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11 UBER TECHNOLOGIES, INC.

**ELECTRONICALLY
FILED**

*Superior Court of California,
County of San Francisco*

08/02/2024
Clerk of the Court
BY: SHENEQUA GLADNEY
Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 CITY AND COUNTY OF SAN FRANCISCO

14 UNLIMITED JURISDICTION

CGC-24-616956

15 UBER TECHNOLOGIES, INC.,

Case No. _____

16 Plaintiff,

17 v.

**VERIFIED COMPLAINT FOR REFUND OF
SAN FRANCISCO TAX**

18 CITY AND COUNTY OF SAN
19 FRANCISCO, and DOES 1 through 50,

20 Defendants.

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1 Plaintiff Uber Technologies, Inc. (“Uber” or “Plaintiff”), in accordance with Gov.
2 Code § 945.6 and San Francisco Business and Tax Regulations Code (“B&TC”) §§ 6.15-1
3 through 6.15-4, hereby files this Complaint for Refund of San Francisco Tax (“Complaint”). This
4 Complaint constitutes an appeal of the denial of claims for refund of gross receipts tax paid by
5 Plaintiff to the City and County of San Francisco.

6 Plaintiff states and alleges as follows:

7 **PARTIES**

- 8 1. Plaintiff at all times mentioned herein was a corporation organized and existing under the
9 laws of the State of Delaware. Plaintiff is headquartered at 1725 3rd Street, San Francisco,
10 CA 94158.
- 11 2. Defendant City and County of San Francisco (“City”) is a political subdivision of the State
12 of California. The City is a “local government” as defined in the California Constitution,
13 Article XIII C, § 1(b). The tax at issue in this case is administered by the Office of the
14 Treasurer and Tax Collector of the City, a subdivision of the City.
- 15 3. The true names and capacities, whether individual, corporate, or otherwise, of Does 1
16 through 50, inclusive, are unknown to Plaintiff, who therefore sues such defendants by
17 fictitious names. Plaintiff will amend this Complaint to allege the Doe defendants’ true
18 names and capacities once they are ascertained.

19 **JURISDICTION AND VENUE**

- 20 4. Jurisdiction is vested in this Court under Gov. Code § 940 *et seq.*
21 5. Venue is proper in this Court pursuant to Civ. Proc. Code § 394.

22 **BASIS OF THE ACTION**

- 23 6. Plaintiff brings this action in accordance with Gov. Code § 945 *et seq.* and B&TC §§ 6.15-1
24 through 6.15-4. This is an action for refund of San Francisco Gross Receipts Tax (“GRT”) and
25 Homelessness Gross Receipts Tax (“HGRT”) (collectively “SFGRT”) paid under
26 protest by Plaintiff to Defendants pursuant to the B&TC for the tax period January 1, 2022,
27 through December 31, 2022 (hereinafter “2022”).
28

1 7. Plaintiff is entitled to a tax refund because it overpaid its 2022 taxes by at least
2 \$18,750,433.49.

3 **FACTS¹**

- 4 8. Plaintiff is a technology company that creates and licenses internet-based applications.
- 5 9. Plaintiff is based in San Francisco, home to a community of technology companies which
6 have established the City as one of the world’s leading technology and innovation hubs.
7 Plaintiff competes with these companies for talent and capital.
- 8 10. Plaintiff has offices throughout the United States and in Canada, Asia, Latin America,
9 Europe, the Middle East, and Africa. Plaintiff’s applications are used in thousands of cities
10 nationwide and internationally.
- 11 11. Plaintiff’s internet-based applications, created and maintained by Plaintiff’s engineer-heavy
12 employee-base, connect persons seeking to provide personal transportation services
13 (“Drivers”) with persons seeking personal transportation services (“Riders”), and connect
14 persons selling prepared food, groceries, or other items (“Merchants”) with persons desiring
15 to purchase such items (“Eaters”), and with persons seeking to provide delivery services
16 (“Couriers”).
- 17 12. Plaintiff does not provide transportation or delivery services. Plaintiff does not prepare or
18 sell food, groceries, or other items.
- 19 13. Drivers and Couriers use Plaintiff’s “Driver App” to get leads to potential Riders and
20 Eaters. Riders use Plaintiff’s “Uber App” to find Drivers to provide transportation, and
21 Eaters use Plaintiff’s “UberEats App” to find Couriers to deliver items that they order from
22 Merchants. The Driver App, Uber App, and UberEats App are collectively referred to herein
23 as “Uber Apps.”
- 24 14. Use of the Uber Apps by Drivers, Couriers, Riders, and Eaters is governed by agreements.
25 Those agreements require Drivers and Couriers to pay a fee (“Service Fee”) to Plaintiff for
26 using Uber Apps for lead generation and related services such as mapping and routing

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28 1 All facts and figures relate to the 2022 year unless otherwise noted.

