tax is based shall be the sum of all charges for such services included in the bill; except that if a non-taxable service and a taxable service are billed together under a single charge, the entire charge shall be deemed taxable unless the service supplier or service user reasonably identifies actual charges for services not subject to tax. The service supplier or service

user seeking a reduction has the burden of proving the proper valuation and apportionment of taxable and nontaxable charges based upon books and records that are kept in the regular course of business and in a manner consistent with generally accepted accounting principles.

D. Charges subject to the communications user tax include all amounts billed to the service user for communications services, unless such charge is otherwise exempt from the tax as provided in this section or under state or federal law. Such charges include but are not limited to the following: connection, reconnection, termination, movement, or change of communications services; late payment fees; detailed billing; voice mail service and other messaging services; directory assistance service; access and line charges; universal service charges; and regulatory, administrative and other cost recovery charges.

E. Mobile telecommunications services shall be sourced in accordance with the sourcing rules set forth in the Mobile Telecommunications Sourcing Act (4 U.S.C. Section 124). The tax administrator may issue and disseminate to service suppliers who are subject to the tax collection requirements of this section, sourcing rules for the taxation of other communications service, including, but not limited to, prepaid communications services, postpaid communications services, and private communications services, provided that such rules are based upon custom and common practice that further administrative efficiency and minimize multi-jurisdictional taxation. The tax administrator may also issue and disseminate to communications services suppliers who are subject to the tax collection requirements of this section, an administrative ruling identifying those communications services, or charges therefor, that are subject to the tax of subsection A. This administrative ruling shall not impose a new tax, revise an existing tax methodology as stated in this section, or increase an existing tax, except as allowed by California Government Code Section 53750(h)(2)(A).

F. The following shall be exempt from any tax imposed by this section:

1. News Services. No tax shall be imposed under this section, except with respect to local telephone service, on any payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to such person.

2. International Organizations. No tax shall be imposed under this section on any payment received for services furnished to a public international organization in which the United States participates pursuant to treaty or Act of Congress, or to the American National Red Cross.

3. Servicemen and Women in Combat Zone. No tax shall be imposed under this section on any payment received for any communications services which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, as defined in and determined under Section 112 of Title 26 of the United States Code.

4. Items Otherwise Taxed. Only one payment of tax under this section shall be required with respect to the tax on any communications services.

5. Common Carriers and Communications Companies. No tax shall be imposed under this section on the amount paid for any communications services described in this section, to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

6. Nonprofit Hospitals. No tax shall be imposed under this section on any amount paid by a nonprofit hospital for communications services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in Section 170(b)(1)(A)(iii) of Title 26 of the United States Code, that is exempt from federal income tax under Section 501(a) of Title 26 of the United States Code.

7. Exemption for Nonprofit Educational Organizations. No tax shall be imposed under this section on any amount paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization described in Section 170(b)(1)(A)(ii) of Title 26 of the United States Code, that is exempt from federal income tax under Section 501(a) of Title 26 of the United States Code, including a school operated as an activity of an organization described in Section 501(c)(3) of Title 26 of the United States Code that is exempt from federal income tax under Section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

G. To prevent actual multiple taxation of communications services that are subject to tax under this section, any service user, upon proof that the service user owed and has paid a tax in another taxing jurisdiction on the communications services, shall be allowed a credit against the tax imposed in subsection A to the extent of the amount of the tax properly due and paid in the other taxing jurisdiction. However, no credit may be allowed for any

tax paid to

another taxing jurisdiction on any communications services to the extent that the communications services may not, under the Constitution and statutes of the United States, be made the subject of taxation by the other taxing jurisdiction. Nor shall the amount of credit exceed the tax owed to the city under this section.

