



*California State Board of Equalization,
Legislative Division*

LEGISLATIVE BULLETIN

**SALES TAX LEGISLATION
2002**

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Assembly Bill 7 (Thomson) Chapter 330
Transactions and Use Taxes - City of Davis

Effective January 1, 2003. Adds Chapter 3.6 (commencing with Section 7290) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

BILL SUMMARY

This measure authorizes the City of Davis, subject to either a two-thirds or majority voter approval, depending on how the revenues will be spent, to levy a transactions and use tax at a rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent.

Sponsor: *City of Davis*

LAW PRIOR TO AMENDMENT

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The tax rate is fixed at $1\frac{1}{4}$ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the $1\frac{1}{4}$ percent local tax.

Under the Bradley-Burns Law, the $\frac{1}{4}$ percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed $1\frac{1}{4}$ percent.

Under the existing **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under all sections of the Transactions and Use Tax Law, the maximum allowable combined rate of transactions and use taxes levied in any county may not exceed $1\frac{1}{2}$ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed $1\frac{3}{4}$ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for specific purposes with the approval of two-thirds of

the voters. Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon two-thirds voter approval. Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of $\frac{1}{8}$ or $\frac{1}{4}$ percent for purposes of funding public libraries, upon two-thirds voter approval.

In addition to county authorization to levy a tax, through specific legislation, some cities and towns have received authorization to impose a transactions and use tax. The following cities/towns are so authorized: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its sphere of influence), Lakeport, Madera, North Lake Tahoe (within boundaries established in legislation), Placerville, Sebastopol, Town of Truckee, West Sacramento, Woodland, and the Town of Yucca Valley (the cities of Avalon, Calexico, Clearlake, Placerville, the Town of Truckee, and Woodland are currently imposing a tax). The City of Fresno and its sphere of influence had imposed a tax for the period 7/1/93 through 3/21/96, however, this tax ceased to be operative, as it was declared unconstitutional in *Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority* (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

The City of Davis is located in Yolo County. Currently, neither the City of Davis nor the County of Yolo, impose a transactions and use tax. However, the City of Woodland located in Yolo County imposes a transactions and use tax at a rate of $\frac{1}{2}$ percent, for a total tax rate of 7.75 percent. Under the Bradley-Burns Law, Davis imposes a sales and use tax rate of 1.0 percent, which is credited against Yolo County's one percent rate. Therefore, the current state and local tax rate throughout all of Yolo County, with the exception of the City of Woodland, is 7.25 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

AMENDMENT

This measure adds Chapter 3.6 (commencing with Section 7290) to Part 1.7 of Division 2 of the Revenue and Taxation Code to authorize the City of Davis to impose a transactions and use tax at a rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent, upon two-thirds approval of the city council, and either a two-thirds or a majority vote of qualified voters of the city voting in an election on the issue. The ordinance proposing the tax would establish how the revenues would be expended, and therefore determine the vote requirement. The tax would be levied pursuant to existing law regarding transactions and use taxes (Part 1.6, commencing with Section 7251). This measure also includes findings and declarations that a special law is necessary because of the uniquely difficult fiscal pressures being experienced by the City of Davis in providing essential services and funding for city programs and operations.

IN GENERAL

Many special districts in California impose transactions and use taxes that are administered by the Board. In Sacramento County, for example, a transactions and use tax of 0.50 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the counties of Fresno, Nevada, Solano, and Stanislaus impose the lowest county-wide transactions and use tax rate of $\frac{1}{8}$ percent. San Francisco City and County has the highest combined county-wide transactions and use tax rate of $1\frac{1}{4}$ percent. The remaining districts impose rates in between these ranges.

BACKGROUND

There were several bills during last year's legislative session that would authorize cities or special districts to impose transactions and use taxes. The Board took a neutral position on each of these bills.

AB 863 (Ch. 263, Stats. 2001) authorizes the City of West Sacramento, subject to two-thirds or majority voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent.

SB 685 (Ch. 474, Stats. 2001) authorizes the Fresno County Transportation Authority, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{2}$ percent for an additional 30 years to finance regional transportation improvements.

SB 1186 (Ch. 292, Stats. 2001) modifies the vote requirement for the existing City of Sebastopol transactions and use tax authority from a two-thirds to a majority approval by voters.

SB 1187 (Ch. 285, Stats. 2001) authorizes Fresno County to establish a special purpose authority for the support of zoos, zoological facilities, and related zoological purposes in Fresno County and may impose a transactions and use tax of 0.10 percent, subject to two-thirds voter approval, to fund those purposes.

COMMENTS

1. **Purpose.** To enable the city to raise additional revenue for general purposes.
2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. A retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, a retailer was affected competitively. Many retailers

advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, fifteen cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

3. **Multiplicity of tax rates is gaining national attention.** The Streamlined Sales Tax Project is a nationwide effort to simplify sales and use taxes in all states. Congress is currently reviewing this and other sales tax simplification efforts. Some proposals would expand states' rights to impose a use tax collection duty in exchange for certain simplifications, including the imposition of a single statewide sales and use tax rate. Allowing more cities to impose transactions and use taxes moves California away from national efforts concerning sales and use tax simplicity.
4. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Bradley-Burns Uniform Local Tax Law.** There are over 470 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes exceedingly complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered (unlike the state and Bradley-Burns tax, the transactions tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district). This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.
5. **City transactions and use taxes may limit county flexibility.** The Transactions and Use Tax Law places a cap on the total transactions and use tax rate that may be levied within a county. The limit is 1½%, except in the City and County of San Francisco and the County of San Mateo, as noted previously. A city-wide transactions and use tax counts against the cap, thus limiting the fiscal options of the county.

6. **It may not be cost effective for some cities to impose a transactions and use tax.** The Board's total administrative costs are driven by the workload involved in processing returns, and are relatively fixed. The cost of administering these taxes is not directly related to the revenue generated by the tax. However, the ratio of such costs to the amount of revenue generated by a tax varies widely. Therefore, if the tax rate or volume is very low, the ratio will be high. Revenue and Taxation Code Section 7273, as amended by Chapter 890, Statutes of 1998 (AB 836, Sweeney, et al.) and again by Chapter 865, Statutes of 1999 (SB 1302, Rev & Tax Committee) requires the Board to cap administrative costs based on the lesser of the ratio during the first full year the tax is in effect, or a predetermined amount based on the tax rate and applied to the revenues generated in the taxing jurisdiction. The maximum administrative costs for a district imposing a transaction and use tax rate of one-quarter of 1 percent is capped at 3 percent, and the maximum for a rate of one-half of 1 percent is capped at 1.5 percent of the revenue generated. If the City of Davis were to impose this tax, it is not expected that the administrative costs would exceed the cap.

In some local taxing jurisdictions, administrative costs do exceed the cap. As a point of perspective, the Board's estimated 2001-02 administrative costs assessments to the existing special taxing jurisdictions range between \$4,000 (City of Avalon Municipal Hospital and Clinic) and \$6.5 million (Los Angeles Transportation Commission). Because the Board is limited in the amount it may charge special taxing jurisdictions, any shortfall that results from actual costs exceeding the amount the Board may charge would impact the General Fund. For 2001-02, it is estimated that the State General Fund will absorb \$1.5 million as a result of the cap limitations on administrative cost recovery. However, this estimate could change when the actual revenues are known.

Assembly Bill 902 (Strom-Martin) Chapter 331
Transactions and Use Taxes - Qualified Cities

Effective January 1, 2003. Adds Chapter 2.64 (commencing with Section 7286.24) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

BILL SUMMARY

This measure authorizes the cities of Clearlake, Fort Bragg, Point Arena, Ukiah, and Willits, subject two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ percent, or multiple thereof, not to exceed 1 percent, for funding of the cities' road systems.

Sponsor: Lake County and Mendocino County

LAW PRIOR TO AMENDMENT

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The tax rate is fixed at $1\frac{1}{4}$ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. As of October 1967, all counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the $1\frac{1}{4}$ percent local tax.

Under the Bradley-Burns Law, the $\frac{1}{4}$ percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed $1\frac{1}{4}$ percent.

Under the **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under all sections of the Transactions and Use Tax Law, the maximum allowable combined rate of transactions and use taxes levied in any county may not exceed $1\frac{1}{2}$ percent, with the exception of the City and County of San Francisco (Ch. 73, Stats. 1993) and the County of San Mateo (Ch. 369, Stats. 1991), whose combined rates may not exceed $1\frac{3}{4}$ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for general

purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters. Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon two-thirds voter approval. Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of $\frac{1}{8}$ or $\frac{1}{4}$ percent for purposes of funding public libraries, upon two-thirds voter approval.

As stated above, Sections 7285, 7285.5, 7286.59, and 7288.1, authorize counties to levy transactions and use taxes under specified conditions. There is no such authority for cities to impose these taxes. Any city desiring to impose a transactions and use tax must seek special enabling legislation from the California legislature.