1 software, and payment processing, all of which make Drivers' and Couriers' work more
2 convenient and more profitable.

3 15. Drivers and Couriers operate their own businesses.

4 16. Drivers and Couriers are independent contractors.

5 17. Drivers and Couriers are not employees or agents of Plaintiff.

6 18. Drivers and Couriers use their own vehicles or other modes of transportation (collectively
7 "vehicles") to provide the transportation and delivery services at issue.

8 19. Drivers and Couriers are responsible for the storage of their vehicles. Drivers and Couriers
9 are responsible for the maintenance of their vehicles. Drivers and Couriers (using
10 automobiles for delivery) are required to have personal auto insurance on their vehicles.

11 20. Drivers and Couriers have freedom in how they perform their transportation and delivery
12 services. For example, Plaintiff does not control the path Drivers or Couriers take to
13 complete a ride or a delivery; Plaintiff does not control the hours a Driver or Courier works.
14 Plaintiff does not control the ride or delivery requests a Driver or Courier accepts or does
15 not accept; Plaintiff does not control the number of rides or deliveries a Driver or Courier
16 provides in any given period of time; and, Plaintiff does not control Drivers' or Couriers'
17 use of competitor marketplaces.

18 21. Drivers and Couriers charge a fare ("Fare") to Riders and Eaters for transportation and
19 delivery services, respectively.

20 22. Plaintiff has no ownership rights over the Fares paid by Riders and Eaters under the
21 agreements with Drivers and Couriers, or otherwise.

22 23. Plaintiff or its affiliates, as an intermediary and third-party settlement organization, collects
23 the Fare from the Riders and Eaters on behalf of the Drivers and Couriers. Drivers and
24 Couriers agree to "appoint [Uber] as [their] limited payment collection agent solely for the
25 purpose of accepting the Fare...via the payment processing functionality facilitated by the
26 Uber Services" from Riders and Eaters. Drivers and Couriers further agree that the payment
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1 made by the Rider or Eater to Plaintiff is “treated the same as payment made directly” by
2 the Rider or Eater to the Driver or Courier.

3 24. After Plaintiff or its affiliates collect the Fare, the entire amount is transferred into a
4 segregated bank account for the benefit of (“FBO”) the relevant Driver or Courier; and then
5 Plaintiff remits the Fare to the relevant Driver or Courier.

6 25. The Fares are not income to Plaintiff for federal income tax purposes, and Plaintiff does not
7 report them as gross receipts for federal or California tax return purposes on its federal or
8 California income tax returns. On its federal and California income tax returns, Plaintiff has
9 consistently reported only Service Fees (and not Fares paid to Drivers and Couriers) as its
10 gross income.²

11 26. The Internal Revenue Service (“IRS”) audited Plaintiff’s income tax returns for tax years
12 2013 and 2014, and 2017 and 2018. The California Franchise Tax Board (“FTB”) audited
13 Plaintiff’s income tax returns for tax years 2012 and 2013. Each of those audits spanned
14 approximately 3 years. At the conclusion of each of those audits, the IRS or FTB (as
15 applicable) accepted Plaintiff’s reporting of only Service Fees (and not Fares) as gross
16 income.

17 27. Since its founding, Plaintiff has consistently reported only Service Fees (and not Fares) as
18 revenue for Securities and Exchange Commission (“SEC”) purposes. As required by law,
19 with every one of those filings, Plaintiff’s officers certified the accuracy of its contents.

20 28. The SEC has reviewed Plaintiff’s reporting of revenues at least three times and did not
21 object to Plaintiff’s reporting each time.³ Prior to its Initial Public Offering (“IPO”),
22 Plaintiff twice informed the SEC of its intent to report only Service Fees (and not Fares),
23 and twice the SEC did not object to the position. Since the IPO, in every Annual Report to
24 date, including 2019 and 2020, Plaintiff continued to report only Service Fees (and not
25

26 ² Plaintiff reported operational income in addition to Service Fees for federal, California, and City
27 tax purposes that is not at issue in this case.

28 ³ The SEC reviews all 10-Ks once every three years. 15 U.S.C. § 7266.

1 Fares).⁴ In 2023, the SEC inquired about Plaintiff’s reporting of revenues for 2020 and
2 2022, and again did not object to Plaintiff’s reporting of only Service Fees (and not Fares).

