



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	03/24/14	Bill No:	Senate Bill 1183
Tax Program:	Bicycle Tax	Author:	DeSaulnier
Sponsor:	Author	Code Sections:	RTC 7293 -7293.4
Related Bills:	None	Effective Date:	01/01/15

BILL SUMMARY

This bill authorizes cities, counties or regional park districts to impose a special sales tax on new bicycles, as specified. The tax rate would be determined by the local agency and proceeds used for improvements and/or maintenance of paved and natural surface trails.

ANALYSIS

CURRENT LAW

The State Board of Equalization (BOE) administers locally-imposed 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 provided in separate parts of the Revenue and Taxation Code. By law, cities and counties contract with the BOE to administer the ordinances imposing the local and district taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law**¹ authorizes cities and counties to impose local sales and use tax. This tax rate is fixed at 1% 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. Of this 1%, cities and counties use 0.75% to support general operations. The remaining 0.25% is designated by statute for county transportation purposes, but restricted for road maintenance or the operation of transit systems. The counties receive the 0.25% tax for transportation purposes regardless of whether the sale occurs in a city or in the unincorporated area of a county. In California, all cities and counties impose Bradley-Burns local taxes at the uniform rate of 1%.

The **Transactions and Use Tax Law**² and the statutes imposing the additional local taxes³ authorize cities and counties to impose district taxes under specified conditions. Counties may impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the county. Cities also may impose a district tax for general purposes and special purposes at a rate of 0.125%, or multiples of 0.125%, if the ordinance imposing the tax is approved by the required percentage of voters in the city. Under these laws, the combined district tax rate imposed within any county cannot exceed 2%⁴ (with the exception of the counties of Alameda, Contra Costa, and Los

¹ Part 1.5 of Division 2 of the Revenue and Taxation Code (RTC), commencing with Section 7200.

² Part 1.6 of Division 2 of the RTC, commencing with Section 7251.

³ Part 1.7 of Division 2 of the RTC, commencing with Section 7280.

⁴ RTC Section 7251.1.

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.

Angeles⁵).

Counties can also establish a transportation authority to impose district taxes under the Public Utilities Code (PUC). Various statutes under the PUC authorize a county board of supervisors to create an authority within the county or designate a transportation-planning agency to impose a district tax, subject to the applicable voter approval requirement. District taxes imposed under the PUC must conform to the administrative provisions contained in the Transactions and Use Tax Law, including the requirement to contract with the BOE to perform all functions related to the administration and operation of the ordinance.

Currently, all district tax ordinances administered by the BOE have boundaries coterminous with city or county lines. Some districts consist of multiple counties.

PROPOSED LAW

This bill would add RTC Chapter 3.8 (commencing with Section 7293) to Part 1.7 of Division 2 to authorize a city, county, or regional park district to impose bicycle tax. This would be a point of sale tax on new bicycles, with the rate of tax to be determined by the local agency. The bill excludes from the tax bicycles with wheels of 20 inches or less in diameter.

Imposition of Tax. The bill authorizes a city, county, or regional park district to impose the bicycle tax as a special tax subject to subdivision (d) of Section 2 of Article XIII C of the California Constitution. Subdivision (d) provides that, “No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote. A special tax shall not be deemed to have been increased if it is imposed at a rate not higher than the maximum rate so approved. The tax shall be in addition to any other tax imposed by law.”

Administration. The bill requires the BOE to collect the tax in a manner similar to the collection of local transactions and use taxes.

Tax rate. The rate of tax must be specified in an ordinance adopted by the governing board of the local agency proposing to impose the tax.

Disposition of Proceeds. The BOE also must transmit the net revenues from the tax to the local agency imposing the tax.

Definitions. This bill defines “bicycle” and “regional park district,” by reference to other California codes that define the terms. The definitions include the following:

"Bicycle" shall have the meaning as that term is defined in Vehicle Code Section 231, which reads: “A bicycle is a device upon which any person may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels.”

"Regional park district" has the same meaning as that term is defined in Public Resources Code Section 5500, which reads: “‘District’ as used in this article, means any regional park district, regional park and open-space district, or regional open-space district formed pursuant to this article.”