The following cities, through specific legislation, have received authorization to impose a transactions and use tax: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its sphere of influence), Lakeport, Madera, North Lake Tahoe (within boundaries established in legislation), Placerville, Sebastopol, Truckee, West Sacramento, Woodland, and the town of Yucca Valley (the cities of Avalon, Calexico, Clearlake, Placerville, the Town of Truckee, and Woodland are currently imposing a tax). The City of Fresno (and its sphere of influence) had imposed a tax for the period 7/1/93 through 3/21/96; however, this tax ceased to be operative, as it was declared unconstitutional in *Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority* (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

As state above, the cities of Clearlake and Fort Bragg are authorized to impose a transactions and use tax. However, currently, only the City of Clearlake imposes a $\frac{1}{2}\%$ transactions and use tax. The combined state and local tax rate in the City of Clearlake is $7\frac{3}{4}\%$ percent. The combined state and local tax rate throughout Lake County, with the exception of City of Clearlake, is $7\frac{1}{4}\%$ (the City of Lakeport in Lake County is authorized to impose a transactions and use tax, but currently does not impose a transactions and use tax). Mendocino County imposes no additional countywide transactions and use tax. Therefore, the combined state and local tax rate throughout all of Mendocino County is $7\frac{1}{4}\%$.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

AMENDMENT

This measure adds Chapter 2.64 (commencing with Section 7286.24) to Part 1.7 of Division 2 of the Revenue and Taxation Code to authorize a qualified city to impose a transactions and use tax at a rate of $\frac{1}{4}$ percent, or multiple thereof, not to exceed 1 percent, upon majority approval of the city council and subsequent two-thirds voter

approval. This measure defines a “qualified city” as the City of Clearlake, the City of Fort Bragg, the City of Point Arena, the City of Ukiah, and the City of Willits. The City of Clearlake is located in Lake County. The cities of Fort Bragg, Point Arena, Ukiah, and Willits are located in Mendocino County. The net revenues derived from the proposed tax would be exclusively expended for maintenance, repair, replacement, construction, or reconstruction of the cities’ road systems. The tax would be levied pursuant to existing law regarding transactions and use taxes (Part 1.6, commencing with Section 7251). This measure also includes findings and declarations that a special law is necessary because of the uniquely difficult fiscal pressures being experienced by these cities in providing maintenance, repair, replacement, construction, and reconstruction services of these cities’ road systems.

BACKGROUND

Several bills were passed during the 2001 legislative session that authorized cities or special districts to impose transactions and use taxes. The Board took a neutral position on each of these bills.

AB 863 (Ch. 263, Stats. 2001) authorizes the City of West Sacramento to impose a transactions and use tax rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent, upon two-thirds or majority voter approval, as determined by the ordinance proposing the tax and establishing how the revenues shall be expended.

SB 685 (Ch. 474, Stats. 2001) authorizes the Fresno County Transportation Authority to continue to impose a transactions and use tax rate of $\frac{1}{2}$ percent, subject to two-thirds voter approval, for an additional 30 years to finance regional transportation improvements.

SB 1186 (Ch. 292, Stats. 2001) modifies the vote requirement for the existing City of Sebastopol transactions and use tax authority from a two-thirds to a majority approval by voters. The revenues generated by the tax are to be expended for the city’s general purposes.

SB 1187 (Ch. 285, Stats. 2001) authorizes Fresno County to establish a special purpose authority for the support of zoos, zoological facilities, and related zoological purposes in Fresno County and may impose a transactions and use tax of 0.10 percent, subject to two-thirds voter approval, to fund those purposes.

COMMENTS

1. **Purpose.** To enable the cities of Clearlake (located in Lake County) and Fort Bragg, Point Arena, Ukiah, and Willits (located in Mendocino County) to raise additional revenues for maintenance, repair, replacement, construction, and reconstruction services for the cities’ road systems.
2. **City imposed transactions and use tax limits the total transactions and use tax rate imposed within a county.** As stated above, the Transactions and Use Tax Law places a cap on the total transactions and use tax rate that may be levied within a county. The maximum allowable rate is $1\frac{1}{2}$ percent, except in the

City and County of San Francisco and the County of San Mateo, which through special legislation, may not exceed $1\frac{3}{4}$ and 2 percent, respectively. Therefore, any transactions and use tax imposed in a city counts against the $1\frac{1}{2}$ percent cap, thus limiting the transactions and use tax rate that may be imposed in a county.

Currently, Lake County and Mendocino County do not impose a county-wide transactions and use tax. However, if Lake and Mendocino counties were to impose a transactions and use tax, the rate imposed would be limited by any transactions and use tax rate imposed by the cities. Currently, the City of Clearlake imposes a transactions and use tax rate of $\frac{1}{2}$ percent. Thus, if Lake County wished to levy a transactions and use tax, it would currently be limited to levying a transactions and use tax at a rate of 1 percent.

3. **Locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. A retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, a retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, fifteen cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

4. **Multiplicity of tax rates is gaining national attention.** The Streamlined Sales Tax Project is a nationwide effort to simplify sales and use taxes in all states. Congress is currently reviewing this and other sales tax simplification efforts. Some proposals would expand states' rights to impose a use tax collection duty in exchange for certain simplifications, including the imposition of a single statewide sales and use tax rate. Allowing more cities to impose transactions and use taxes moves California away from national efforts concerning sales and use tax simplicity.

5. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Bradley-Burns Uniform Local Tax Law.** There are over 470 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes exceedingly complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered (unlike the state and Bradley-Burns tax, the transactions tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district). This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.
6. **It may not be cost effective for some cities to impose a transactions and use tax.** The Board's total administrative costs are driven by the workload involved in processing returns, and are relatively fixed. The cost of administering these taxes is not related to the revenue generated by the tax. However, the ratio of such costs to the amount of revenue generated by a tax varies widely. Therefore, if the tax rate or volume is very low, the ratio will be high. Revenue and Taxation Code Section 7273, as amended by Chapter 890, Statutes of 1998 (AB 836, Sweeney, et al.) and again by Chapter 865, Statutes of 1999 (SB 1302, Rev & Tax Committee) requires the Board to cap administrative costs based on the lesser of the ratio during the first full year the tax is in effect, or a predetermined amount based on the tax rate and applied to the revenues generated in the taxing jurisdiction. The maximum administrative costs for a district imposing a transaction and use tax rate of one-quarter of 1 percent is capped at 3 percent of the revenue generated, and the maximum for a rate of one-half or greater of 1 percent is capped at 1.5 percent.

In some local taxing jurisdictions, administrative costs do exceed the cap. As a point of perspective, the Board's estimated 2001-02 administrative costs assessments to the existing special taxing jurisdictions range between \$4,000 (City of Avalon Municipal Hospital and Clinic) and \$6.5 million (Los Angeles Transportation Commission). Because the Board is limited in the amount it may charge special taxing jurisdictions, any shortfall that results from actual costs exceeding the amount the Board may charge would impact the General Fund. For 2001-02, it is estimated that the State General Fund will absorb \$1.5 million as a result of the cap limitations on administrative cost recovery.

Assembly Bill 1458 (Kelley) Chapter 152
Offers in Compromise

Effective January 1, 2003. Adds Sections 7093.6, 9278, 50156.18 and 55046.5 to the Revenue and Taxation Code.

BILL SUMMARY

This bill contains Board of Equalization-sponsored provisions that provide the Board with the administrative authority to compromise a tax or fee debt under the Sales and Use, Use Fuel, and Underground Storage Tank Fee Laws.

Sponsor: Board of Equalization

LAW PRIOR TO AMENDMENT

Under existing administrative procedures, when a tax or fee liability is not paid by a taxpayer or feepayer when due, the Board will bill the tax or feepayer, negotiate for payments, search for the tax or feepayer's assets, and take collection actions to use the assets to satisfy the tax or fee debt. Collection actions may include manually searching records for assets, making telephone calls, or seizing and selling vehicles, vessels, or stocks. In the event of a hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the tax or fee debtor improves. However, if tax or feepayers can obtain loans or can use credit lines to pay their tax or fee debts, they are expected to do so.

If a debt remains unpaid for a number of years, and a lien has been filed and assets cannot be located, the Board may write off the debt under the Government Code (discharge from accountability). When a debt is written off, the debt is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a tax or fee debt, and interest and applicable penalties continue to accrue. The debt also remains on the tax or feepayer's credit record, impeding his or her ability to obtain credit.

Under existing law, the Board does not have the statutory authority to compromise a tax or fee debt, and instead must bring a civil action against the tax or fee debtor. Such an action requires the assistance of the Attorney General (AG). In general, an offer in compromise is a process whereby the tax or feepayer offers to pay an amount that he or she believes to be the maximum amount that can be paid within a reasonable period of time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount. Currently, taxes and fees administered by the Board may be compromised only where there is doubt as to the collectibility, and through the AG's statutory authority to obtain a judgment against the tax or feepayer to collect the amount due. After the offer is reviewed for completeness and reasonableness, the Board collects the amount offered and the review process

commences, with final approval by the Chief Counsel. A stipulated judgment is obtained followed by the filing of a satisfaction of the judgment when all terms of the agreement have been met. The court documents, which include a stipulation setting forth the terms of the compromise, are a matter of public record. In the offer in compromise process, the Board generally follows the Franchise Tax Board's (FTB) procedures and Employment Development Division's (EDD) law with respect to:

- the terms of the offer
- the process leading up to the acceptance of the offer, including high levels of review; and
- the refunding of rejected offers without interest, at the tax or feepayer's discretion.

AMENDMENT

This bill provides the Board with the administrative authority to compromise a tax or fee debt under the Sales and Use Tax law, comparable to the authority provided the FTB. For the smaller compromises (reductions in tax or fees of \$7,500 or less), the bill allows the Executive Director and Chief Counsel, jointly, to compromise the debt or delegate the authority to others within the Board. For those cases in which the reduction in tax or fee exceeds \$7,500, this bill provides that the Board, itself, has the authority to compromise the debt upon recommendation by staff. However, for those cases in which the reduction in tax or fee exceeds \$7,500, but is less than \$10,000, this bill states that the Board, by resolution, may delegate to the Executive Director and Chief Counsel, jointly, its authority to compromise the debt. The bill requires that a public record be placed on file, comparable to those required by laws governing EDD and FTB offers in compromise, as well as the Board's settlement procedures. The record is required to include a summary statement as to why the compromise would be in the best interests of the state.

COMMENTS

The FTB and EDD have the authority to administratively compromise final tax debts that are due and payable, and the processes and procedures generally are similar. However, the oversight/review provisions differ. For EDD, the criteria for a compromise and its procedures and processes are codified, and for the FTB, the codified authority is general in nature.