3 29. Plaintiff’s annual reports explain the rationale for reporting revenues on a net basis, which is
4 the same rationale that the SEC did not object to each time it reviewed Plaintiff’s reporting.
5 Plaintiff’s 2022 10-K states:⁵ “Judgment is required in determining whether we are the
6 principal or agent in transactions with Drivers, [Couriers], Merchants and end-users. We
7 evaluate the presentation of revenue on a gross or net basis based on whether we control the
8 service provided to the end-user and are the principal (*i.e.* “gross”), or we arrange for other
9 parties to provide the service to the end-user and are an agent (*i.e.* “net”) . . . In the vast
10 majority of transactions with end-users, we act as an agent of the Driver or Merchant by
11 connecting end-users seeking Mobility and Delivery services with Drivers, [Couriers], and
12 Merchants looking to provide these services. Drivers, [Couriers], and Merchants are our
13 customers and pay us a service fee for each successfully completed transaction with end-
14 users. Accordingly, we recognize revenue on a net basis, representing the fee we expect to
15 receive in exchange for us providing the service to Drivers, [Couriers], and Merchants.”

16 30. The SEC is the United States federal agency responsible for protecting investors. The
17 purpose of requiring public companies to report revenue is for investors to have a clear and
18 accurate understanding of the health of the company. If a company such as Plaintiff reported
19 revenues that reflected not only its own activities but also the activities of Drivers and
20 Couriers, the resulting picture of its operations would be distorted, confusing, and
21 misleading to the public. Thus, the SEC not objecting to Plaintiff’s reporting only Services
22 Fees (and not Fares) is conclusive that Plaintiff receives Fares only as an agent of the
23 Drivers and Couriers and the Fares are not Plaintiff’s revenues.

24 31. The technology underlying the Uber Apps is complex and proprietary.

25 _____
26 ⁴ See Uber Technologies, Inc., 2019 Annual Report (Form 10-K) 92-93 (Mar. 2, 2020); Uber
27 Technologies, Inc., 2020 Annual Report (Form 10-K) 99–101 (Mar. 1, 2021); see also Uber
28 Technologies, Inc., 2021 Annual Report (Form 10-K) 87-89 (Feb. 24, 2022).

⁵ Uber Technologies, Inc., 2022 Annual Report (Form 10-K) 86-88 (Feb. 21, 2023).

1 32. Plaintiff's production processes are primarily focused on the development and operation of
2 proprietary technology applications.

3 33. Software developed and used by Plaintiff includes proprietary marketplace, routing, and
4 payments technologies.

5 34. Plaintiff heavily invests in research and development.

6 35. Plaintiff heavily invests in recruiting, training, and hiring talented software engineers to
7 develop sophisticated software-based products and related hardware.

8 36. Excluding sales and marketing, legal, finance, facilities, IT, human resources departments
9 and the executive assistant teams (hereinafter referred to as "overhead"), the vast majority
10 of Plaintiff's employees are either software engineers or employees supporting them.

11 37. Excluding overhead, the vast majority of Plaintiff's total operating expenses are for
12 designing, engineering and producing software and related hardware products.

13 **PROCEDURAL BACKGROUND AND**
14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 38. Plaintiff timely filed its San Francisco SFGRT returns for 2022 ("Original Tax Returns")
16 and timely paid the taxes due per those returns.

17 39. On its Original Tax Returns, Plaintiff computed its tax liability under the business activity
18 classification of B&TC § 953.2(c) (transportation).

19 40. On its Original Tax Returns, Plaintiff reported Services Fees and Fares as taxable gross
20 receipts.

21 41. On March 31, 2023, Plaintiff filed timely claims for refund of 2022 SFGRT pursuant to Cal.
22 Gov. Code §§ 910 *et seq.* and B&TC §§ 6.15-1 *et seq.* ("Claims for Refund"). For purposes
23 of those Claims for Refund, Plaintiff removed the Fares from taxable gross receipts. The
24 total amount of the refund claims is \$18,750,433.49, including a refund of GRT of
25 \$9,846,872.90 and HGRT of \$8,903,560.59.

26 42. Among other things, the Claims for Refund are based on the grounds that the Fares are not
27 taxable gross receipts and that Plaintiff should be taxed under the business activity
28 classification of B&TC § 953.2(3) (information).