⁵ Exceptions authorized through AB 210 (Ch. 194, 2013, Wieckowski) for Alameda County and Contra Costa County and SB 314 (Chapter 785, 2003, Murray) for the Los Angeles Metropolitan Transportation Authority.

IN GENERAL – DISTRICT TAXES

California voters have approved many district taxes in their cities or counties. These district taxes are levied exclusively within the borders of either a county or an incorporated city (with the exception of the Bay Area Rapid Transit District, which is comprised of Alameda, Contra Costa, and San Francisco counties, and the Sonoma-Marín Area Rail Transit District). Cities and counties that levy a tax within their borders are referred to as “districts.”

District transactions (sales) taxes are imposed on the sale of tangible personal property in a district. If a retailer is located in a district, his or her sales are generally subject to district sales tax, either when the purchaser picks up the property at the retailer’s place of business or when the retailer delivers the property to the purchaser in the district. Retailers located within a district selling and delivering outside the district, generally are not liable for district sales tax in their district; however, they may be required to collect district use tax in the district of delivery (if applicable) on the transaction.

District use tax is imposed on the storage, use, or other consumption of tangible personal property in a district. Retailers generally must report district use tax if they are “engaged in business” within a district. The most common scenarios when retailers are considered “engaged in business” in a district include:

- The retailer maintains, occupies, or uses, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any type of office, sales room, warehouse, or other place of business in the district.
- The retailer has any kind of representative operating in the district for the purposes of making sales or deliveries, installing or assembling tangible personal property, or taking orders.
- The retailer receives rentals from a lease of tangible personal property located in the district.
- The retailer is a retailer of vehicles or undocumented vessels which will be registered, or aircraft which will be licensed, in a district.

A retailer “engaged in business” in a district generally is required to collect and report district use tax on a sale when it ships or delivers the property into the district or participates in making the sale of the property within the district. The following example illustrates when retailers should collect and report district use tax:

A retailer in Sacramento County makes a taxable sale of property that it delivers to the purchaser in the City of Concord in Contra Costa County, who will use the property there. Even though the sale is subject to the state sales tax, the sale is not subject to the Sacramento County district sales tax because the property was required to be delivered pursuant to the contract of sale outside the county. However, use of the property in Concord makes the sale subject to the applicable district use tax in Concord and Contra Costa County. If the retailer is “engaged in business” in Concord and ships or delivers the property to the Concord location, he or she is responsible for collecting and reporting district use taxes applicable in the City of Concord and in Contra Costa County. Conversely, if the retailer is not engaged in business anywhere in Contra Costa County, the retailer is not responsible for collecting any district use tax.

DISTRICT TAXES CURRENTLY ADMINISTERED BY THE BOE

Beginning April 1, 2014, there will be 178 local jurisdictions (city, county, and special purpose entity) imposing a district tax for general or specific purposes. Of the 178 jurisdictions, 44 are county-imposed taxes and 134 are city-imposed taxes. Of the 44 county-imposed taxes, 30 are imposed for transportation purposes.

District taxes increase the tax rate within a city or county because the district tax rate is added to the combined state and local (Bradley-Burns local tax) tax rate of 7.50%. As stated above, subject to certain exceptions the maximum combined rate of district taxes imposed in any county cannot exceed 2%. Each individual city district taxes count separately against the 2% maximum. For example, if a county imposes district taxes totaling 1.50%, each city within that county can only impose district taxes up to a maximum of 0.50%

Currently, district tax rates vary from 0.10⁶% to 1%. The combined state, local, and district tax rates range from 7.50 to 10%. Some jurisdictions impose no district taxes, while others, such as the cities of La Mirada, Pico Rivera, and South Gate located in Los Angeles County have total district taxes greater than 2% because they are subject to the specific exception discussed above. A listing of the district taxes, rates, and effective dates is available on the BOE's [website](#).