The benefits of this bill include:

- The existing stipulated judgment process affords the state nothing that cannot be achieved administratively through this bill. The stipulated judgment proceeding is cursory in nature, without the formality of a full judicial proceeding, and information now available to the public through the court proceedings would be on file with the Board, available to the public. This bill would remove an unnecessary (though relatively small) workload from the court system. In addition, in cases of little overall benefit to the state (compromises of \$7,500 and under) but costly for the staff to conduct court-related activities, the process

would be significantly more efficient. Additionally, because this bill would remove a non-tax or non-fee related obstacle (the court and state's costs relating to the civil action) from the offer in compromise process, it should enhance the relationship between the public and the Board. This bill makes sense from the perspective of the tax and feepayers and the state.

- Under current procedures, going through the court delays the process by many months and requires a time-consuming process for AG staff to prepare and file the pleadings and meet the court's calendar.
- This bill would streamline and expedite the offer in compromise process, which benefits the state and the tax and feepayer. Under this bill, tax or fee debtors who are the most needy can become taxpayers and feepayers, with the stigma of the debt removed. Currently, when the Board discharges these very small cases, the lien remains on record and these tax and feepayers still have the worry about a Board lien affecting their credit record and a potential collection action.
- Because under the current process the debt is reduced to a judgment, it is unclear whether the Board could administratively assess/reinstate the total unpaid amount or take collection actions in the case of misrepresentation of assets or income. If the Board were required to litigate the reinstatement of the assessment and collection thereof, enforcement generally would not be cost-effective. Therefore, there is no effective consequence for noncompliance.
- By eliminating the court proceeding, the offer in compromise process would be expedited. Greater efficiency in resolving these collection cases would be realized.
- Eliminating the court proceeding would also increase the number of tax and feepayers that could be considered under the current offer in compromise program. Tax and feepayers whose liabilities have been discharged in bankruptcy or whose liens have expired are precluded from using the current process because the Board is not able to obtain a stipulated judgment.
- Historically, compliance is maximized by effective enforcement of the law. If the tax or feepayer defaults on the terms of the compromise agreement or misrepresents his or her assets or income, this bill would provide that the Board could reinstate the entire unpaid amount, which is comparable to the FTB, EDD and Internal Revenue Service (IRS) authorities. In addition, if the facts warrant, this bill would provide for criminal penalties, which would be in conformity with the IRS and settlement sanctions.

Assembly Bill 1752 (Migden) Chapter 156
Disclosure and Posting of Board Hearing Information

Effective January 1, 2003. Amends Section 11125.1 of the Government Code.

BILL SUMMARY

This bill requires the Board of Equalization to distribute public writings, except those involving a named tax or fee payer, that pertain to a topic under consideration at a public meeting to all persons who request copies, as well as post that information on the Internet, and make the writings available for public inspection at the meeting, prior to the Board taking final action on that item.

Sponsor: Assembly Member Migden

LAW PRIOR TO AMENDMENT

Under current law, the Bagley-Keene Open Meeting Act (commencing with Government Code Section 11120) requires that meetings of state bodies be conducted openly, and that public writings pertaining to a matter subject to discussion or consideration at a public meeting be made available for public inspection. All disclosable public writings that are distributed to Board Members prior to Board meetings are made available upon request, but are not mailed to all persons who have requested notice of the hearing in writing and not all are currently placed on the Internet.

Section 11125.1 of the Government Code requires the Franchise Tax Board, prior to taking final action on any item, to 1) make available for public inspection, 2) distribute to all persons who request notice in writing, and 3) make available on the Internet, all items that are public records and distributed to its members by Franchise Tax Board staff or individual members prior to or during a meeting.

AMENDMENT

This bill amends Government Code Section 11125.1 to require that prior to the Board taking final actions on any item that does not involve named tax or fee payers, writings pertaining to that item that are public records prepared and distributed by Board staff or individual members to Board Members prior to or during a meeting, be:

- Made available for public inspection at that meeting.
- Distributed to all persons who request or have requested copies of these writings.

- Made available on the Internet.

This bill also makes conforming changes to the current information posting requirements placed on the Franchise Tax Board.

BACKGROUND

Section 11125.1 was amended by Senate Bill 445 (Ch. 670, 2000, Burton) to specifically require the Franchise Tax Board to distribute certain written public records prior to or during a Franchise Tax Board meeting. The Board of Equalization had also been included in the provisions of the bill until the Board staff gave assurances to Senator Burton's office that the information needed would be made available without the costly requirement of posting a lot of extraneous information on the Internet. Since the passage of SB 445, the Board has made the following changes to its web site:

- Added more information on the Public Agenda Notice, including links to the different Committee pages.
- Added coordinated links between regulations under Board consideration and the associated issues paper prepared by Board staff, accessible through the Committee meeting icon.
- Added the names of cases to be heard.
- Added rulemaking information, including type of action (e.g. 15-day file) and regulation titles. The site includes a link to each regulation.
- Added a list by case name of non-appearance items, including the reference number used by the Board Members in order for the audience to more easily follow along with Board Member discussions.
- Added an email link and a telephone number to allow interested parties to request additional information and receive it either electronically, by fax, or by mail.
- Added a new icon on the Board Internet home page to aid in finding hearing information.

COMMENTS

1. **Purpose.** To ensure that the Board of Equalization handles public writings that pertain to matters that are subject to discussion or consideration at a public meeting in the same manner as the Franchise Tax Board, as required by SB 445 of 2000.
2. **Amendments addressed the major concerns of the Board.** The analysis of the January 7, 2002 version of the bill raised the Board's concerns about making available on the Internet the briefs prepared for Franchise Tax Board cases heard by the Members of the Board of Equalization, which are disclosable public records. These briefs may contain detailed and often very personal information about taxpayers, including their social security number, credit card bills, expense

reports and all sorts of other information that they submit as evidence to support their tax appeal. The **April 9, 2002 amendments** excluded any information that involves a named tax or fee payer and therefore removed the requirement that this information be made available at the hearings, automatically distributed to requesting parties, or posted on the Internet.

The amendments also limited the information to be made available, distributed, and posted on the Internet to writings prepared by Board staff or individual members. The bill no longer requires that the Board be responsible for information submitted by outside parties.

3. **The Open Meeting Act currently requires that *disclosable public records be made available upon request*.** However, many documents that are distributed to Board Members prior to Board meetings are exempt from public disclosure because they contain confidential taxpayer information or are protected by the attorney-client privilege. While this bill provides another avenue in which to obtain records, it does not require that additional information, such as documents that are currently *not disclosable*, be distributed as specified and placed on the Internet.
4. **This bill requires public information to be posted on the Internet.** The information includes budget change proposals and baseline budget numbers which is currently approved by the Board prior to advancing to the Department of Finance and Legislative Budget Committees, as well as certain contract information. This information is currently available to the public upon request. Requiring the information to be posted on the Internet should not be problematic to administer.

Assembly Bill 2061 (Salinas) Chapter 338
Transactions and Use Taxes - City of Salinas

Effective January 1, 2003. Adds Chapter 2.67 (commencing with Section 7286.28) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

BILL SUMMARY

This measure authorizes the City of Salinas, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ percent, for expenditure on identifiable capital facilities, furnishings, and equipment.

Sponsor: City of Salinas

LAW PRIOR TO AMENDMENT

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The tax rate is fixed at $1\frac{1}{4}$ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the $1\frac{1}{4}$ percent local tax.

Under the Bradley-Burns Law, the $\frac{1}{4}$ percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed $1\frac{1}{4}$ percent.

Under the existing **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under all sections of the Transactions and Use Tax Law, the maximum allowable combined rate of transactions and use taxes levied in any county may not exceed $1\frac{1}{2}$ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed $1\frac{3}{4}$ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for specific purposes with the approval of two-thirds of

the voters. Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon two-thirds voter approval. Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of $\frac{1}{8}$ or $\frac{1}{4}$ percent for purposes of funding public libraries, upon two-thirds voter approval.

In addition to county authorization to levy a tax, through specific legislation, some cities have received authorization to impose a transactions and use tax. The following cities are so authorized: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its sphere of influence), Lakeport, Madera, North Lake Tahoe (within boundaries established in legislation), Placerville, Sebastopol, Truckee, West Sacramento, Woodland, and the town of Yucca Valley (the cities of Avalon, Calexico, Clearlake, Placerville, the Town of Truckee, and Woodland are currently imposing a tax). The City of Fresno and its sphere of influence had imposed a tax for the period 7/1/93 through 3/21/96, however, this tax ceased to be operative, as it was declared unconstitutional in *Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority* (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

The City of Salinas is located in Monterey County, which imposes no additional countywide transactions and use taxes. Under the Bradley-Burns Law, Salinas imposes a sales and use tax rate of 1.0 percent, which is credited against Monterey County's one percent rate. Therefore, the current state and local tax rate throughout all of Monterey County is 7.25 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

AMENDMENT

This measure adds Chapter 2.67 (commencing with Section 7286.28) to Part 1.7 of Division 2 of the Revenue and Taxation Code to authorize the City of Salinas to impose a transactions and use tax rate of $\frac{1}{4}$ percent, upon majority approval of the city council and subsequent two-thirds majority voter approval. The net revenues derived from the proposed tax would be exclusively expended for the provision of identifiable capital facilities, furnishings, and equipment. The tax would be levied pursuant to existing law regarding transactions and use taxes (Part 1.6, commencing with Section 7251). This measure also includes findings and declarations that a special law is necessary because of the uniquely difficult fiscal pressures being experienced by the City of Salinas in providing capital facilities including, but not limited to, the facilities of the police department, library, municipal pool, gymnasium, and senior center.

IN GENERAL

Many special districts in California impose transactions and use taxes that are administered by the Board. In Sacramento County, for example, a transactions and use tax of $\frac{1}{2}$ percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the counties of Fresno, Nevada, Solano, and Stanislaus impose the lowest county-wide transactions and use tax rate of $\frac{1}{8}$ percent. San Francisco City and County has the highest combined county-wide transactions and use tax rate of $1\frac{1}{4}$ percent. The City of Avalon in the County of Los Angeles currently imposes the highest combined transactions and use tax rate of $1\frac{1}{2}$ percent. The various combined state and local tax rates and transactions and use tax rates by county are shown on the attached schedule.