H. For purposes of imposing a tax or establishing a duty to collect and remit a tax under this section, “substantial nexus” and “minimum contacts” shall be construed broadly in favor of the imposition, collection and/or remittance of the communications user tax to the fullest extent permitted by state and federal law, and as it may change from time to time by judicial interpretation or by statutory enactment. Any communications services used by a person with a service or billing address in the city shall be subject to a rebuttable presumption that “substantial nexus/ minimum contacts” exists for purposes of imposing a tax, or establishing a duty to collect and remit a tax, under this section. For communications services for which there is no billing address or primary physical location for the provision of services, the service address shall mean the point of sale of the services.

I. Amendment or Repeal. The communications user tax imposed by this section may be decreased, repealed or amended by the city council, but may not be increased without a vote of the people as required in California Constitution Article XIII C and California Government Code Section 53750(h).

J. Audit of Communications User Tax. The city shall annually audit the communications user taxes imposed by this section to verify that tax revenues have been properly expended in accordance with the law. The annual audit shall be performed under the direction of the director of finance by a qualified independent third party employing reasonable, cost-effective procedures. (Ord. 2008-036 § 3; Ord. 2006-054 § 2; prior code § 41.06.052)

Sacramento City Code

Title 3 REVENUE AND FINANCE Chapter 3.32 UTILITY USER TAX

3.32.160 Refunds.

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city collector under this chapter, it may be refunded as provided in subsections B and C of this section, provided that a claim in writing therefor is presented in accordance with the provisions of Section 3.04.070 within one year of the date of payment.

B. A person required to collect and remit taxes imposed under this chapter may request a refund for the amount overpaid, paid more than once or erroneously or illegally collected or received by establishing a right to a refund. In lieu of refunding an overpayment, the city collector may allow such person a credit of equal value to be applied against taxes to be remitted in the future. However, neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit.

C. A person who is a service user may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city, but only if it is established that the tax was not owed. If the person has paid the tax to the service supplier, the person may obtain a refund of the overpayment only if the person establishes that he or she has been unable to obtain a refund from the service supplier who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement thereto. (Ord. 2010-036 § 7; prior code § 41.06.061)

Sacramento City Code

Title 3 REVENUE AND FINANCE

Chapter 3.04 FISCAL PROVISIONS GENERALLY

3.04.070 Claims.

A. Claims Generally.

1. No claim for money or damages shall be made against the city unless a written claim is presented in accordance with this section, including claims that are required to be presented or that are exempt from presentation under the Government Claims Act (Government Code Section 900 et seq.).
2. Every claim shall be signed by the claimant under penalty of perjury and shall state the dollar amount claimed and the specific grounds upon which the claim is founded.
3. Except as provided otherwise in subsection C of this section, all claims shall be presented to the city clerk and shall be submitted in accordance with this section and the Government Claims Act. Claims shall be presented to the city clerk within the time limits prescribed by Government Code Section 911.2. For purposes of determining whether a claim is timely presented, a claim is presented to the city clerk when it is received in the office of the city clerk.
4. A claim shall be submitted on the claim form furnished by the city. A claim may be returned if it was not presented using the proper form.
5. Where there is a conflict between the provisions of the Government Claims Act and this section, the provisions of this section shall apply.

B. Tax Refund Claims. In addition to the presentation requirements set forth in subsection A of this section, tax refund claims shall be subject to the presentation requirements set forth in this subsection and to any other legal requirements or conditions stated in applicable tax refund provisions in this title. Every tax refund claim shall be signed under penalty of perjury, stating: (1) the specific amount claimed to have been overpaid or paid more than once, or erroneously or illegally collected or received by the city; (2) the tax period at issue; and (3) the grounds upon which the claim is founded, with specificity sufficient to enable city officials to understand and evaluate the claim. A tax refund claim shall be signed by the taxpayer or, if applicable, the person obligated to remit the tax, or such person's guardian or conservator. No agent, including the taxpayer's attorney, may sign a tax refund claim. Class claims for tax refunds shall not be permitted. A tax refund claim shall be filed on the tax refund claim form furnished by the city. A claim may be returned if it was not presented using the proper form.

