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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**05/19/11**	Bill No:	**Assembly Bill 1086**
Tax Program:	**Transactions and Use**	Author:	**Wieckowski**
Sponsor:	**County of Alameda**	Code Sections:	**RTC 7291**
Related Bills:	**AB 686 (Huffman)** **SB 653 (Steinberg)**	Effective Date:	**01/01/12**

BILL SUMMARY

This bill would authorize the County of Alameda to impose a transactions and use tax for the support of countywide transportation programs at a rate no more than 0.50 percent that would, in combination with other transactions and use taxes, exceed the maximum combined rate (2%), as specified.

Summary of Amendments

Since the previous analysis, this bill was amended to authorize only a transportation tax at a rate of no more than 0.50 percent and repeal the provisions on January 1, 2014, if no such ordinance is adopted by then.

ANALYSIS

CURRENT LAW

The State Board of Equalization (BOE) administers local sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law and under the Transactions and Use Tax Law, which are divisions of the Revenue and Taxation Code.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (commencing with Section 7200 of the Revenue and Taxation Code), authorizes cities and counties to impose a local sales and use tax. The rate of tax is fixed at 1.25 percent of the sales price of tangible personal property sold at retail in the local jurisdiction, or purchased outside the jurisdiction for use within the jurisdiction. However, beginning July 1, 2004, and continuing through the "revenue exchange period" (also known as the "Triple Flip"), Section 7203.1 temporarily suspends the authority of a county or a city to impose a tax under Sections 7202 and 7203, and instead provides that the applicable rate is the following: 1) in the case of a county, 1 percent; and 2) in the case of a city, 0.75 percent or less. "Revenue exchange period" means the period on or after July 1, 2004, and continuing until the Department of Finance notifies the BOE, pursuant to Section 99006 of the Government Code, that the $15 billion Economic Recovery Bonds have been repaid or that there is sufficient revenues to satisfy the state's bond obligations.

Of the 1 percent, cities and counties use the 0.75 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may by used only for road maintenance or the operation of transit systems. The counties receive the 0.25 percent tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county.

The **Transactions and Use Tax Law** (commencing with Section 7251 of the Revenue and Taxation Code) authorizes cities and counties to impose transactions and use taxes (hereinafter referred to as district taxes) under specified conditions. **Section 7285**

authorizes a county to impose a district tax for general purposes at a rate of 0.25 percent, or multiple thereof, 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 0.25 percent, or multiple thereof, 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.

The combined rate of all district taxes imposed in any county cannot exceed 2 percent.

Cities and counties are required to contract with the BOE to perform all functions in the administration and operations of the ordinances imposing the Bradley-Burns local taxes and the district taxes.

PROPOSED LAW

This bill would add Chapter 3.7 (commencing with Section 7291) to the Transactions and Use Tax Law to authorize the County of Alameda to impose a transactions and use tax for the support of countywide transportation programs at a rate of no more than 0.50 percent that would, in combination with all transactions and use taxes imposed, exceed the 2 percent limitation established in Section 7251.1, if all of the following requirements are met:

1) The County of Alameda adopts an ordinance proposing a transactions and use tax by any applicable voting approval requirement.
2) The ordinance proposing the transactions and use tax is submitted to the electorate on the November 6, 2012, General Election ballot and is approved by the voters voting on the ordinance in accordance with Article XIII C of the California Constitution.
3) The transactions and use tax conforms to the Transactions and Use Tax Law, Part 1.6, other than Section 7251.1.

This bill would become effective on January 1, 2012. This bill also provides that if the ordinance proposing the transactions and use tax is not approved as required, the provisions of the bill would be repealed as of January 1, 2014.

IN GENERAL

Cities and counties may impose a district tax for general or specific purposes. These taxes can be imposed either directly by the city or county or through a special purpose entity established by the city or county. Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code.

As of April 1, 2011, there are 132 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 132 jurisdictions, 40 are county-imposed taxes and 92 are city-imposed taxes. Of the 40 county-imposed taxes, 26 are imposed for transportation purposes.