BACKGROUND

Several bills were passed during the 2001 legislative session that authorized cities or special districts to impose transactions and use taxes. The Board took a neutral position on each of these bills.

AB 863 (Ch. 263, Stats. 2001) authorizes the City of West Sacramento, subject to two-thirds or majority voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent.

SB 685 (Ch. 474, Stats. 2001) authorizes the Fresno County Transportation Authority, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{2}$ percent for an additional 30 years to finance regional transportation improvements.

SB 1186 (Ch. 292, Stats. 2001) modifies the vote requirement for the existing City of Sebastopol transactions and use tax authority from a two-thirds to a majority approval by voters.

SB 1187 (Ch. 285, Stats. 2001) authorizes Fresno County to establish a special purpose authority for the support of zoos, zoological facilities, and related zoological purposes in Fresno County and may impose a transactions and use tax of 0.10 percent, subject to two-thirds voter approval, to fund those purposes.

COMMENTS

1. **Purpose.** To enable the city to raise additional revenue for identifiable capital facilities, furnishings, and equipment.
2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation

for retailers, confused consumers, and created fiscal problems for the cities and counties. A retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, a retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, fifteen cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

3. **Multiplicity of tax rates is gaining national attention.** The Streamlined Sales Tax Project is a nationwide effort to simplify sales and use taxes in all states. Congress is currently reviewing this and other sales tax simplification efforts. Some proposals would expand states' rights to impose a use tax collection duty in exchange for certain simplifications, including the imposition of a single statewide sales and use tax rate. Allowing more cities to impose transactions and use taxes moves California away from national efforts concerning sales and use tax simplicity.
4. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Bradley-Burns Uniform Local Tax Law.** There are over 470 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes exceedingly complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered (unlike the state and Bradley-Burns tax, the transactions tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district). This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.
5. **City transactions and use taxes may limit county flexibility.** The Transactions and Use Tax Law places a cap on the total transactions and use tax rate that may be levied within a county. The limit is 1½%, except in the City and County of San Francisco and the County of San Mateo, as noted previously.

A city-wide transactions and use tax counts against the cap, thus limiting the fiscal options of the county.

6. **It may not be cost effective for some cities to impose a transactions and use tax.** The Board's total administrative costs are driven by the workload involved in processing returns, and are relatively fixed. The cost of administering these taxes is not related to the revenue generated by the tax. However, the ratio of such costs to the amount of revenue generated by a tax varies widely. Therefore, if the tax rate or volume is very low, the ratio will be high. Revenue and Taxation Code Section 7273, as amended by Chapter 890, Statutes of 1998 (AB 836, Sweeney, et al.) and again by Chapter 865, Statutes of 1999 (SB 1302, Rev & Tax Committee) requires the Board to cap administrative costs based on the lesser of the ratio during the first full year the tax is in effect, or a predetermined amount based on the tax rate and applied to the revenues generated in the taxing jurisdiction. The maximum administrative costs for a district imposing a transaction and use tax rate of one-quarter of 1 percent is capped at 3 percent of the revenue generated. If the City of Salinas were to impose this tax, it is not expected that the administrative costs would exceed the cap.

In some local taxing jurisdictions, administrative costs do exceed the cap. As a point of perspective, the Board's estimated 2001-02 administrative costs assessments to the existing special taxing jurisdictions range between \$4,000 (City of Avalon Municipal Hospital and Clinic) and \$6.5 million (Los Angeles Transportation Commission). Because the Board is limited in the amount it may charge special taxing jurisdictions, any shortfall that results from actual costs exceeding the amount the Board may charge would impact the General Fund. For 2001-02, it is estimated that the State General Fund will absorb \$1.5 million as a result of the cap limitations on administrative cost recovery.

Assembly Bill 2065 (Oropeza) Chapter 488
Waiver of Interest and Penalties

Tax levy; effective September 12, 2002. Among its provisions, adds Section 7093.8 to the Revenue and Taxation Code.

BILL SUMMARY

This is a budget trailer bill implementing various provisions incorporated into the 2002-03 Budget. Among other things, this bill authorizes the Board to waive any penalties and interest on unpaid sales and use taxes owed by eligible taxpayers, as defined, to the extent that the underlying tax liability is paid.

The remaining provisions of this measure are outside the scope of the Board.

Sponsor: Assembly Budget Committee

LAW PRIOR TO AMENDMENT

Under existing law, when a sales or use tax liability is not paid when due, interest is imposed on the unpaid tax and one or more penalties may be added to the liability. Generally, a penalty of ten percent is imposed for failure to pay the tax timely, but the law contains other provisions for additional penalties for other reasons for noncompliance. Under the law, interest continues to accrue on any unpaid portion of the tax until the tax is paid in full. Interest is computed on a simple basis, and only accrues on the unpaid tax liability. Interest does not accrue on any unpaid penalty amounts.

If a payment is not timely received, the Board generally negotiates with the taxpayer for payments, and if the liability remains unpaid, the Board ultimately searches for any assets of the taxpayer, and takes collection actions to use the assets to satisfy the tax liability. Collection actions may include manually searching records for assets, seizing bank accounts, or seizing and selling vehicles, vessels, or stocks. In the event of a financial hardship, existing law allows installment payment arrangements, or collection may be deferred until the financial situation of the taxpayer improves. However, if taxpayers can obtain loans or can use credit lines to pay their tax liabilities, they are expected to do so.

If a debt remains unpaid for a number of years, and a lien has been filed and assets cannot be located, the Board may write off the debt pursuant to provisions in the Government Code (discharge from accountability). When a debt is written off, however, the debt is still due and owing and any liens recorded are still valid, but routine billing and collection actions are discontinued unless assets are subsequently located. There is no statute of limitations on the Board's collection of a

tax debt (except liens last for ten years, and can only be renewed twice for an additional 20 years), and interest and applicable penalties continue to accrue. The debt also remains on the taxpayer's credit record, impeding his or her ability to obtain credit.

Under existing law, under specified circumstances, the Board may reduce a delinquent tax liability, commonly called an "offer in compromise." In general, an offer in compromise is a process whereby the taxpayer offers to pay an amount that he or she believes to be the maximum amount that can be paid within a reasonable period of time. If the parties agree to the amount offered, the debt is compromised (reduced) to that amount.

AMENDMENT

This bill adds Section 7093.8 to the Sales and Use Tax Law to authorize, for the period beginning October 1, 2002 and ending June 30, 2003, an eligible taxpayer's liability with respect to any unpaid taxes, to be satisfied by the payment of an amount equal to the tax liability, excluding penalties and interest. The bill specifies that this authority is limited to an unpaid tax liability that has been determined by the Board to be a "high-risk" collection account.

The bill provides the following definitions:

- "Eligible taxpayer" means any person that receives notification from the Board that the taxpayer's unpaid tax liability may be satisfied by the payment of an eligible amount.
- "Eligible amount" means an amount equal to any unpaid tax liability, excluding penalties and interest, owed by the eligible taxpayer that is paid in one or more installments, as determined by the Board, on or before the due date established by the Board, but in no event later than June 30, 2004.
- "High-risk collection account" means any unpaid tax liability of a taxpayer where satisfaction of that liability under this bill would be in the best interest of the state, and shall include any unpaid tax liability for which the Board has made either of the following determinations:
 - (1) Under the Board's collection modeling policies, practices, and procedures, efforts to collect the unpaid tax liability would not be economical.
 - (2) The unpaid tax liability would not be paid in full within a reasonable period of time.
- "Unpaid tax liability" means any final liability under Part 1 (commencing with Section 6001), including tax, penalties, and interest, that are owed by an individual and, as of October 1, 2002, are unpaid.

The bill further provides:

- No refund or credit shall be granted with respect to any penalty or interest paid or collected with respect to an unpaid tax liability prior to October 1, 2002.
- The determinations made by the Board pursuant to this bill shall be final and conclusive and shall not be subject to review by any other officer, employee, or agent of the state, or by any court.
- Nothing in Section 7056, or in any other provision of law, shall be construed to require the disclosure of standards used or to be used in connection with any determinations made by the Board for purposes of this bill, or the data used or to be used for determining those standards if the Board determines that the disclosure will seriously impair assessment, collection, or enforcement of sales or use taxes.
- Nothing in this bill shall authorize the Board to compromise any final tax liability.
- Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code (the Administrative Procedure Act) shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued in implementing and administering the program required by this bill.
- This provision is operative with respect to unpaid tax liabilities of high-risk collection accounts that are the subject of notifications made to eligible taxpayers on or after October 1, 2002, and before July 1, 2003.
- Whenever a "high-risk collection account" is forgiven of any penalties and interest pursuant to this bill, the public record shall include all of the following information:
 - (1) The name of the taxpayer.
 - (2) The amount of related penalties and interest relieved.
 - (3) A summary of the reason why the relief is in the best interest of the state.

COMMENTS

1. **Purpose.** To address, in part, the projected 2002-03 Budget shortfall.
2. **August 31, 2002 amendments.** The amendments delete the property tax provisions and instead incorporate the budget provisions.
3. **Related legislation.** These provisions are similar to the provisions in AB 433 (Assembly Budget Committee), and Senate Bill 1849 (Senate Budget and Fiscal Review Committee), other trailer bills. The Board voted to support the provisions in both measures.

Also, AB 1458 (Kelley) was signed into law this session (Chapter 152, Kelley) to provide the Board with the administrative authority to compromise tax debts. This Board-sponsored bill provides the Board with the administrative authority to compromise a tax or fee debt under the Sales and Use, Use Fuel, and Underground Storage Tank Maintenance Fee laws when the reduction amount is \$10,000 or less. This authorization essentially eliminated the need to obtain a

judgment through a court proceeding, which the prior law required. Elimination of the court proceeding, should result in expediting the in compromise process with a greater amount of efficiency.

Assembly Bill 2701 (Wyman) Chapter 593
Indian Tribal Tax Exclusion

Tax levy; effective September 16, 2002, but operative January 1, 2003. Amends Sections 6011 and 6012 of the Revenue and Taxation Code.