C. Retirement System Claims. Applications or claims for money or benefits under the Sacramento city employees' retirement system shall be filed with the retirement system manager in accordance with Chapter 2.124 of this code.

D. Claims Exempt from Presentation. No claim need be presented for the following types of claims:

1. Claims described in Government Code Section 905(b) (claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any law relating to liens of mechanics, laborers, or materialmen).
2. Claims described in Government Code Section 905(c) (claims by public employees for fees, salaries, wages, mileage, or other expenses and allowances).
3. Claims described in Government Code Section 905(d) (claims for which the workers' compensation authorized by Division 4 (commencing with Section 3200) of the Labor Code is the exclusive remedy).
4. Claims described in Government Code Section 905(e) (applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance

programs, and claims for goods services, provisions, or other assistance rendered for or on behalf of any recipient of any form of public assistance).

5. Claims described in Government Code Section 905(j) (claims arising under any provision of the Unemployment Insurance Code, including, but not limited to, claims for money or benefits, or for refunds or credits of employer or worker contributions, penalties, or interest, or for refunds to workers of deductions from wages in excess of the amount prescribed).

6. Claims described in Government Code Section 905(k) (claims for the recovery of penalties or forfeitures made pursuant to Article 1 (commencing with Section 1720) of Chapter 1 of Part 7 of Division 2 of the Labor Code).

7. Requests for the return of unused money deposited with the city as a security for a particular purpose.

8. Requests for the return of unused development impact fees and other similar fees paid to the city which are governed by limitations and procedures under other provisions of this code.

9. Requests for the return of money made in response to a notice initiated by the city; provided, however, if the amount to be paid is in dispute, a claim must be presented in accordance with this section as a prerequisite to filing a lawsuit.

10. Requests for the return of parking citation penalties made pursuant to the procedures under Chapter 10.56 of this code.

E. Exhaustion of Administrative Remedies.

1. Lawsuits Generally. Unless exempt from the claims presentation requirement as provided in subsection D of this section, no suit for money or damages may be brought against the city or any officer, employee, board, commission or authority of the city until:

a. A written claim therefor has been presented in accordance with this section and has been rejected by the city or deemed to have been rejected; and

b. The claimant has exhausted all administrative remedies applicable to the claim.

2. Lawsuits for Tax Relief. No suit for a tax refund or for injunctive relief to prevent or enjoin the collection of taxes may be brought against the city or any officer, employee, board, commission or authority of the city until:

a. The disputed tax, interest and penalties owing have been first paid to the city;

b. A claim for refund has been presented by the claimant in accordance with this section and the city has rejected the claim or the claim is deemed to have been rejected; and

c. The claimant has exhausted all administrative remedies applicable to the claim.

F. Lawsuits for Retirement System Claims. No suit for money or damages may be brought against the Sacramento city employees' retirement system or the retirement hearing commission of the city for benefits claimed payable pursuant to Article XVII of the Sacramento City Charter until: (1) a written claim therefor has been presented to the retirement system manager in accordance with Chapter 2.124 of this code and has been acted upon by the retirement system manager; and (2) the claimant has exhausted all administrative remedies available under Chapter 2.124. The limitation periods provided in Section 2.124.2330 shall apply for lawsuits filed pursuant to Chapter 2.124.

G. Limitation Period. Except as provided otherwise in subsection F of this section, the limitation periods set forth in the Government Claims Act shall govern all claims presented and lawsuits filed under this section unless a longer limitation period is provided for such claim under this code, in which case the longer limitation period shall apply. Under no circumstances shall any longer limitation periods apply, whether based in law or equity. (Ord. 2010-036 § 2; prior code § 64.04.400)

4.24.030 - Tax imposed.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eleven (11) percent of the rent charged by the operator. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such a tax shall be paid directly to the Tax Administrator.