As stated previously, the combined rate of all district taxes imposed in any county shall not exceed 2 percent. Generally, tax rates are imposed at a rate of 0.25 percent or 0.25 percent increments up to the 2 percent limit. A city's tax rate counts toward the combined rate in computing the 2 percent limit in a county. Currently, the district tax rates vary from 0.10 percent to 1 percent. The combined state, local, and district tax rates range from 8.375 percent to 10.25 percent, with the exception of the cities of

South Gate and Pico Rivera (10.75%) in Los Angeles County[1].

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the Alameda County Transportation Commission in an effort to provide additional funding for transportation programs and services for Alameda County. According to the author's office, in November 2010, voters within the city of Union City approved an additional 0.50 percent tax effective April 1, 2011. Consequently, Alameda County cannot enact a new district tax as Union City's 0.50 percent tax increase, which, combined with the county's district taxes, reaches the maximum 2 percent limit.

2. **The May 19, 2011 amendments** (1) authorize a transportation tax at a rate of no more than 0.50 percent and (2) repeal the bill's provisions on January 1, 2014, if the ordinance proposing the district tax is not approved by the voters at the November 6, 2012 General Election. **The April 4, 2011 amendments**, which addressed technical issues raised in the BOE's previous analysis, (1) deleted the term "any local government entity" for purposes of narrowing the scope to the County of Alameda itself (consistent with the intent of the author and sponsor), and (2) provided that the provisions are only effective until January 1, 2013 and repealed on January 1, 2014, since the ordinance proposing the transactions and use tax is specifically slated for the November 6, 2012 general election ballot.

3. **Current district taxes levied within the County of Alameda.** Currently, Alameda County has five district taxes imposed within its borders—three county-wide taxes and two city-wide taxes. The tax rates for the three county-wide taxes are 0.50 percent each for a total county-wide tax rate of 1.50 percent. Thus, the total state, local, and district tax rate imposed within the unincorporated area of Alameda County is 9.75 percent. The two cities that impose a district tax are San Leandro at a rate of 0.25 percent and Union City at a rate of 0.50 percent, with a total state, local, and district tax rate of 10.00 and 10.25 percent, respectively.

   As previously stated, cities and counties may impose district taxes as long as the combined rate in the county does not exceed 2 percent. The city district taxes count against the 2 percent limit. Because Union City imposes a tax of 0.50 percent, Alameda County is prohibited from enacting a new district tax.

   Of the three county-wide taxes, two are imposed for transportation purposes and one is imposed for essential health care services. The two 0.50 percent district transportation taxes levied within the borders of Alameda County are levied by the Alameda County Transportation Improvement Authority (ACTIA) and the Bay Area Rapid Transit (BART). In 2010, the ACTIA merged with the Alameda County Congestion Management Agency (ACCMA) to form the new county-wide transportation agency—the Alameda County Transportation Commission (Alameda CTC). The Alameda CTC is a joint powers authority whose members include the 14 cities in Alameda County, the County of Alameda, Alameda County Transit, BART, ACCMA, and ACTIA.

[1] In 2003, SB 314 (Ch. 785, Murray) authorized the Los Angeles County Metropolitan Transportation Authority to impose a 0.50 district tax for specific transportation projects, and excluded that 0.50 percent tax from the 2 percent limitation. In 2009, voters within Los Angeles County approved the additional 0.50 percent effective July 1, 2009, which raised the tax rate in the cities of South Gate and Pico Rivera from 10.25 to 10.75 percent.

4. **This bill contains an exclusion from the 2 percent rate limitation in Section 7251.1 of the Transactions and Use Tax Law.** As previously stated, Alameda County is currently prohibited from imposing an additional county-wide transactions and use tax (Union City tax pushes Alameda County to the 2 percent cap). However, this bill contains a provision that excludes this tax from the 2 percent cap.