BILL SUMMARY

This bill excludes from the definition of “gross receipts” and “sales price” the amount of any tax imposed by an Indian tribe, as specified, thereby excluding that amount from the computation of sales or use tax.

Sponsor: Chemehuevi and Hopland Indian tribes

LAW PRIOR TO AMENDMENT

Under existing law, the sales tax is imposed on the gross receipts from the sale of tangible personal property, unless specifically exempted by law. “Gross receipts” and “sales price” are terms defined in the law which include the total amount of the sale or lease or rental price, without any deduction on account of the cost of materials used, labor or service costs, interest charged, losses, or any other expenses related to the sale of the property. However, the following fees and taxes have specifically been excluded from the definition of “gross receipts” and “sales price”, thereby exempting these amounts from the computation of sales tax:

- Federal taxes (except most manufacturers’ or importers’ excise taxes).
- Local sales and use taxes when they are a stated percentage of the sales price.
- Certain state taxes or fees imposed on vehicles, mobilehomes or commercial coaches that have been added to, or are measured by a stated percentage of the sales price.
- State-imposed diesel fuel tax.

AMENDMENT

This bill amends Sections 6011 and 6012 of the Sales and Use Tax Law to specify that “gross receipts” and “sales price” do not include the amount of any tax imposed by any Indian tribe within California with respect to a retail sale of tangible personal property measured by a stated percentage of the sales or purchase price, whether the tax is imposed upon the retailer or the consumer.

The bill specifies, however, that the exclusion only applies to an Indian tribe that is in substantial compliance with the Sales and Use Tax Law.

IN GENERAL

Under the U. S. Constitution and subsequent U. S. law and treaties with Indian nations, Indians enjoy a unique form of sovereignty. The Commerce Clause of the U.S. Constitution recognizes Indian tribes as separate nations. These principles of federal law have been repeatedly reaffirmed by the Supreme Court. Thus, the sovereignty retained by tribes includes the power of regulating their internal and social relations, and this authority includes the power to make their own substantive law in internal matters and to enforce that law in their own forums. These rights include the right for tribes to, among other things, levy their own taxes on reservation lands.

As a result of these principles, state law generally does not apply to Indians on the reservation. Consistent with these principles, under the Board's Regulation 1616, with respect to sales of tangible personal property occurring on Indian reservations, California sales or use tax is only imposed upon the *non-Indian* purchaser. Whether or not the retailer is an Indian retailer or non-Indian retailer, the retailer is required to collect the tax and remit it to the state. However, sales tax does not apply to sales by either a non-Indian retailer or Indian retailer on sales made to Indians residing on the reservation.

Currently, none of the state- or locally-imposed sales or use taxes generated by sales made on Indian reservations are shared with any of the tribes. Therefore, in order for tribes to support tribal governmental services, including tribal courts, law enforcement, fire protection, water, sewer, solid waste, roads, and more, some tribes have resolved to levy their own retail sales tax.

COMMENTS

1. **Purpose.** To exclude from the definition of *gross receipts* and *sales price* any retail sales tax imposed by an Indian tribe, as it is objectionable to apply the California sales or use tax on another tax.
2. **The August 12, 2002 amendments** were incorporated into the bill at the request of the Members of the Senate Revenue and Taxation Committee to specify that the proposed exclusion would not apply to an Indian tribe that is not in compliance with the Sales and Use Tax Law.
3. **This exclusion will not complicate the Board's administration of the law.** It will, however, require retailers on Indian reservations to reprogram their cash registers to exclude any tribal tax portion charged to customers from the computation of sales or use tax.
4. **Related legislation.** Senator Chesbro introduced SB 1869 which is similar to this measure. The Board also voted to support SB 1869. The provisions, however, were amended out on April 23, 2002.

Assembly Bill 2758 (Briggs) Chapter 346
Transactions and Use Taxes - City of Visalia

Effective January 1, 2003. Adds Chapter 2.87 (commencing with Section 7286.44) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

BILL SUMMARY

This measure authorizes the City of Visalia, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ percent, for the improvement of public safety, fire, and law enforcement services.

Sponsor: City of Visalia

LAW PRIOR TO AMENDMENT

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The tax rate is fixed at $1\frac{1}{4}$ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the $1\frac{1}{4}$ percent local tax.

Under the Bradley-Burns Law, the $\frac{1}{4}$ percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed $1\frac{1}{4}$ percent.

Under the existing **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under all sections of the Transactions and Use Tax Law, the maximum allowable combined rate of transactions and use taxes levied in any county may not exceed $1\frac{1}{2}$ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed $1\frac{3}{4}$ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax rate of $\frac{1}{4}$

percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

Section 7288.1 also allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon two-thirds voter approval. Finally, Section 7286.59 allows counties to levy a transactions and use tax rate of $\frac{1}{8}$ or $\frac{1}{4}$ percent for purposes of funding public libraries, upon two-thirds voter approval.

In addition to county authorization to levy a tax, through specific legislation, some cities and towns have received authorization to impose a transactions and use tax. The following cities/towns are so authorized: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its sphere of influence), Lakeport, Madera, North Lake Tahoe (within boundaries established in legislation), Placerville, Sebastopol, Town of Truckee, West Sacramento, Woodland, and the Town of Yucca Valley (the cities of Avalon, Calexico, Clearlake, Placerville, the Town of Truckee, and Woodland are currently imposing a tax). The City of Fresno and its sphere of influence had imposed a tax for the period 7/1/93 through 3/21/96, however, this tax ceased to be operative, as it was declared unconstitutional in *Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority* (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

The City of Visalia is located in Tulare County, which imposes no additional countywide transactions and use taxes. Under the Bradley-Burns Law, Visalia imposes a sales and use tax rate of 1.0 percent, which is credited against Tulare County's one percent rate. Therefore, the current state and local tax rate throughout all of Tulare County is 7.25 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

AMENDMENT

This measure adds Chapter 2.87 (commencing with Section 7286.44) to Part 1.7 of Division 2 of the Revenue and Taxation Code to authorize the City of Visalia to impose a transactions and use tax at a rate of $\frac{1}{4}$ percent, upon majority approval of the city council and subsequent two-thirds voter approval. The net revenues derived from the proposed tax would be exclusively expended for public safety, fire, and law enforcement purposes. The tax would be levied pursuant to existing law regarding transactions and use taxes (Part 1.6, commencing with Section 7251). This measure also includes findings and declarations that a special law is necessary because of the uniquely difficult fiscal pressures being experienced by the City of Visalia in providing public safety, fire, and law enforcement services.

IN GENERAL

Many special districts in California impose transactions and use taxes that are administered by the Board. In Sacramento County, for example, a transactions and use tax of 0.50 percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the counties of Fresno, Nevada, Solano, and Stanislaus impose the lowest county-wide transactions and use tax rate of $\frac{1}{8}$ percent. San Francisco City and County has the highest combined county-wide transactions and use tax rate of $1\frac{1}{4}$ percent. The City of Avalon in Los Angeles County currently imposes the highest combined transactions and use tax rate of $1\frac{1}{2}$ percent. The various combined state and local tax rates and transactions and use tax rates by county are listed on the attached schedule.

BACKGROUND

There were several bills during last year's legislative session that would authorize cities or special districts to impose transactions and use taxes. The Board took a neutral position on each of these bills.

AB 863 (Ch. 263, Stats. 2001) authorizes the City of West Sacramento, subject to two-thirds or majority voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent.

SB 685 (Ch. 474, Stats. 2001) authorizes the Fresno County Transportation Authority, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{2}$ percent for an additional 30 years to finance regional transportation improvements.

SB 1186 (Ch. 292, Stats. 2001) modifies the vote requirement for the existing City of Sebastopol transactions and use tax authority from a two-thirds to a majority approval by voters.

SB 1187 (Ch. 285, Stats. 2001) authorizes Fresno County to establish a special purpose authority for the support of zoos, zoological facilities, and related zoological purposes in Fresno County and may impose a transactions and use tax of 0.10 percent, subject to two-thirds voter approval, to fund those purposes.

COMMENTS

1. **Purpose.** To enable the city to raise additional revenue for public safety, fire, and law enforcement purposes.
2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between cities prior to the enactment of this uniform law created a very difficult situation

for retailers, confused consumers, and created fiscal problems for the cities and counties. A retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, a retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, fifteen cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

3. **Multiplicity of tax rates is gaining national attention.** The Streamlined Sales Tax Project is a nationwide effort to simplify sales and use taxes in all states. Congress is currently reviewing this and other sales tax simplification efforts. Some proposals would expand states' rights to impose a use tax collection duty in exchange for certain simplifications, including the imposition of a single statewide sales and use tax rate. Allowing more cities to impose transactions and use taxes moves California away from national efforts concerning sales and use tax simplicity.
4. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Bradley-Burns Uniform Local Tax Law.** There are over 470 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes exceedingly complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered (unlike the state and Bradley-Burns tax, the transactions tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district). This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.
5. **City transactions and use taxes may limit county flexibility.** The Transactions and Use Tax Law places a cap on the total transactions and use tax rate that may be levied within a county. The limit is 1½%, except in the City and County of San Francisco and the County of San Mateo, as noted previously.

A city-wide transactions and use tax counts against the cap, thus limiting the fiscal options of the county.

6. **It may not be cost effective for some cities to impose a transactions and use tax.** The Board's total administrative costs are driven by the workload involved in processing returns, and are relatively fixed. The cost of administering these taxes is not directly related to the revenue generated by the tax. However, the ratio of such costs to the amount of revenue generated by a tax varies widely. Therefore, if the tax rate or volume is very low, the ratio will be high. Revenue and Taxation Code Section 7273, as amended by Chapter 890, Statutes of 1998 (AB 836, Sweeney, et al.) and again by Chapter 865, Statutes of 1999 (SB 1302, Rev & Tax Committee) requires the Board to cap administrative costs based on the lesser of the ratio during the first full year the tax is in effect, or a predetermined amount based on the tax rate and applied to the revenues generated in the taxing jurisdiction. The maximum administrative costs for a district imposing a transaction and use tax rate of one-quarter of 1 percent is capped at 3 percent of the revenue generated. If the City of Visalia were to impose this tax, it is not expected that the administrative costs would exceed the cap.