(Ord. 11629 1, 1993: prior code § 5-20.03)

4.24.120 - Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once or has been erroneously or illegally collected or received by the city under this chapter, it may be refunded as provided in subsections B and C of this section, provided a claim in writing therefor, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Tax Administrator within three years of the date of payment. The claim shall be on forms furnished by the Tax Administrator.
- B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, or erroneously or illegally collected or received; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- C. A transient may obtain a refund of taxes overpaid or erroneously or illegally collected or received by the city by filing a claim in the manner provided in subsection A of this section, but only when the tax was paid by the transient directly to the Tax Administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the Tax Administrator that the transient cannot obtain a refund from the operator who collected the tax and remitted it to the city.
- D. No refund shall be paid under the provisions of this section unless the claimant establishes to the satisfaction of the Tax Administrator his or her right thereto by written records showing entitlement thereto.

(Prior code § 5-20.12)

4.28.030 - Telephone users tax imposed.

- A. There is imposed a tax upon every person, other than a telephone corporation, using telephone communication services including, but not limited to, cellular telephones and facsimile transmissions, whose place of primary use is within the city of Oakland. The tax imposed by this section shall be at the rate of seven and one-half (7.5%) percent of all charges made for such services and shall be paid by the person using such services, and collected by the provider of such services.
- B. The following shall be exempt from the tax imposed by this section:
1. Charges paid for by inserting coins in coin-operated telephones available to the public with respect to local telephone service, or with respect to long distance telephone service if the charge for such long distance telephone service is less than twenty-five (25) cents; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax.
 2. Except with respect to local telephone service, any charges for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, or a news ticker service furnishing a general news service similar to that of the public press, or by means of radio broadcasting, if the charge for such service is billed in writing to a person engaged in such activity.
 3. Charges for services furnished to an international organization or to the American National Red Cross.
 4. Charges for any long distance telephone service which originates within a combat zone, as defined in section 112 of the Internal Revenue Code, from a member of the Armed Forces of the United States performing service in such combat zone, as determined under such section, provided a certificate setting forth such facts as the Secretary of the U.S. Treasury may by regulations prescribe is furnished to the person receiving such payment.
 5. Charges for any long distance telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.
 6. Amounts paid by a nonprofit hospital for services furnished to such organization. For purposes of this subsection, the term "nonprofit hospital" means a hospital referred to in Internal Revenue Code section 170(b)(1)(A)(iii) which is exempt from income tax under Internal Revenue Code section 501 (a).
 7. Charges for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.
 8. Charges paid by a nonprofit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "nonprofit educational organization" means an educational organization described in Internal Revenue Code section 170(b)(1)(A)(ii) which is exempt from income tax under Internal Revenue Code section 501 (a). The term also includes a school operated as an activity of an organization described in Internal Revenue Code section 501(c)(3) which is exempt from income tax under Internal Revenue Code section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of

pupils or students in attendance at the place where its educational activities are regularly carried on. (Res. 81107 § 3, 2008; Ord. 12844 § 2, 2008; amended by: Stats. March 2004; prior code § 5-23.03)

4.28.180 - Refund to the service user of taxes, penalties and/or interest erroneously or illegally collected.

Whenever the city or utility service supplier erroneously or illegally collected or received an overpayment of tax, penalties or interest under this chapter, the city may refund to the service user the amount of the tax that was overpaid if the service user or his or her guardian, conservator, executor or administrator files a written claim with the Tax Administrator within one year from the date the tax was paid. All claims must specify the specific grounds for the claim, and shall be made and verified by the service user. No other agent, including the taxpayer's attorney, may sign a refund claim. No claim may be filed on behalf of a class of persons unless each class member verifies the claim in accordance with the requirements of this section.

(Ord. 12805 § 3. 2007)

SEC. 502. IMPOSITION AND RATE OF TAX.

There shall be paid a tax of eight percentum on the rent for every occupancy of a guest room in a hotel in the City and County.

(Amended by Ord. 251-78, App. 6/1/78; Ord. 19-98, App. 1/16/98)

SEC. 6.15-1. REFUNDS.

