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| Date Amended: | 04/28/09 | Bill No: | <u>SB 138</u> |
| Tax: | Local Graffiti | Author: | Liu |
| Related Bills: | | | |

BILL SUMMARY

This bill would increase the amount of the graffiti prevention tax a city or county may impose, upon voter approval.

ANALYSIS

CURRENT LAW

The Board of Equalization (Board) administers locally-imposed sales and use taxes under the Bradley-Burns Uniform Local Sales and Use Tax Law (local taxes) and under the Transactions and Use Tax Law (district taxes), which are provided in separate parts of the Revenue and Taxation Code. Cities and counties are required to contract with the Board to perform all functions in the administration and operations of the ordinances imposing the local and the district taxes.

The **Bradley-Burns Uniform Local Sales and Use Tax Law** (Part 1.5, commencing with Section 7200 of the Revenue and Taxation Code) authorizes cities and counties to impose these local taxes. The law requires that the rate of tax be fixed at one 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. Of the one 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. All local jurisdictions impose these local taxes at the uniform rate of 1 percent.

The **Transactions and Use Tax Law** (Part 1.6, commencing with Section 7251 of the Revenue and Taxation Code) and **Additional Local Taxes law** (Part 1.7, commencing with Section 7285) authorize cities and counties to impose district taxes under specified conditions. In general, all district taxes levied under these provisions are levied based on a percentage (ranging from .10% to 1%) of the sales price of the tangible personal property sold or used within the district levying the tax. Under these laws, the combined rate of these district taxes imposed in any local jurisdiction cannot exceed 2% (with one exception in Los Angeles County).

In addition to the district taxes authorized to be levied by local jurisdictions as a percentage of the sales price as described in the above paragraph, Chapter 3 of the **Additional Local Taxes law** authorizes cities and counties, upon approval by a 2/3 majority of qualified voters, to levy a distinctly different tax. Under this chapter, cities and counties are authorized to levy a “graffiti prevention tax” on the privilege of selling at retail aerosol paint containers, containers of any other marking substance, specified felt tip markers and other marking instruments at the rate of no more than 10 cents per aerosol paint container and no more than 5 cents per felt tip marker or other marking instrument. Although this chapter has been in law since 1991, no local jurisdictions have ever levied the tax.

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 Board’s formal position.

PROPOSED LAW

This bill would amend Revenue and Taxation Code Section 7287 in the Additional Local Taxes law to increase the amount of graffiti prevention tax a city or county may impose from \$0.10 to \$0.50 per aerosol container or container of other marking substance, and from \$0.05 to \$0.25 per felt tip marker or other marking instrument. This tax, including the proposed increase, is not considered in the determination of the 2% combined-rate county tax cap imposed under Section 7251.1.

The bill would become effective on January 1, 2010.

IN GENERAL

There are over 100 district taxes imposed by various cities and counties in the state, with tax rates ranging from 0.10 to 1.00 percent. A list of all the various tax rates in California's local jurisdictions as of April 1, 2009, may be viewed at <http://www.boe.ca.gov/news/pdf/l212b.pdf>. Not shown on this list are additional district taxes approved by voters within Los Angeles County that will take effect on July 1, 2009. With these additional voter-approved district taxes, the tax in all jurisdictions within Los Angeles County will increase by an additional 0.50 percent beginning on July 1, 2009 and in addition, the tax in two cities within the county – South Gate and Pico Rivera – will be an additional 0.50 percent higher. These newly enacted taxes will result in the cities of South Gate and Pico Rivera having the highest total sales and use tax rates in the state, at 10.75%.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Los Angeles City Councilman Jose Huizar. According to the author's office, local government leaders, law enforcement, and community groups have worked together to develop successful graffiti-prevention programs. Criminal penalties have increased, and ordinances allowing local governments to levy civil fines against taggers have been enacted, yet problems continue to persist. Local governments need additional funding for graffiti cleanup efforts, particularly when graffiti endangers a community's quality of life. Enactment of this measure would allow voters to approve additional funding for local graffiti cleanup efforts.
2. **Past concerns about the language of the graffiti prevention tax would still apply.** When the 1990 legislation was pending to add the original graffiti prevention tax to the law, the Board's analysis noted several concerns that were not addressed in the language of the bill. These concerns would continue to apply to this bill. Specifically, the definition of the items upon which tax would be imposed lack clarity. For example, "other marking substance" could include chalk, soap, fingernail polish, shoe polish, primers, pencils, white-out, etc. In order for the Board and retailers to appropriately implement and administer any proposed tax adopted under these provisions, it is important to have a specific description of the items to which the tax would apply.

Also, there is a concern with respect to the accounting burden this new tax would have on retailers who would be required to segregate sales of the specific items for proper reporting. For many, a separate computer program would be required to account for, and to provide a receipt to customers for, the graffiti tax.

Another issue relates to the concept of essentially penalizing a wide range of legitimate purchasers of the products to which the tax would apply in order to

provide funding for the repair of property destroyed by a relatively few individuals.

COST ESTIMATE

This bill does not increase administrative costs to the Board 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 adopted an ordinance to levy the tax, the city or county would be required to contract with the Board to perform all functions related to the ordinance, and pay to the Board its costs of preparation to administer the ordinance as well as the costs for the Board's services in actually administering the ordinance. Costs for preparation and administration of this tax could be higher than other district taxes the Board administers, since the proposed tax is unlike other district taxes.

As a point of perspective for existing district taxes administered by the Board, our estimated 2007-08 administrative costs range from \$18,000 (Inyo County) to \$2.6 million (Orange County), with the highest administrative costs of \$6.1 million attributable to the Los Angeles County Transportation Commission.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

For the year 2007, the estimated number of aerosol paint cans sold in California was 24,856,000. For Los Angeles County, there were 6,717,000 sold; and for the city of Pasadena, a total of 101,000. The estimated number of felt tip markers sold in California was 327,550,000; for Los Angeles County there were 88,521,000 sold; and in the City of Pasadena a total of 327,000. If the voters pass the proposed tax increase for aerosol containers and felt tip markers, the estimated revenue for aerosol paint containers in Los Angeles County would amount to \$3,359,000 (6,717,417 x \$0.50) and in the City of Pasadena the revenue would be \$50,000 (100,726 x \$0.50). The estimated revenue for felt tip markers in Los Angeles County would amount to \$22,130,000 (88,520,888 x \$0.25) and in the City of Pasadena the revenue would be \$332,000 (1,327,345 x \$0.25). We do not have data on "other marking substances."

REVENUE SUMMARY

If the legislative body of all cities and counties in California, through voter approval, passed an ordinance to levy a tax on the sale of aerosol paint containers and felt tip markers the estimated revenue for the State of California would amount to \$94,316,000. The revenue in County of Los Angeles would amount to \$25,489,000, while the City of Pasadena would generate \$382,000.

| | California | Los Angeles | Pasadena |
|-----------------|--------------|--------------|-----------|
| Aerosol Revenue | \$12,428,000 | \$3,359,000 | \$50,000 |
| Marker Revenue | 81,888,000 | 22,130,000 | 332,000 |
| Total Revenue | \$94,316,000 | \$25,489,000 | \$382,000 |

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