In some local taxing jurisdictions, administrative costs do exceed the cap. As a point of perspective, the Board's estimated 2001-02 administrative costs assessments to the existing special taxing jurisdictions range between \$4,000 (City of Avalon Municipal Hospital and Clinic) and \$6.5 million (Los Angeles Transportation Commission). Because the Board is limited in the amount it may charge special taxing jurisdictions, any shortfall that results from actual costs exceeding the amount the Board may charge would impact the General Fund. For 2001-02, it is estimated that the State General Fund will absorb \$1.5 million as a result of the cap limitations on administrative cost recovery. However, this estimate could change when the actual revenues are known.

Senate Bill 1766 (Ortiz) Chapter 686
Face-to-Face Sales of Cigarettes

Effective January 1, 2003. Adds Section 1021.10 to the Code of Civil Procedure and adds Section 30101.7 to the Revenue and Taxation Code.

BILL SUMMARY

Among its provisions, this bill requires that every retail sale of cigarettes in California be a vendor-assisted, face-to-face sale, unless all applicable taxes due on the sale are paid or the seller includes a prominent notice on the package indicating that the purchaser is responsible for any applicable California taxes on the cigarettes.

Sponsor: Senator Ortiz

LAW PRIOR TO AMENDMENT

Under current law, Section 30101 of the Cigarette and Tobacco Products Tax Law imposes an excise tax of 6 mills (or 12 cents per package of 20) on each cigarette distributed. In addition, Section 30123 and 30131.2 impose a surtax of 12 ½ mills (25 cents per package of 20) and 25 mills (50 cents per package of 20), respectively, on each cigarette distributed. The current total tax on cigarettes is 43 ½ mills per cigarette (87 cents per package of 20). This excise tax is imposed upon each cigarette distribution, which is basically defined as the first sale of untaxed cigarettes in this state.

Chapter 10A of Title 15 of the United States Code (also known as the Jenkins Act) requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. This information is required to show the name and address of the person to whom the shipment was made, the brand, and quantity of the shipment. Any person who violates these provisions shall be guilty of a misdemeanor and shall be subject to a fine of not more than \$1,000, imprisoned not more than 6 months, or both.

Current law imposes a sales or use tax on the sale or purchase of tangible personal property in this state (including cigarettes). When a person sells cigarettes at retail in this state, the sales tax applies. The seller is responsible for this tax and must pay it to the state. When the sales tax does not apply, the use tax does. For example, when a person buys cigarettes from a point outside this state for the use or consumption in this state, the use tax is the applicable tax. If the out-of-state seller has nexus within the state, the seller is required to collect the use tax from the purchaser at the time of sale. If the seller does not collect the use tax, or if the seller does not have nexus in this state, the purchaser is required to pay the use tax directly to the Board of Equalization.

AMENDMENTS

Vendor sales

This bill adds Section 30101.7 to the Revenue and Taxation Code to provide that no person may engage in a retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale.

This bill defines a “face-to-face sale” to mean a sale in which the purchaser is in the physical presence of the seller or the seller’s employee or agent at the time of the sale. A face-to-face sale does not include any transaction conducted by mail order, the Internet, telephone, or any other anonymous transaction method in which the buyer is not in the seller’s physical presence. However, this section does not prohibit any lawful sale of a tobacco product that occurs by means of a vending machine.

Non-face-to-face sales

This bill also provides that a person may engage in a non-face-to-face sale of cigarettes to a person in California provided that the seller complies with either of the following conditions:

- All applicable California taxes on the cigarettes have been paid.
- The seller includes on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States, an externally visible and easily legible notice located on the same side of the shipping container as the address to which the package is delivered stating the following:

If these cigarettes have been shipped to you from a seller located outside of the state in which you reside, the seller has reported pursuant to federal law the sale of these cigarettes to your state tax collection agency, including your name and address. You are legally responsible for all applicable unpaid state taxes on these cigarettes.

Penalties

This bill provides that the Attorney General or a city attorney, county counsel, or district attorney may bring a civil action to enforce the proposed section against any person that violates the provisions of the proposed section. This bill also provides that in addition to any other remedies provided by law, the court shall assess a civil penalty ranging from \$1,000 to \$10,000 based on the number of violations within a specified period of time.

This bill adds Section 1021.1 to the Code of Civil Procedure to provide that if an action is brought against a person by the people of the State of California for failure to comply with the provisions of the Jenkins Act, the court shall award fees and costs, including reasonable attorney's fees, to the people if the people succeed on any claim to enforce the Jenkins Act.

This bill also provides that all the provisions are severable, and if any provision of this bill is found to be invalid, that invalidity will not affect other provisions of this bill.

BACKGROUND

Because of the state excise tax imposed on cigarettes and the sales tax due on the sale of cigarettes, many consumers have turned to the Internet as a way of obtaining cigarettes from out-of-state sellers who do not charge the California taxes. To help track down the purchasers of cigarettes from out-of-state sellers, the Board utilizes information required to be provided by the Jenkins Act (requires the sellers to provide the name and address of the purchasers to the Board) to bill consumers for the taxes due.

COMMENTS

- 1. Purpose.** To facilitate the collection of taxes on cigarettes sold to residents of California over the Internet or by mail order.
- 2. Internet purchases.** As efforts increase in this state to stop the illegal sale of cigarettes and tobacco products to minors, minors may find it more difficult to purchase cigarettes from traditional locations such as liquor stores and gas station mini-marts. This may lead to minors turning to the Internet as a means of acquiring cigarettes since the retailer is not likely to verify the age of the purchaser. This can lead to additional tax avoidance since the Internet retailer is unlikely to collect the California taxes due and the minor purchasing cigarettes is unlikely to self-report the California taxes due.
- 3. The Jenkins Act.** The Jenkins Act requires any person that sells or transfers cigarettes for profit in interstate commerce and ships the cigarettes into a state that imposes a tax on cigarettes to file by the 10th of each calendar month a copy of the invoice for each and every shipment of cigarettes made during the previous calendar month in that state. Many consumers who shop on the Internet may not be aware of these provisions and think they are successfully avoiding the tax by purchasing cigarettes from out-of-state sellers over the Internet. The Board utilizes the information required to be provided by the Jenkins Act to bill consumers for the taxes due. Unfortunately, some cigarette retailers do not comply with the provisions of the Jenkins Act. Since the Jenkins Act is a federal statute, the Board requires the assistance of federal law enforcement agencies to enforce the provisions of the Jenkins Act. Also, the provisions of the Jenkins Act apply only to the sale of cigarettes, not tobacco products.

- 4. Enforcement.** This bill makes several requirements of any person who sells tobacco products to consumers in this state. However, some of these retailers are located outside California and have no business presence in this state. Without a presence in this state, the state will have a difficult time enforcing the provisions of this bill.
- 5. Penalty provisions.** This bill provides that the Attorney General, a city attorney, county counsel, or district attorney may bring a civil action to enforce the provisions of this bill against any person that violates the provisions of this bill. This bill also provides a schedule of civil penalties ranging from \$1,000 to \$10,000, depending on the frequency of violations.
- 6. Related legislation.** Senate Bill 2082 (Bowen) would have required any person who advertises on the Internet to sell cigarettes in California and is subject to the provisions of the Jenkins Act to conspicuously disclose that a purchaser who buys cigarettes that are shipped into California is responsible for paying the state excise tax and the state use tax and to show in the advertisement the amount of these taxes that would be due. This bill would have also required the person selling or transferring the cigarettes to provide to the Board of Equalization a copy of the invoice for each shipment made into California. The Board voted to support SB 2082, but it was held in Assembly Revenue and Taxation Committee.

Senate Bill 1889 (Johannessen) Chapter 119
Transactions and Use Taxes - City of Redding

Effective January 1, 2003. Adds Chapter 2.90 (commencing with Section 7286.47) to Part 1.7 of Division 2 of the Revenue and Taxation Code.

BILL SUMMARY

This measure authorizes the City of Redding, subject to majority voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ percent, for general governmental purposes.

Sponsor: City of Redding

LAW PRIOR TO AMENDMENT

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code) authorizes counties to impose a local sales and use tax. The tax rate is fixed at $1\frac{1}{4}$ percent of the sales price of tangible personal property sold at retail in the county, or purchased outside the county for use in the county. All counties within California have adopted ordinances under the terms of the Bradley-Burns Law and levy the $1\frac{1}{4}$ percent local tax.

Under the Bradley-Burns Law, the $\frac{1}{4}$ percent tax rate is earmarked for county transportation purposes, and 1 percent may be used for general purposes. Cities are authorized to impose a sales and use tax rate of up to 1 percent, which is credited against the county rate so that the combined local tax rate under the Bradley-Burns Law does not exceed $1\frac{1}{4}$ percent.

Under the existing **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code), counties are additionally authorized to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, if the ordinance imposing that tax is approved by the voters. Under all sections of the Transactions and Use Tax Law, the maximum allowable combined rate of transactions and use taxes levied in any county may not exceed $1\frac{1}{2}$ percent, with the exception of the City and County of San Francisco and the County of San Mateo, whose combined rates may not exceed $1\frac{3}{4}$ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally allows counties to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for general purposes with the approval of a majority of the voters. Section 7285.5 permits the board of supervisors of any county to levy a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for specific purposes with the approval of two-thirds of

the voters. Section 7286.59 also allows counties to levy a transactions and use tax rate of $\frac{1}{8}$ or $\frac{1}{4}$ percent for purposes of funding public libraries, upon two-thirds voter approval. Finally, Section 7288.1 allows counties to establish a Local Public Finance Authority to adopt an ordinance to impose a transactions and use tax rate of $\frac{1}{4}$ percent, or multiple thereof, for purposes of funding drug abuse prevention, crime prevention, health care services, and public education upon two-thirds voter approval.