- 1 43. On behalf of Merchants, Plaintiff collects the full charge for prepared food, groceries, and
2 other items ordered from a Merchant (“Merchant Charges”), from Eaters, and remits the
3 Merchant Charges to the Merchant, just as Plaintiff does with the Fares charged by Drivers
4 and Couriers. Merchant charges are not at issue in this lawsuit. On its Original Tax Returns,
5 Plaintiff did not include the Merchant Charges in gross receipts for SFGRT purposes. The
6 City agrees that Merchant Charges are not includible in Plaintiff’s taxable gross receipts.
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8 44. Defendants did not respond to, or deny, the Claims for Refund in writing.
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10 45. Defendants did not provide notification of any insufficiency of the Claim for Refunds
11 pursuant to the California Government Code or the San Francisco Municipal Code. *See*
12 *Gov. Code § 911.*
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14 46. Plaintiff has exhausted all administrative remedies relevant to this lawsuit. *See* B&TC §
15 6.15-3.

13 CAUSE OF ACTION

14 ACTION FOR REFUND OF SAN FRANCISCO GROSS RECEIPTS TAX

- 15 47. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1
16 through 46 above.

17 **Plaintiff may be taxed only on its Service Fees**

- 18 48. Plaintiff is properly taxable only on Service Fees. The Fares collected on behalf of, and
19 remitted to, Drivers and Couriers are not taxable gross receipts. (Again, the City agrees that
20 the analogous Merchant Charges are not taxable.)
21
22 49. A taxpayer’s gross receipts for SFGRT purposes are the same as its gross income for federal
23 tax purposes, as reported on line 1a of the federal Form 1120. B&TC § 952.3(a) provides:
24 “Gross receipts” means the total amounts received or accrued by a person from
25 whatever source derived. . . . gross receipts includes but is not limited to **all**
26 **amounts that constitute gross income for federal income tax purposes. . . .**
27 Gross receipts, including advance payments, shall be included in a taxpayer’s
28 gross receipts **at the time such receipts are recognized as gross income for**
federal income tax reporting purposes.
(Emphasis added.)

1 50. This definition expressly incorporates federal gross income (as indicated by the bold
2 highlighting above). It also uses the same terms to describe taxable gross receipts as the
3 federal definition of gross income, *i.e.*, Internal Revenue Code (“IRC”) § 61. By its express
4 terms and its interpretation, IRC § 61 casts the broadest possible net for the meaning of
5 gross income: “Except as otherwise provided in this subtitle, gross income means all income
6 from whatever source derived . . .”.

7 51. The reference in B&TC § 952.3(a) to “at the time such receipts are recognized for federal
8 income tax reporting purposes,” further confirms that SFGRT gross receipts and federal
9 gross income are coincident, and furthermore that the timing for federal tax purposes is also
10 incorporated into the SFGRT.

11 52. Under both its federal and San Francisco definition, gross receipts/income excludes amounts
12 received by a person as an agent for another person. *See* San Francisco Tax Collector
13 Regulation 2014-3; *McGaugh v. Comm’r*, T.C. Memo. 2016-28, at *10 (2016); *Lashells’*
14 *Estate v. Commissioner*, 208 F.2d 430 (6th Cir. 1953).

15 53. Thus, the B&TC incorporates federal gross income into its definition of taxable gross
16 receipts, and there is a complete overlap of the federal and San Francisco definitions,
17 including the agency concept, with San Francisco’s definition of gross receipts.

18 54. Plaintiff does not, and is not required to, recognize Fares as gross income for federal income
19 tax purposes.

20 55. Fares cannot be Plaintiff’s gross receipts under the SFGRT in 2022, or any other year,
21 because Plaintiff did not recognize, and was not required to recognize, Fares for federal
22 income tax reporting in 2022, or any other year.

23 56. Fares also cannot be Plaintiff’s gross receipts under the SFGRT in 2022, or any other year,
24 because they are not Plaintiff’s revenues for SEC reporting purposes.

25 57. The Fares collected on behalf of, and remitted to, Drivers and Couriers, also are not
26 Plaintiff’s gross receipts because, among other reasons, Drivers and Couriers are not agents
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1 or employees of Plaintiff; rather Plaintiff is a limited payment collection agent for the
2 purpose of accepting the Fares from Riders and Eaters.

3 58. Therefore, Plaintiff is taxable only on its Service Fees and is entitled to a refund of its
4 overpayment of tax.

5 **Plaintiff is Entitled to Relief Under B&TC § 957**

6 59. B&TC § 957 provides, “[t]he Tax Collector may, in his or her reasonable discretion,
7 independently establish a person’s gross receipts within the City and establish or reallocate
8 gross receipts among related entities so as to fairly reflect the gross receipts within the City
9 of all persons.”

10 60. The Fares are earned by Drivers and Couriers for providing transportation services to Riders
11 and Eaters. Plaintiff collects the Fares from Riders and Eaters on behalf of Drivers and
12 Couriers and then remits them to Drivers and Couriers. Assuming the Fares were included
13 in Plaintiff’s taxable gross receipts, a fair reflection of Plaintiff’s gross receipts within the
14 City would require the Drivers’ and Couriers’ activities responsible for earning the Fares to
15 be reflected and represented in Plaintiff’s apportionment formula (*i.e.*, factor
16 representation).