(a) Except as otherwise provided in subdivision (c) below, the Controller shall refund or cause to be refunded the amount of any tax, interest or penalty that has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City, provided the person that paid such amount files with the Controller, within the later of 1 year of payment of such amount or when the return accompanying such payment was due, a verified claim in writing therefor, stating under penalty of perjury: (i) the specific amount claimed to have overpaid or paid more than once, or erroneously or illegally collected or received by the City, (ii) the tax periods at issue, and (iii) the grounds upon which the claim is founded, with specificity sufficient to enable the Tax Collector and other responsible City officials to understand and evaluate the claim. The Controller shall enter the claim in the claim register, and shall forthwith forward it to the City Attorney. If the City Attorney determines the claim is insufficient, the City Attorney shall give the claimant written notice of how the claim is insufficient, stating with particularity the defects or omissions therein. The City Attorney shall send the claimant that notice within 20 days after the claimant presents the claim. The City Attorney may reject any and all claims the Controller forwards to the City Attorney, and shall notify the claimant of such rejection. Allowance or compromise and settlement of claims under this Section in excess of \$25,000 shall require the written approval of the City Attorney and approval of the Board of Supervisors by resolution. The City Attorney may allow or compromise and settle such claims if the amount is \$25,000 or less. No claim may be paid until the Controller certifies that monies are available from the proper funds or appropriations to pay the claim as allowed or as compromised and settled. For purposes of this Section, a claim shall be deemed to accrue on the later of the date the return was due or the tax was paid.

(b) The claim shall be on a form furnished by the Controller. A claim may be returned to the person if it was not presented using the form. A refund claim may be made only by the taxpayer or other person determined to be liable for the tax or said person's guardian or conservator. No other agent, including the taxpayer's attorney, may sign a refund claim. Class claims for refunds shall not be permitted. The customer who pays a third-party tax to an operator is the proper party to seek the refund of a disputed third-party tax. No operator or other person responsible for collecting or remitting a disputed third-party tax may obtain a tax refund unless that operator or other person has paid the tax to the Tax Collector pursuant to a deficiency determination or a jeopardy determination in which case the operator or other person who paid the tax, and not the individual customer, may seek a refund. If the claim is approved as set forth in subsection (a) above, the excess amount collected or paid may be refunded or may be credited on any amount due and payable, from the person from whom it was collected or by whom paid and the balance may be refunded to such person, his administrator or executors.

(c) The City Attorney, in his or her discretion and upon good cause shown, prior to the expiration of the 1-year limitations period, may waive the requirement set forth in subdivision (a) above that a taxpayer file a written verified claim for a refund in any case in which the Tax Collector and City Attorney determine on the basis of other evidence that (i) an amount of tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the City, and (ii) all other conditions precedent to the payment of a refund to the taxpayer have been satisfied.

(d) The City Attorney shall allow, reject or otherwise act upon a claim for refund in a manner specified in Government Code Section 912.6 within 45 days after it is presented to the Controller. If the claim is amended, the City Attorney shall act on the amended claim within 45 days after the amended claim is presented. The claimant may agree in writing to extend the period within which the City Attorney must act on the claim for refund prior to expiration of the original 45-day period. The claimant may deem the claim for refund denied and seek judicial relief if the City Attorney does not act upon the claim within the 45-day period, or such extended period to which the claimant has agreed.

(e) The Tax Collector may authorize the Controller to refund tax payments, without a refund claim having been filed, without the need for a refund claim, and without review by the City Attorney, if the Tax Collector determines:

(i) the tax was paid more than once; or

(ii) the amount paid exceeds the amount due as a result of an arithmetic or clerical error. The Tax Collector may authorize such a refund no later than 1 year after payment of the tax.

