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ELECTRONICALLY
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Superior Court of California, County of San Francisco
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Clerk of the Court
BY: JAMES FORONDA
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

CITY AND COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

CGC-24-612603

AIRBNB, INC., a Delaware Corporation, Plaintiff, v. CITY AND COUNTY OF SAN FRANCISCO; JOSÉ CISNEROS, TREASURER AND TAX COLLECTOR OF THE CITY AND COUNTY OF SAN FRANCISCO, and DOES 1 through 50, Defendants.	Case No.______________________ VERIFIED COMPLAINT FOR REFUND OF SAN FRANCISCO TAX

Plaintiff Airbnb, Inc. ("Airbnb" or "Plaintiff") in accordance with California Government Code ("Gov. Code") § 945.6 and San Francisco Business and Tax Regulations Code ("SF Tax Code") §§ 6.15-1 through 6.15-4, hereby files this Verified Complaint for Refund of Tax ("Complaint"). This Complaint constitutes an appeal of the denial of claims for refund of tax paid by Plaintiff to the City and County of San Francisco ("City").

Plaintiff states and alleges as follows:

PARTIES

1. Plaintiff at all times mentioned herein was a corporation organized and existing under the laws of the State of Delaware. Plaintiff is headquartered at 888 Brannan Street, Suite 600, San Francisco, CA 94103.
2. Defendant City is a political subdivision of the State of California. The City is a "local government" as defined in the California Constitution, Article XIIIC, § 1(b).
3. Defendant José Cisneros ("Treasurer"), at all times relevant herein, was the Treasurer of the City and head of the Office of the Treasurer and Tax Collector of the City. He is sued in his official capacity only.
4. The true names and capacities, whether individual, corporate, or otherwise, of Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues such defendants by fictitious names. Plaintiff will amend this Complaint to allege the Doe defendants' true names and capacities once they are ascertained.

JURISDICTION AND VENUE

5. Jurisdiction is vested in this Court under Gov. Code §§ 940 *et seq.*
6. Venue is proper in this Court pursuant to California Code of Civil Procedure § 394.

BASIS OF THE ACTION

7. Plaintiff brings this action in accordance with Gov. Code § 945 *et seq.* and SF Tax Code §§ 6.15-1 through 6.15-4. This is an action for refund of San Francisco Gross Receipts Tax ("GRT"), Homelessness Gross Receipts Tax ("HGRT"), and Payroll Expense Tax ("PET") paid by Plaintiff to Defendants pursuant to the SF Tax Code for the tax period January 1, 2019 through December 31, 2019 (hereinafter "2019").

8. After filing its 2019 GRT, HGRT, and PET returns ("Original 2019 Tax Returns"), Plaintiff secured additional data which showed that it had overstated the amount of payroll compensation attributable to San Francisco which, in turn, caused it to overpay its taxes.
9. The lawsuit seeks a refund of that overpayment of taxes.

BACKGROUND

10. Plaintiff is a San Francisco-based company and has employees throughout the United States and throughout the world. Many of its employees who are assigned to the San Francisco office perform significant portions of their work outside of San Francisco.
11. Plaintiff timely filed its Original 2019 Tax Returns and timely paid the taxes due per those returns.
12. A critical component of computing a taxpayer's GRT, HGRT, and PET is compensation (i.e., payroll) paid to employees for services performed in San Francisco. For purposes of the GRT and the HGRT, the taxpayer computes a "Payroll Factor" which is a "fraction, the numerator of which is payroll in the City and the denominator of which is combined payroll." Tax Code § 956.2(a). The Payroll Factor is multiplied by the applicable tax base as part of the determination of the portion of the tax base the City is permitted to tax.
13. When it was in effect, the PET tax base was effectively compensation paid to employees for services performed in San Francisco. Former Tax Code § 902.1(a). (The PET was repealed effective January 1, 2022.)
14. Thus, if the taxpayer's compensation paid to employees for services performed in the City decreased, its GRT, HGRT, and PET all would decrease as well.
15. After filing its Original 2019 Tax Returns, Plaintiff secured more data which showed that it had overstated its compensation paid to employees for services performed in the City, and thus had overstated and overpaid its GRT, HGRT, and PET.
16. Specifically, the Plaintiff's 2019 tax returns included compensation for all employees who were assigned to its San Francisco office; however, some of those employees performed some of their work outside of San Francisco. With the new data, Plaintiff was able to

quantify compensation that was improperly included in compensation paid to employees for services performed in San Francisco because actually it was paid for services performed outside of San Francisco.