17 61. Thus, assuming the Fares were included in Plaintiff’s taxable gross receipts, Defendants
18 must use B&TC § 957 to apply an alternative apportionment formula to compute Plaintiff’s
19 SFGRT liability.

20 62. That apportionment formula must give representation to the Drivers’ and Couriers’
21 activities responsible for earning the Fares.

22 **The City’s Tax as Applied to Plaintiff is Unconstitutional**
23 **(Commerce Clause and Due Process)**

24 63. Article I, § 8 of the U.S. Constitution (hereinafter the “Commerce Clause”) requires that
25 state and local taxes be fairly apportioned. Fair apportionment includes the requirement that
26 the apportionment formula be externally consistent. Utilizing an externally consistent
27 apportionment formula ensures that the taxing jurisdiction does not tax extraterritorial
28 values.

1 64. The U.S. and California Constitutions incorporate the same requirement through their due
2 process clauses. The Fourteenth Amendment to the U.S. Constitution provides that no State
3 shall “deprive any person of life, liberty, or property, without due process of law.” Article 1,
4 § 7 of the California Constitution provides, “[a] person may not be deprived of life, liberty,
5 or property without due process of law or denied equal protection of the laws.”

6 65. Assuming the Fares were included in Plaintiff’s taxable gross receipts, and Defendants did
7 not apply an alternative apportionment formula under B&TC § 957 to compute Plaintiff’s
8 SFGRT liability, the SFGRT would not be fairly apportioned or externally consistent and it
9 would tax extraterritorial values.

10 66. In that case the SFGRT, on its face and as applied to Plaintiff, would violate the Commerce
11 Clause of the U.S. Constitution and the Due Process Clauses of the U.S. and California
12 Constitutions, entitling Plaintiff to a refund.

13 **Plaintiff must be Taxed under B&TC Section 953.2(d)**

14 67. B&TC § 953(a) provides, “[a] person’s liability for the gross receipts tax shall be calculated
15 according to Sections 953.1 through 953.7.” “Person” is defined to include a “corporation.”
16 B&TC §§ 952 and 6.2-15.

17 68. B&TC § 953.2(d) provides, “[i]nformation includes producing and distributing information
18 or cultural products; providing the means to transmit or distribute those products; and
19 processing data; it includes business activity described in NAICS code 51.”

20 69. NAICS is an acronym for the North American Industry Classification System. *See* B&TC §
21 952.4 (“NAICS code’ means the numerical classification for business activities established
22 in the North American Industry Classification System used by federal governmental
23 agencies to classify business establishments; references in this Article to particular
24 numerical NAICS codes are intended to apply the definitions and descriptions adopted in
25 that system as of the effective date of this Article.”).

26 70. NAICS is a “production-oriented” business activity classification system, which focuses on
27 the inputs and production processes of industries to classify business activities.
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71. This is in contrast to the North American Products Classification System, which is a market-based system for the classification of goods and services.

72. By analyzing Plaintiff's inputs and production processes, whether through operating expenses, headcount, or otherwise, most of Plaintiff's activities are properly classified in NAICS code 51.

73. Plaintiff's production processes are primarily focused on the development and production of software. Excluding overhead, the vast majority of Plaintiff's employees are either software engineers or employees supporting them. Excluding overhead, the vast majority of Plaintiff's total operating expenses are for developing and producing software and related hardware products.

74. Plaintiff does not provide transportation, and its business activities are not properly classified in NAICS codes 48 or 49. Therefore, Plaintiff may not be taxed under B&TC § 953.2(c).

75. Plaintiff's business activities for purposes of the B&TC must be classified in NAICS code 51 and taxed under B&TC § 953.2(d), and Plaintiff is entitled to a refund for the full amount requested in its Claims for Refund.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For a refund of SFGRT paid by Plaintiff for 2022 in the total amount of \$18,750,433.49, or such other amount 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

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3. For such other and further legal and equitable relief as the Court deems just and reasonable.

Dated: August 2, 2024

SILVERSTEIN & POMERANTZ LLP



By: _____

Amy Silverstein
Attorneys for Plaintiff
Uber Technologies, Inc.

1 **VERIFICATION**

2

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

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

9 Executed this 2nd day of August, 2024, in **Dallas, Texas**.

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11 Uber Technologies, Inc.

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13 By: 

14 Corey Donaway
15 Sr. Manager, Indirect Tax
16 Uber Technologies, Inc.

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