(Added by Ord. 18-98, App. 1/16/98; amended by Ord. 92-99, File No. 990302, App. 4/30/99; Ord. 57-00, File No. 000183, App. 4/7/2000; Ord. 26-04, File No. 031990, App. 2/19/2004; Ord. 291-10, File No. 101099, App. 11/18/2010)

SEC. 6.15-2. REFUNDS; INTEREST.

(a) Any amounts refunded shall bear interest at the rate of $\frac{2}{3}$ of 1 percent per month or fraction thereof, or the average rate of interest computed over the preceding 6-month period obtained, by the San Francisco Treasurer on deposits of public funds at the time refund is made, whichever rate is lower, and shall be computed from the date of payment to the date of refund.

(b) If the Controller offsets overpayments for a period or periods against underpayments for another period or periods, against penalties or against interest on the underpayments, the taxpayer will be credited with interest on the amount so applied at the rate of interest set forth above, computed from the date of payment.

(c) If a taxpayer chooses to apply all or part of a refund against a San Francisco tax liability for a future period, the taxpayer will not be credited with interest on the amount so applied.

(Added by Ord. 18-98, App. 1/16/98; amended by Ord. 26-04, File No. 031990, App. 2/19/2004; Ord. 291-10, File No. 101099, App. 11/18/2010)

SEC. 6.15-3. REFUNDS; NOTICE OF DENIAL.

If the claim for refund is denied, the City Attorney shall serve or cause to be served notice of such denial upon the taxpayer personally or by mail. The notice of denial of such claim shall be in a form substantially similar to the form for notice of rejection of claims set forth in Government Code Section 913. If the City Attorney does not serve such a notice of denial of claim, then the statute of limitations for filing a suit for refund shall be as set forth in Section 6.15-4.

(Added by Ord. 18-98, App. 1/16/98; amended by Ord. 26-04, File No. 031990, App. 2/19/2004; Ord. 291-10, File No. 101099, App.

**SEC. 6.15-4. EXHAUSTION OF ADMINISTRATIVE REMEDIES;
PRESENTATION OF CLAIM FOR REFUND AS PREREQUISITE TO SUIT;
PAYMENT OF DISPUTED AMOUNT AND PETITION FOR REFUND;
LIMITATIONS.**

(a) Persons claiming they are aggrieved under the Business and Tax Regulations Code must prior to seeking judicial relief: (1) pay the amount of the disputed tax, penalty and interest; (2) if the disputed tax was paid pursuant to the Tax Collector's jeopardy determination or deficiency determination, file a petition for redetermination, pursuant to Section 6.12-5 or Section 6.13-1; and (3) present a claim for refund to the Controller and allow action to be taken on such claim, pursuant to Section 6.15-1.

(b) Any suit for tax refund shall be commenced no later than 6 months from the date the notice of denial of the claim for refund was personally delivered or deposited in the mail, or within 2 years of accrual of the cause of action if notice of denial of the claim for refund is not served on the person as set forth in Section 6.15-3. Persons claiming they are aggrieved under the Business and Tax Regulations Code may not seek any type of judicial relief other than a refund action. Notwithstanding any other section of this Code, no claim or defense that, for any reason, a tax is not due or cannot be applied under this Code may be raised in any judicial proceeding except as specified in the preceding sentence.

(Added by Ord. 26-04, File No. 031990, App. 2/19/2004; Ord. 291-10, File No. 101099, App. 11/18/2010)

(8-2009)

“Transient” means any Person who exercises Occupancy, or is entitled to Occupancy, by reason of concession, permit, right of access, license, or other agreement for a period of less than one (1) month. A month is defined as the period of consecutive days from the first calendar day of Occupancy in any month to the same calendar day in the next month following, or the last day of the next month following if no corresponding calendar day exists.
(Amended 6-1-1999 by O-18650 N.S.)

§35.0103 Tax Imposed

For the privilege of Occupancy in any Hotel located in The City of San Diego, each Transient is subject to and shall pay a tax in the amount of six percent (6%) of the Rent charged by the Operator.
(Amended 6-20-1994 by O-18078 N.S.)