As stated above, Sections 7285, 7285.5, 7286.59, and 7288.1, authorize counties to levy transactions and use taxes under specified conditions. There is no such authority for cities to impose these taxes. Any city desiring to impose a transactions and use tax must seek special enabling legislation from the California legislature.

The following cities, through specific legislation, have received authorization to impose a transactions and use tax: Avalon, Calexico, Clearlake, Clovis, Fort Bragg, Fresno (and its sphere of influence), Lakeport, Madera, North Lake Tahoe (within boundaries established in legislation), Placerville, Sebastopol, Town of Truckee, West Sacramento, Woodland, and the Town of Yucca Valley (the cities of Avalon, Calexico, Clearlake, Placerville, the Town of Truckee, and Woodland are currently imposing a tax). The City of Fresno and its sphere of influence had imposed a tax for the period 7/1/93 through 3/21/96, however, this tax ceased to be operative, as it was declared unconstitutional in *Howard Jarvis Taxpayers' Association v. Fresno Metropolitan Projects Authority* (1995) 40 Cal.App.4th 1359, mod.(1996) 41 Cal.App.4th 1523a.

The City of Redding is located in Shasta County, which imposes no additional countywide transactions and use taxes. Under the Bradley-Burns Law, Redding imposes a sales and use tax rate of 1.0 percent, which is credited against Shasta County's one percent rate. Therefore, the current state and local tax rate throughout all of Shasta County is 7.25 percent.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and the Transactions and Use Taxes and all local jurisdictions imposing these local taxes are required to contract with the Board for administration of these taxes.

AMENDMENT

This measure adds Chapter 2.90 (commencing with Section 7286.47) to Part 1.7 of Division 2 of the Revenue and Taxation Code to authorize the City of Redding to impose a transactions and use tax at a rate of $\frac{1}{4}$ percent, upon two-thirds approval of the city council and subsequent majority voter approval. The net revenues derived from the proposed tax would be expended for general governmental purposes. The tax would be levied pursuant to existing law regarding transactions and use taxes (Part 1.6, commencing with Section 7251). This measure also includes findings and declarations that a special law is necessary because of the uniquely difficult fiscal pressures being experienced by the City of Redding in providing essential services and funding for city programs and operations.

IN GENERAL

Many special districts in California impose transactions and use taxes that are administered by the Board. In Sacramento County, for example, a transactions and use tax of $\frac{1}{2}$ percent is levied by the Sacramento County Transportation Authority for purposes of funding transportation projects. The first special tax district of this sort was created in 1970 when voters approved the San Francisco Bay Area Rapid Transit District to pay for bonds and notes issued for construction of the BART system. The tax rate in these special taxing districts varies from district to district. Currently, the counties of Fresno, Nevada, Solano, and Stanislaus impose the lowest county-wide transactions and use tax rate of $\frac{1}{8}$ percent. San Francisco City and County has the highest combined county-wide transactions and use tax rate of $1\frac{1}{4}$ percent. The City of Avalon in Los Angeles County currently imposes the highest combined transactions and use tax rate of $1\frac{1}{2}$ percent. The various combined state and local tax rates and transactions and use tax rates by county are shown on the attached schedule.

BACKGROUND

There were several bills during last year's legislative session that would authorize cities or special districts to impose transactions and use taxes. The Board took a neutral position on each of these bills.

AB 863 (Ch. 263, Stats. 2001) authorizes the City of West Sacramento, subject to two-thirds or majority voter approval, to levy a transactions and use tax at a rate of $\frac{1}{4}$ or $\frac{1}{2}$ percent.

SB 685 (Ch. 474, Stats. 2001) authorizes the Fresno County Transportation Authority, subject to two-thirds voter approval, to levy a transactions and use tax at a rate of $\frac{1}{2}$ percent for an additional 30 years to finance regional transportation improvements.

SB 1186 (Ch. 292, Stats. 2001) modifies the vote requirement for the existing City of Sebastopol transactions and use tax authority from a two-thirds to a majority approval by voters.

SB 1187 (Ch. 285, Stats. 2001) authorizes Fresno County to establish a special purpose authority for the support of zoos, zoological facilities, and related zoological purposes in Fresno County and may impose a transactions and use tax of 0.10 percent, subject to two-thirds voter approval, to fund those purposes.

COMMENTS

1. **Purpose.** To enable the city to raise additional revenues for general governmental purposes.
2. **Proliferation of locally-imposed taxes creates problems.** In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with differences in the amount of sales tax levied among the various communities of the state. The varying rates between

cities prior to the enactment of this uniform law created a very difficult situation for retailers, confused consumers, and created fiscal problems for the cities and counties. A retailer was faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, a retailer was affected competitively. Many retailers advertised "no city sales tax if you buy in this area." This factor distorted what would otherwise have been logical economic advantages or disadvantages. With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected.

The Transactions and Use Tax Law is becoming as complicated as the local tax laws were before the enactment of the Bradley-Burns Law, and retailers and consumers are again experiencing the confusion caused by varying tax rates in varying communities. Prior to 1991, all districts imposing a transactions and use tax had boundaries equal to their respective county lines. In 1991, legislation was enacted for the first time to allow a city to impose a transactions and use tax. That city was Calexico. Currently, fifteen cities have gained such authorization. The proliferation of tax rates dependent on the area in which the sale is made compounds compliance problems for retailers doing business in several districts and makes record-keeping more complex, resulting in a larger margin of error and increased Board administrative costs.

3. **Multiplicity of tax rates is gaining national attention.** The Streamlined Sales Tax Project is a nationwide effort to simplify sales and use taxes in all states. Congress is currently reviewing this and other sales tax simplification efforts. Some proposals would expand states' rights to impose a use tax collection duty in exchange for certain simplifications, including the imposition of a single statewide sales and use tax rate. Allowing more cities to impose transactions and use taxes moves California away from national efforts concerning sales and use tax simplicity.
4. **Legislature should consider revising the Transactions and Use Tax Law to parallel the Bradley-Burns Uniform Local Tax Law.** There are over 470 cities in California. As more cities gain authorization to levy their own local taxes, the administration of these taxes becomes exceedingly complicated. Considering the increasing number of measures approved by the Legislature authorizing cities to impose transactions and use taxes, strong consideration should be given to revising the Transactions and Use Tax Law so that its provisions parallel the Bradley-Burns Law. In that way, all taxable sales attributable to a retailer located within that special taxing district would be subject to the district tax, regardless of where the property is delivered (unlike the state and Bradley-Burns tax, the transactions tax does not apply to gross receipts from the sale of property to be used outside the district when the property is shipped to a point outside the district). This would minimize the problems associated with districts that are not coterminous with county boundaries. However, retailers in varying communities with various tax rates could continue to be affected competitively.
5. **City transactions and use taxes may limit county flexibility.** The Transactions and Use Tax Law places a cap on the total transactions and use

tax rate that may be levied within a county. The limit is 1½%, except in the City and County of San Francisco and the County of San Mateo, as noted previously. A city-wide transactions and use tax counts against the cap, thus limiting the fiscal options of the county.

6. **It may not be cost effective for some cities to impose a transactions and use tax.** The Board's total administrative costs are driven by the workload involved in processing returns, and are relatively fixed. The cost of administering these taxes is not directly related to the revenue generated by the tax. However, the ratio of such costs to the amount of revenue generated by a tax varies widely. Therefore, if the tax rate or volume is very low, the ratio will be high. Revenue and Taxation Code Section 7273, as amended by Chapter 890, Statutes of 1998 (AB 836, Sweeney, et al.) and again by Chapter 865, Statutes of 1999 (SB 1302, Rev & Tax Committee) requires the Board to cap administrative costs based on the lesser of the ratio during the first full year the tax is in effect, or a predetermined amount based on the tax rate and applied to the revenues generated in the taxing jurisdiction. The maximum administrative costs for a district imposing a transaction and use tax rate of one-eighth of 1 percent is capped at 5 percent of the revenue generated. The maximum for a rate of one-quarter of 1 percent is capped at 3 percent, and the maximum for a rate of one-half of 1 percent is capped at 1.5 percent of the revenue generated. If the City of Redding were to impose any of these tax rates, it is not expected that the administrative costs would exceed the cap.

In some local taxing jurisdictions, administrative costs do exceed the cap. As a point of perspective, currently the Board's estimated 2001-02 administrative costs assessments to the existing special taxing jurisdictions range between \$4,000 (City of Avalon Municipal Hospital and Clinic) and \$6.5 million (Los Angeles Transportation Commission). Because the Board is limited in the amount it may charge special taxing jurisdictions, any shortfall that results from actual costs exceeding the amount the Board may charge would impact the General Fund. For 2001-02, it is estimated that the State General Fund will absorb \$1.5 million as a result of the cap limitations on administrative cost recovery. However, this estimate could change when the actual revenues are known.

Senate Bill 1901 (Machado) Chapter 446
Diesel Fuel Prepayment Exemption

Urgency statute; effective September 9, 2002, but operative October 9, 2002. Adds Section 6480.3 to the Revenue and Taxation Code.

BILL SUMMARY

This bill authorizes a qualified person, as defined, to issue an exemption certificate to a diesel fuel supplier with respect to that portion of diesel fuel that the qualified person reasonably expects to sell to farmers and food processors that qualify for the state sales and use tax exemption, under specified conditions.

Sponsor: California Independent Oil Marketers Association

LAW PRIOR TO AMENDMENT

Existing law imposes a sales or use tax on the gross receipts from the sale of, or the storage, use, or other consumption of, tangible personal property, unless specifically exempted by statute. Under existing law, sales of diesel fuel are generally subject to sales or use tax. However, Section 6357.1 was added to the Sales and Use Tax Law by AB 426 (Ch. 156 of the 2001 Legislative Session) to provide a state General Fund sales and use tax exemption that became operative on September 1, 2001, for the sale and purchase of diesel fuel used in farming activities and food processing.