LEGISLATIVE HISTORY

[Assembly Bill 1989](#) (Carter, 2012) proposed a \$2 surcharge on the retailer for each new bicycle sold in California with the funds to be used for the creation and maintenance of bicycle trails. The measure failed in the Assembly Water, Parks and Wildlife Committee.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author who notes that the bill gives communities a new choice and mechanism for supporting local bicycle infrastructure. According to the author, investing in bicycle infrastructure and promoting cycling can draw new money to a local economy by attracting residents, visitors and businesses.
- 2. The proposed tax lacks the usual sales tax exemptions.** As provided in this bill, the special tax applies to all sales of new bicycles in this state with wheels over 20 inches in diameter. Bicycles with wheels of 20 inches or less are excluded from the tax. However, there is no provision to limit the special tax to retail sales of new bicycles. As written, the tax would apply to all sales of new bicycles in California that are normally exempt or excluded from sales and use tax, such as sales for resale, to the US government, or shipped outside this state.
- 3. Out-of-state retailers are exempt.** This bill proposes a point of sale tax to be imposed by cities, counties or regional park districts. Purchases from out-of-state retailers would not be subject to the special tax.
- 4. Overlapping taxing jurisdictions.** A city, county or regional park district are each authorized to impose a tax on new bicycles. Counties can include several cities while regional park districts may include multiple cities and counties within its borders. The bill does not limit the number of special taxes imposed within a specific

⁶ Through specific authority, SB 1187 (Chapter 285, Stats. 2001, Costa) authorizes Fresno County to impose a 0.10% district tax for zoological purposes.

location. As written, the bill could allow a county, city, and a regional park district to each impose a tax on a new bicycle sold at the same location.

- 5. Proposed special tax may be subject to the sales tax.** Under current Sales and Use Tax Law, the total gross receipts from sales of tangible personal property at retail are subject to sales tax unless specifically exempted or excluded by law. Because the new special tax is not specifically exempted or excluded, depending on how this tax is imposed it may be included in the total amount of the gross receipts and, therefore, subject to sales tax.

If the author wishes to exempt the proposed local tax from the sales tax, the following amendment to RTC 6012 is suggested:

(c). "Gross receipts" do not include any of the following:

(13) The amount of any tax imposed upon new bicycles pursuant to Part 1.7, Chapter 3.8 (commencing with Section 7293)

- 6. Procedures for contracting with the BOE for administration are unclear.** While the legislation provides that the tax imposed by this chapter shall be collected by the BOE in a manner *similar* to the collection of local transactions and use taxes, it is unclear what this means. There are no provisions requiring that the jurisdiction contract with the BOE to administer the tax, the amount of notice required before the tax is operative, or if and how the jurisdictions will reimburse the BOE for administration of the tax.
- 7. No limitation on rate or how the rate is calculated.** The Transactions and Use Tax Law limits the total rate of district taxes that may apply in a jurisdiction and also provides that the taxes must be imposed at multiples of 0.125%, with certain exceptions discussed previously. It is possible for multiple taxes to apply in one jurisdiction under this chapter. As written, there appears to be no limit on the tax any jurisdiction can impose or the total rate in a specific jurisdiction. Additionally, it appears that the tax may be imposed at any rate (i.e., not multiples of a certain percentage).

COST ESTIMATE

This bill does not increase administrative costs to the BOE because it only authorizes local jurisdictions to impose a higher amount of tax. Voter approval would be required before any tax is levied pursuant to these provisions.

If a city or county adopts an ordinance to levy the tax, the city or county would be required to contract with the BOE to perform all functions related to the ordinance, and reimburse the agency its administrative costs as well as the costs for the BOE's services in administering the ordinance. Costs for preparation and administration of this tax would likely be higher than other district taxes the BOE administers, since the proposed tax is unlike other district taxes.

To the extent that more local bicycle tax measures are approved by local voters, the BOE will need additional resources to administer the new taxes. The BOE will utilize the normal budget change proposal process to obtain the necessary funding when the number of newly approved measures requires additional staff to administer the workload.

REVENUE ESTIMATE

The bill does not include a tax rate, thus a revenue estimate cannot be prepared. The special tax revenue is limited to the local agencies that impose a special tax and is dependent on the rate at which the special tax is established. General Fund revenue would be increased only to the extent that any imposed special tax would be included in gross receipts that sales and use tax is applied.

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