5. **Technical concerns.**

   - The first sentence provides that the County of Alameda may adopt an ordinance imposing a transactions and use tax for the support of countywide transportation programs. As previously stated under "Current Law," the authorization provided in the Transactions and Use Tax Law authorizes counties to *impose* transactions and use taxes, rather than authorizing counties to adopt ordinances imposing transactions and use taxes. Therefore, to make this provision consistent with existing Transactions and Use Tax Law, we recommend the following amendment:

     "7291. Notwithstanding any other provision of law, the County of Alameda may ~~adopt an ordinance imposing~~impose a transactions and use tax for the support of countywide transportation programs at a rate that would, in combination with all taxes imposed in accordance with Part 1.6 (commencing with Section 7251), exceed the limit established in Section 7251.1, if all of the following requirements are met:"

   - Subdivision (c) makes reference to the *Transaction* and Use Tax Law. It is "Transactions" and Use Tax Law and not "Transaction." We recommend the following amendment:

     "(c) The transactions and use tax conforms to the ~~Transaction~~Transactions and Use Tax Law, Part 1.6 (commencing with Section 7251), other than Section 7251.1. "

6. **Related legislation.** AB 686 (Huffman) decreases the rate at which cities and counties may levy, increase, or extend a transactions and use tax to 0.125% (currently 0.25%), or a multiple thereof, for general or specific purposes.

   SB 653 (Steinberg) authorizes the governing board of any county or city and county or school district, subject to specified voter approval requirements, to levy, increase, or extend a local personal income tax, vehicle license fee, transactions and use tax (excluded from the 2 percent cap), alcoholic beverage tax, cigarette and tobacco products tax, sweetened beverage tax, and oil severance tax, as provided. The bill requires the BOE, the Franchise Tax Board, or the Department of Motor Vehicles to perform various functions related to the administration and collection of the local tax if the county or city and county contracts with the state agency.

COST ESTIMATE

This bill does not increase administrative costs to the BOE because it only authorizes the County of Alameda to impose a tax. However, if the voters of Alameda County approve the ordinance imposing the tax, the County of Alameda would be required to contract with the BOE for its preparation costs, as well as the ongoing costs for the BOE's services in actually administering the ordinance.

Based on the BOE's experience with similar county-imposed taxes, the one-time preparatory costs typically can range from $12,000 to $138,000. Preparatory costs are the actual costs to update publications and returns, perform programming for data processing, develop instructions for both BOE staff and taxpayers, and notify taxpayers, and other necessary costs which include costs from other state agencies (e.g., California Department of Motor Vehicles costs to train staff and program computers). In addition, various factors can have an impact on the BOE's preparatory costs. For example, the BOE mails a special notice to taxpayers in the affected county, including adjacent areas. If a county borders jurisdictions with a large number of seller's permits, the BOE's mailing costs could be substantially higher.

In addition, because of certain fixed costs, the preparatory costs can vary depending on the number of new district taxes being implemented at the same time. For example, the cost of updating a publication and return to add four new taxes is similar to the cost to add one new tax. Moreover, those costs would be shared amongst four new districts versus one district. Thus, depending on the number of district taxes being implemented at the same time, the preparatory costs can vary.

Currently, Alameda County has three district taxes being imposed each at a rate of 0.50 percent. For these taxes, the BOE's estimated assessment of administrative costs for the fiscal year 2008-09, using the new methodology, is $1,171,000 for the one Alameda County Transportation Improvement Authority, $1,169,000 for the one Alameda County Essential Health Care Services Transactions and Use Tax, and $2,760,000 for Bay Area Rapid Transit District.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Alameda County's taxable sales totaled $20.4 billion in 2009. We assume that the County of Alameda's taxable sales follow a pattern similar to the Department of Finance's (DOF) forecast of overall statewide taxable sales. DOF's current revenue forecast assumes that taxable sales increased by 4 percent in 2010. The DOF further projects that taxable sales will increase 7.1 percent in 2011, 8 percent in 2012, 7 percent in 2013, and 6 percent in 2014. Based on DOF's forecast, we estimate Alameda County's taxable sales to be $20 billion for the period of April 1, 2013-December 31, 2013, and $28.3 billion for 2014.

REVENUE SUMMARY

This bill would generate the following revenue:

- For the operative date **4/1/13-12/31/13**
  The revenue impact for imposing a 0.5 percent tax increase on the County of Alameda amounts to $100 million ($20 billion X 0.5%).
- For **Calendar Year 2014**
  The revenue impact for imposing a 0.5 percent tax increase on the County of Alameda amounts to $141 million ($28.3 billion X 0.5%).

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This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.