Under existing law, distributors and brokers of diesel fuel are required to collect a prepayment of sales tax from the person to whom the diesel fuel is transferred. When the person acquiring the diesel fuel resells that fuel, the person is entitled to claim credit for the prepayment paid to the supplier on the return for the period in which the fuel is resold. The tax prepayment rate for diesel fuel is determined by the Board based upon 80% of the combined state and local tax rate multiplied by the arithmetic average selling price (excluding tax) as determined by the Board – currently at a rate of 8 cents per gallon. The law provides that if the price of diesel fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the Board may readjust the rate.

AMENDMENT

This bill adds Section 6480.3 to the Sales and Use Tax Law to provide that a qualified person may issue a certificate to a seller to exempt his or her purchase of diesel fuel from the prepayment requirements when purchasing diesel fuel that qualifies for the exemption from the state sales and use tax under Section 6357.1.

Among other things, the bill specifies that the certificate indicate the volume of diesel fuel that the person reasonably expects he or she will sell that qualifies for the exemption under Section 6357.1.

The bill also specifies that a person is qualified if both of the following conditions are met:

1. The person sold diesel fuel that was used by the consumer in a manner that qualified, or would have qualified for an exemption under Section 6357.1, and in the prior year, those sales totaled more than 25 percent of that person's total taxable sales, and
2. The person's sales consist primarily of either bulk deliveries of 500 gallons or more or of fuel sales through a cardlock, keylock, or other unattended mechanism, or both.

The bill further specifies the following:

1. A person issuing the certificate is liable for the local and transactions and use taxes, and any sales tax on any portion of the gross receipts from the sale of the fuel that is not sold in a manner that qualifies for an exemption under Section 6357.1.
2. A person liable for the sales tax shall report and pay that tax with the return for the reporting period in which the person sells the fuel.
3. Any person who gives a certificate pursuant to this section for purchases of diesel fuel that he or she knows at the time of purchase do not qualify for the exemption from the prepayment for the purpose of evading the prepayment of the tax is guilty of a misdemeanor and, in addition, shall be liable to the state for penalty of \$1,000 for each certificate so issued.

BACKGROUND

Several retailers of diesel fuel who have a large volume of sales to farmers and food processors that qualify for the state sales and use tax exemption on their purchases of diesel fuel are incurring severe cash flow difficulties. The law requires that these retailers pay the prepayment of the fuel when they purchase the fuel (currently at a rate of 8 cents per gallon) and claim a credit on their return for the period in which the fuel was sold. Because these retailers are only receiving partial reimbursement of the tax from the farmers and food processors (since the sale of the diesel fuel is exempt from the state tax portion), the retailers are ending up with a significant credit of overpaid prepayment on their tax returns. Because the credit can be sizable, and because the time lag between the time the payment of the prepayment to the supplier is made and the time the return is filed, and the associated refund is processed by the Board, many diesel fuel sellers are incurring a severe negative cash flow. Some retailers are even borrowing money simply to run their business because of this issue. In a recent letter from such a retailer, the excess credit amounted to over \$89,000 for one quarter alone.

In order to provide assistance to these retailers to the extent the Board can administratively, the Board staff has been expediting the refunds due the retailers. In addition, staff is offering these retailers with alternatives in filing their tax returns. For example, many of these retailers normally file a return quarterly. In order to identify the overpayment faster and issue a refund sooner, staff is providing an option to the retailers to, instead, file monthly returns. Also, the staff is suggesting to retailers to submit copies of their returns to a specific address in order to expedite the refund process.

COMMENTS

1. **Purpose.** To enable those retailers of diesel fuel with substantial exempt sales to farmers and food processors to acquire that portion of their fuel without payment of the prepaid sales tax to the supplier. This will eliminate the severe financial hardship the current prepayment requirements are placing on these smaller distributors of fuel.
2. **The May 16, 2002 amendments changed the operative date.** The amendments specify that the bill will become operative 30 days after it becomes effective.
3. **Enactment of this bill will resolve the problem.** While the Board had taken steps to administratively assist these distributors, these steps still did not solve the problem, since the distributors were still faced with the cash flow difficulties. The retailers were still incurring the cash flow difficulties, since, in spite of everything, they still had to file their tax return and wait for the Board to issue the refund. Enactment of this bill provides the necessary mechanism to eliminate the refund process, and to enable the retailers to acquire the fuel without payment of the 8 cents per gallon prepayment. We estimate that approximately 150 fuel sellers may be impacted by this measure.

Senate Bill 2092 (Committee on Revenue and Taxation) Chapter 775***Local Tax on Leased Vehicles***

Effective January 1, 2003. Among its provisions, amends Section 7205.1 of the Revenue and Taxation Code.

BILL SUMMARY

This bill contains Board of Equalization-sponsored housekeeping provisions that, with respect to Sales and Use Tax Law, amends the definition of "motor vehicle" to clarify that the allocation of local sales and use tax on leased vehicles is limited to passenger vehicles (other than a house car) and pickup trucks rated less than one ton.

Sponsor: Senate Committee on Revenue and Taxation

LAW PRIOR TO AMENDMENT

Section 7205.1 was added by Senate Bill 602 (Ch. 676, Stats. 1995) in an effort to change the allocation of the Bradley-Burns Uniform Local Use Tax for leases of vehicles. Instead of the 1 percent tax being allocated to the county "pool" in which the lessee resides, where each taxing jurisdiction within the county receives its proportionate share of this use tax, SB 602 required, in the case of a motor vehicle being leased by a new car dealer, that the local sales and use tax be allocated to the place of business of that dealer. SB 602 further required that, for lessors other than new car dealers, the tax be allocated to the place of business of the dealer from whom that lessor purchased the vehicle.

Section 7205.1 also defines "motor vehicles" as a motor vehicle as provided in Section 415 of the Vehicle Code. Section 415 of the Vehicle Code defines a motor vehicle as any vehicle that is self propelled. However, based on the legislative intent of SB 602, the Board interpreted motor vehicles as applying only to passenger vehicles and pickup trucks under one ton.

Section 7205.1 was amended, effective January 1, 1999, by Assembly Bill 1946 (Ch. 140, Stats. 1998) to include leases of new and used motor vehicles in the allocation procedures. The amendment also extended the provisions under Section 7205.1 to "leasing companies," as specified. In addition, a new section was added with the following provisions:

- If the motor vehicle dealer/lessor originates lease contracts and does not sell or assign the lease contracts, and
- If the motor vehicle dealer/lessor has motor vehicle lease receipts of \$15,000,000 or more annually, for any business location, then
- The 1% local use tax due on motor vehicle lease receipts shall be allocated to the jurisdiction in which the leasing company has its place of business.

COMMENTS

This bill amends Section 7205.1 of the Bradley-Burns Uniform Local Sales and Use Tax Law to provide that the definition of motor vehicles is limited to self-propelled passenger vehicles and pickup trucks rated less than one ton for the purpose of allocating local use tax imposed with respect to a lease of a new or used motor vehicle.

On September 13, 2000, the Board adopted the proposed Regulation 1803.5, *Long-Term Leases of Motor Vehicles*, to interpret and explain the provisions of Section 7205.1, and to clarify the definition of motor vehicle. Regulation 1803.5 defined motor vehicle to mean a passenger vehicle and a pickup truck under one ton. However, on November 27, 2000, the Office of Administrative Law (OAL) disapproved the proposed Regulation 1803.5, on the basis that the definition of motor vehicle in the regulation was narrower than the definition provided in Section 7205.1. Section 7205.1 provided that the definition of motor vehicle is "as defined in Section 415 of the Vehicle Code." Section 415 of the Vehicle Code defines a motor vehicle as any vehicle that is self-propelled. The OAL concluded that because the definition in the regulation was substantially narrower than the definition in the statute, that the Board was attempting to amend the statute by regulation. Although the OAL found other minor problems with the regulation, its basis for rejecting the regulation was the narrower definition of "motor vehicle." Currently, Regulation 1803.5 is being held in abeyance pending the amendment to Section 7205.1.

TABLE OF SECTIONS AFFECTED

SECTIONS		BILL AND CHAPTER NUMBER		SUBJECT
Revenue & Taxation Code				
§6011	Amend	AB 2701	Ch. 593	Tribal tax exclusion
§6012	Amend	AB 2701	Ch. 593	Tribal tax exclusion
§6480.3	Add	SB 1901	Ch. 446	Diesel fuel prepayment exemption
§7093.6	Add	AB 1458	Ch. 152	Offers in compromise
§7093.8	Add	AB 2065	Ch. 488	Waiver of interest and penalties
	Repeal			
§7205.1	Amend	SB 2092	Ch. 775	Local tax on leased vehicles
Ch. 2.64	Add (commencing with §7286.24) to Part 1.7	AB 902	Ch. 331	Transactions and use tax: Clearlake, Fort Bragg, Point Arena, Ukiah, Willits
Ch. 2.67	Add (commencing with §7286.28) to Part 1.7	AB 2061	Ch. 338	Transactions and use tax: City of Salinas
Ch. 2.87	Add (commencing with §7286.44) to Part 1.7	AB 2758	Ch. 346	Transactions and use tax: City of Visalia
Ch. 2.90	Add (commencing with §7286.47) to Part 1.7	SB 1889	Ch. 119	Transactions and use tax: City of Redding
Ch. 3.6	Add (commencing with §7290) to Part 1.7	AB 7	Ch. 330	Transactions and use tax: City of Davis
30101.7	Add	SB 1766	Ch. 686	Face-to-face sales of cigarettes

TABLE OF SECTIONS AFFECTED (CONTINUED)

Code of Civil Procedure				
1021.10	Add	SB 1766	Ch. 686	Face-to-face sales of cigarettes
Government Code				
11125.1	Amend	AB 1752	Ch. 156	Disclosure of Board hearing information