§35.0104 Additional Tax Imposed

Notwithstanding the tax imposed by Section 35.0103 and in addition thereto, commencing on January 1, 1985 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.
(Amended 6-20-1994 by O-18078 N.S.)

§35.0105 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103 or 35.0104 and in addition thereto, commencing on August 1, 1988 for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.
(Amended 6-20-1994 by O-18078 N.S.)

§35.0106 Additional Tax Imposed

Notwithstanding the tax imposed by Sections 35.0103, 35.0104 or 35.0105 and in addition thereto, commencing on June 1, 1989, for the privilege of Occupancy in any Hotel, each Transient is subject to and shall pay an additional tax in the amount of one percent (1%) of the Rent charged by the Operator.
(Amended 6-20-1994 by O-18078 N.S.)

§35.0122 Refunds

- (a) Whenever the amount of any tax or penalty has been overpaid, paid more than once or has been erroneously or illegally collected or erroneously received by the City under this article, the overpayment may be refunded provided a claim in writing under penalty of perjury stating the specific grounds upon which the claim is founded is filed with the City Treasurer within three years of the date of payment. The claim shall be on forms available from the City Treasurer.
- (b) An operator may claim a refund or take as a credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the City Treasurer that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.
- (c) A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the City by filing a claim in the manner provided in subparagraph (a) of this section, but only when the transient having paid the tax to the operator establishes to the satisfaction of the City Treasurer that the transient has been unable to obtain a refund from the operator who collected the tax.
- (d) An operator who has remitted an amount in excess of the amount required to be paid by this article may receive a credit to the extent of the excess. If the excess is discovered as a result of an audit by the City, no claim need be filed by the operator. Such credit, if approved by the Treasurer, shall be applied to any deficiency found or any further tax payments due under the rules prescribed by the Treasurer.
- (e) No refund shall be paid under the provisions of this section unless the claimant establishes his right thereto by written records showing entitlement thereto.

("Refunds" renumbered from Sec. 35.0112 and amended 4-17-1989 by O-17278 N.S.)

SEC. 7-603. - TAX IMPOSED.

For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount designated in the Master Fee Resolution. Said tax constitutes a debt owed by the transient to the city which is extinguished only by payment to the operator or to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. Any unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the Tax Administrator may require that such tax shall be paid directly to him. (Rep. and Added Ord. 6457, 1964, based on former Secs. 4-602, 4-603; Am. Ord. 67-42, 1967; Am. Ord. 73-74, § 1, eff. 7-1-73; Am. Ord. 82-127, § 1, eff. 12-24-82).

SEC. 7-613. - REFUNDS.

Whenever the amount of any tax, penalty, or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this ordinance, it may be refunded provided a verified claim in writing therefor, stating the specific ground upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator the excess amount collected or paid may be refunded or may be credited on any amounts then due and payable from the person from whom it was collected or by whom paid and the balance may be refunded to such person, his administrators or executors. (Rep. and Added Ord. 6457, 1964, based on former Sec. 4-614(f)).

CERTIFICATE OF SERVICE

I, Kimberly Nielsen, the undersigned, declare:

1. That declarant is and was, at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of 18 years, and not a party to or interested in the within action; that declarant's business address is 300 South Grand Avenue, Suite 2700, Los Angeles, California 90071.

2. That on November 14, 2012, declarant served the **CITY OF LONG BEACH'S NOTICE OF MOTION AND MOTION FOR JUDICIAL NOTICE IN SUPPORT OF ITS REPLY BRIEF** via U.S. Mail in a sealed envelope fully prepaid and addressed to the parties listed on the attached Service List.

3. That there is regular communication between the parties.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of November, 2012, at Los Angeles, California.

COLANTUONO & LEVIN, PC

By: 
Kimberly Nielsen

McWilliams v. City of Long Beach, et al.

Case No. S202037

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McWilliams v. City of Long Beach, et al.
Case No. S202037
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