17. Due to the overstatement of compensation paid to employees for services performed in San Francisco, the Payroll Factor for purposes of the GRT and HGRT, and the tax base for purposes of the PET, were overstated in the Original 2019 Tax Returns.

18. When the change was made to compensation paid to employees for services performed in San Francisco, it was determined that Plaintiff had overpaid 2019 GRT, HGRT, and PET in the amounts of $384,455, $404,689, and $131,569, respectively, for a total of $920,713.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

19. On February 25, 2021, pursuant to SF Tax Code § 6.15-1(g), Airbnb filed requests for 2019 GRT, HGRT, and PET refunds with the San Francisco Treasurer and Tax Collector in the amounts of $384,455, $404,689, and $131,569, respectively, for a total of $920,713 (the "Requests for Refund").

20. The Requests for Refund were deemed denied by operation of law on February 25, 2022 pursuant to SF Tax Code § 6.15-1(g).

21. By letter dated March 2, 2022, Greg Kato, Compliance Director for the Office of the Treasurer and Tax Collector for San Francisco confirmed that Plaintiff's Requests for Refund were deemed denied.

22. On February 22, 2023, pursuant to Gov. Code §§ 910 *et seq.* and SF Tax Code §§ 6.15-1 *et seq.*, Plaintiff filed claims for refund with the San Francisco Controller of the 2019 GRT, HGRT, and PET in the amounts of $384,455, $404,689, and $131,569, respectively, for a total of $920,713 ("Claims for Refund").

23. Defendants did not respond to, or deny, the Claims for Refund in writing.

24. Defendants did not provide notification of any insufficiency of the Claims for Refund pursuant to the California Government Code or the San Francisco Municipal Code. *See* Gov. Code § 911.

25. Defendants have confirmed in writing that they agree with the adjustments to compensation for services performed in San Francisco as reflected in the Requests for Refund and Claims for Refund.

26. However, Defendants have not paid the claimed refunds to Plaintiff. Instead, Defendants accepted the adjusted compensation for services performed in San Francisco as reflected in the Requests for Refund and Claims for Refund when they issued a Notice of Tax Audit Deficiency for 2019 ("Notice") on or about February 23, 2023; and, they credited the overpayment of tax shown on the Requests for Refund and Claims for Refund against the total tax due per the Notice.

27. Plaintiff disagreed with other positions taken by Defendants in the Notice. Therefore, Pursuant to SF Tax Code § 6.13-1, Plaintiff appealed the Notice by filing a timely Petition for Redetermination.

28. Airbnb has exhausted all administrative remedies relevant to this lawsuit. *See* SF Tax Code § 6.15-3.

CAUSE OF ACTION

ACTION FOR REFUND OF SAN FRANCISCO TAX

29. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 through 28 above.

30. Plaintiff's 2019 GRT, HGRT, and PET must be computed using the adjusted compensation for services performed in San Francisco as reflected in the Requests for Refund and Claims for Refund, which entitles Plaintiff to refunds of 2019 GRT, HGRT, and PET in the amounts of $384,455, $404,689, and $131,569, respectively, for a total of $920,713.

31. Therefore, Plaintiff is entitled to be paid the amount of the refunds set forth in the Claims for Refund.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

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1. For a refund of 2019 GRT, HGRT, and PET in the amounts of $384,455, $404,689, and $131,569, respectively, for a total of $920,713, or such other amounts as the evidence may show, plus interest from the date of payment as provided by law;
2. For Plaintiff's attorneys' fees and costs of suit as permitted by law; and
3. For such other and further legal and equitable relief as the Court deems just and reasonable.

Dated: February 23, 2024

SILVERSTEIN & POMERANTZ LLP

By:______________________________

Amy Silverstein
Attorneys for Plaintiff
Airbnb, Inc.

VERIFICATION

I, Mirei Yasumatsu, have read the foregoing Verified Complaint for Refund of San Francisco Tax and know the contents thereof. I am informed and believe that the information contained in said document is true, and on that ground I allege that the information stated therein is true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 23rd day of February, 2024, in San Francisco, California.

Airbnb, Inc.

By: Mirei Yasumatsu

Mirei Yasumatsu
Vice President, Global Tax
Airbnb, Inc.