

Amend Sections 7261 and 7262 of the Transactions and Use Tax Law to change the transactions and use tax rate to 0.125, or multiples of 0.125 percent (formerly 0.25 or multiples of 0.25 percent) to make it consistent with specified sections contained in the Transactions and Use Tax Law that were recently amended. (Technical)

Source: Legislative Section and Legal Department

Existing Law. Assembly Bill 686 (Chapter 176, Huffman, Stats. 2011), amended Sections 7285, 7285.5, 7285.9 and 7285.91 of the Transactions and Use Tax Law to decrease the rate at which a city or county may levy, increase, or extend a transactions and use tax to a rate of 0.125, or multiples of 0.125 percent (formerly 0.25 or multiples of 0.25 percent). These provisions will become effective January 1, 2012.

Under existing law, Section 7285 authorizes a county to impose a transactions and use tax (also known as district taxes) for general purposes at a rate of 0.125, or multiple of 0.125 percent (effective January 1, 2012), if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a majority vote of the qualified voters of the county. Section 7285.5 authorizes a county to impose a district tax for special purposes at a rate of 0.125, or multiples of 0.125 percent (effective January 1, 2012), if the ordinance proposing the tax is approved by a two-thirds vote of the board of supervisors and a two-thirds vote of the qualified voters of the county.

With respect to cities, Section 7285.9 authorizes a city to impose a district tax for general purposes at a rate of 0.125 or multiples of 0.125 percent (effective January 1, 2012), if the ordinance proposing the tax is approved by a two-thirds vote of all members of the governing body and a majority vote of the qualified voters of the city. Section 7285.91 authorizes a city to impose a district tax for special purposes at a rate of 0.125 or multiples of 0.125 percent (effective January 1, 2012), if the ordinance proposing the tax is approved by a two-thirds vote of all member of the governing body and a two-thirds vote of the qualified voters of the county.

Under existing law, Section 7261 provides that a district (sales) tax is imposed on retailers for the privilege of selling tangible personal property in a district. Section 7262 provides that a district use tax is imposed upon the storage, use, or other consumption of tangible personal property stored, used, or consumed in a district. The district (sales) and use taxes pursuant to these statutes are imposed at rates of 0.25 percent or multiples of 0.25 percent on the gross receipts from the sales within the district of tangible personal property sold at retail or of the sales price of tangible personal property whose use, storage, or consumption within the district is subject to tax. In order to make Sections 7261 and 7262 consistent with the newly amended Sections 7285, 7285.5, 7285.9, and 7285.91 of the Transactions and Use Tax Law, the relevant sections should be amended to change the 0.25 percent rate to a rate of 0.125, or multiples of 0.125 percent.

This Proposal. This proposal would change the rate in Sections 7261 and 7262 to make those sections consistent with the rate contained in Sections 7285, 7285, 7285.9, and 7285.91 of the Transactions and Use Tax Law.

Section 7261 of the Revenue and Taxation Code is amended to read:

7261. The transactions tax portion of any transactions and use taxes ordinance adopted under this part shall be imposed for the privilege of selling tangible personal property at retail, and shall include provisions in substance as follows:

(a) A provision imposing a tax for the privilege of selling tangible personal property at retail upon every retailer in the district at a rate of ~~one-quarter~~ one-eighth of 1 percent, or a multiple thereof, of the gross receipts of the retailer from the sale of all tangible personal property sold by that person at retail in the district.

(b) Provisions identical to those contained in Part 1 (commencing with Section 6001), insofar as they relate to sales taxes and are not inconsistent with this part, except that the name of the district as the taxing agency shall be substituted for that of the state and that an additional transactor's permit shall not be required if a seller's permit has been or is issued to the transactor under Section 6067.

(c) A provision that all amendments subsequent to the effective date of this part to Part 1 (commencing with Section 6001) relating to sales tax and not inconsistent with this part shall automatically become a part of the transactions and use taxes ordinance. However, no amendment shall operate so as to affect the rate of tax imposed by the district's board.

(d) A provision that the amount subject to tax shall not include the amount of sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law, or the amount of any state-administered transactions or use tax.

(e) A provision that there are exempted from the tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to operators of aircraft to be used or consumed principally outside the county in which the sale is made and directly and exclusively in the use of the aircraft as common carriers of persons or property under the authority of the laws of this state, the United States, or any foreign government.

(f) A provision that sales of property to be used outside the district which are shipped to a point outside the district, pursuant to the contract of sale, by delivery to that point by the retailer or his or her agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point, are exempt from the tax.

For purposes of this section, "delivery" of vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code shall be satisfied by registration to an out-of-district address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence.

"Delivery" of commercial vehicles shall be satisfied by registration to a place of business out of district and a declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

(g) A provision that the sale of tangible personal property is exempt from tax if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance. A lease of tangible personal property

which is a continuing sale of that property is exempt from tax for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of the ordinance. For the purposes of this subdivision, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

Section 7262 of the Revenue and Taxation Code is amended to read:

7262. The use tax portion of any transactions and use tax ordinance adopted under this part shall impose a complementary tax upon the storage, use, or other consumption in the district of tangible personal property purchased from any retailer for storage, use, or other consumption in the district. The tax shall be at a rate of ~~one-quarter~~ one-eighth of 1 percent, or a multiple thereof, of the sales price of the property whose storage, use, or other consumption is subject to the tax, and the ordinance shall include provisions in substance as follows:

(a) Provisions identical to those contained in Part 1 (commencing with Section 6001), insofar as they relate to use taxes and are not inconsistent with this part, except that the name of the district as the taxing agency shall be substituted for that of the state. The name of the district shall be substituted for the word "state" in the phrase "retailer engaged in business in this state" in Section 6203 and in the definition of that phrase.

The following additional provisions shall be included:

(1) Except as provided in paragraph (2), a retailer engaged in business in the district shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the district or participates within the district in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the district or through any representative, agent, canvasser, solicitor, subsidiary, or person in the district under the authority of the retailer.

(2) "A retailer engaged in business in the district" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the district.

(b) A provision that all amendments to the provisions of Part 1 (commencing with Section 6001) relating to the use tax and not inconsistent with this part shall automatically become a part of the ordinance. However, no amendment shall operate so as to affect the rate of tax imposed by the district's board.

(c) A provision that the amount subject to tax shall not include the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the amount of any state-administered transactions or use tax.

(d) A provision that any person subject to a use tax under an ordinance adopted pursuant to this part shall be entitled to credit against that tax or any transactions tax, or to reimbursement for a transactions tax, paid to a district or retailer in a district imposing a transactions and use tax pursuant to this part.

(e) A provision that, in addition to the exemptions provided in Sections 6366 and 6366.1, the storage, use, or other consumption of tangible personal property, other than fuel or petroleum products, purchased by operators of aircraft, and used or consumed by the operators directly and exclusively in the use of the aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States, or any foreign government, is exempt from the use tax.

(f) A provision that the storage, use, or other consumption in the district of tangible personal property is exempt from the tax if the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of the ordinance. The possession of, or the exercise of any right or power over, tangible personal property under a lease which is a continuing purchase of the property is exempt from tax for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease entered into prior to the operative date of the ordinance. For purposes of this subdivision, the storage, use, or other consumption of, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not the right is exercised.