STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/14/03**	Bill No:	**AB 427**
Tax:	**Transactions and Use**	Author:	**Longville**
Board Position:		Related Bills:	**ACA 7 (Dutra)** **SCA 2 (Torlakson)**

BILL SUMMARY

This bill would delete the 20-year limit on the duration of a transactions and use tax as specified under Section 180201 of the Public Utilities Code, and would provide that the tax shall remain in effect for the period of time designated in the tax ordinance.

ANALYSIS

Current Law

Under **Article XIII A, Section 4, of the California Constitution**, cities, counties, and special districts, by a two-thirds vote of the voters of such districts, may impose special taxes, except ad valorem taxes on real property or a transactions tax or sales tax on the sale of real property within such districts.

Under **Article XIII C, Section 1, subdivision (a), of the California Constitution**, "General tax" means any tax imposed for general governmental purposes. Under Section 1, subdivision (d) of Article XIII C, a "special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund.

Under Article XIII C, Section 2, subdivision (b), of the California Constitution, a local government may impose a general tax by a majority of the voters. Under Section 2, subdivision (d) of Article XIII C, a local government may impose a special tax by two-thirds of the voters.

Senate Bill 147 (Chapter 786, Statutes of 1987, Deddeh) added Division 19 (commencing with Section 180000) of the Public Utilities Code. This division is known as the Local Transportation Authority and Improvement Act (LTAIA). The LTAIA authorizes a county board of supervisors to create an authority within the county or designate a transportation planning agency pursuant to Section 29532 of the Government Code, and to impose a transactions and use tax with a majority approval of the voters. However, a subsequent California Supreme Court decision [*Santa Clara County Local Transportation Authority v. Guardino,* (1995)] held that a transportation sales tax measure is a special tax that requires approval by a two-thirds vote pursuant to Proposition 62 of 1986.

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The LTAIA also provides that a transactions and use tax shall remain in effect for not longer than 20 years, or any lesser period of time as specified in the tax ordinance. The revenues from these taxes may be allocated by the authority for the construction, maintenance, improvement, and operation of local streets, roads, and highways, and the construction, improvement, and operation of public transit systems. The authority shall contract with the Board of Equalization to perform all functions incidental to the administration and operation of the ordinance.

Under the **Transactions and Use Tax Law** (Parts 1.6 and 1.7, Division 2, Revenue and Taxation Code) counties are authorized to impose a transactions and use tax at a rate of 0.25 percent, or a multiple thereof, if the ordinance imposing such a tax is approved by the voters. The transactions and use taxes are additional sales and use taxes imposed on the sale or use of tangible personal property. The maximum allowable combined rate of transactions and use taxes levied in any county may not exceed 1 ½ 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 ¾ and 2 percent, respectively.

Section 7285 of the Transactions and Use Tax Law additionally authorizes counties to levy a transactions and use tax at a rate of 0.25 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 at a rate of 0.25 percent, or multiple thereof, for specific purposes with the approval of two-thirds of the voters.

Counties are required to contract with the Board to perform all functions in the administration and operations of the ordinances imposing the transactions and use taxes.

Proposed Law

This bill would amend Section 180201 of the Public Utilities Code to delete the 20-year limit on the duration of a transactions and use tax, and provide that the tax shall remain in effect for the period of time specified in the tax ordinance that is approved by the voters.

In General

As stated previously, the LTAIA authorizes counties to create an authority to levy a transactions and use tax for transportation purposes for a period not to exceed 20 years. Counties are also authorized, under the Revenue and Taxation Code, to impose a transactions and use tax for general governmental purposes and specific purposes.

Currently, there are 17 counties that impose transactions and use taxes for transportation purposes (see Table on page 6). Twelve counties have a 20-year limit on the duration of the tax, and one county has a 15-year limit. Seven counties (Alameda, Contra Costa, Los Angeles, San Francisco, San Mateo, Santa Clara, and Santa Cruz) have transportation authorities that impose a tax with no sunset date. These taxes are to remain in effect until repealed. In November 2002, voters of Riverside approved an extension of the existing Riverside County Transportation Commission transactions and use tax from June 30, 2009, to June 30, 2039.

COMMENTS

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1. **Sponsor and purpose.** This bill is sponsored by the author to allow counties more flexibility to impose a transactions and use tax for any period of time that the voters will support. According to the author's staff, several counties have expressed that the voters would support a measure to levy a tax for transportation purposes for a period of 30 to 35 years. The author's staff commented that the LTAIA precludes counties from imposing a tax for transportation purposes for a period greater than 20 years. This bill would allow a transactions and use tax, under the provisions of the LTAIA, to remain in effect for the period of time as specified in the tax ordinance.

2. **The Board staff does not foresee any administrative problems with this measure.** Existing law requires that counties contract with the Board to perform all functions incidental to the administration and operation of the tax ordinance. If a tax is imposed for a specific period of time, the date that the tax will expire is contained in the tax ordinance. Whether the tax is imposed for a period of 20 years or 30 years does not create any administrative difficulty to the Board.

3. **Suggested amendment - delete majority voter approval requirement under Section 180201 of the Public Utilities Code.** Under Section 180201, a transactions and use tax may be imposed by a majority approval of the voters. However, as stated in the Legislative Counsel's Digest of this bill, the California Supreme Court has held that a transportation sales tax measure is a special tax that requires approval by a two-thirds vote. Additionally, Proposition 218, passed by the voters on November 5, 1996, requires, among other things, that (1) any tax imposed for specific purposes is a "special tax," even if the funds are placed into a general fund; (2) special purpose districts or agencies shall have no power to levy general taxes; and (3) any special tax imposed, extended, or increased must be approved by two-thirds of the voters (Cal. Const., Art. XIIIC).

   The voter approval requirement under Section 180201 conflicts with the Constitution. Therefore, Board staff recommends that this section also be amended to either: (1) change the voter approval requirement to a two-thirds vote; or (2) add language that would provide a voter approval requirement subject to existing law. In case there is a change in the voter approval requirement, this second suggestion would account for that change. If the author prefers using the second suggestion, Board staff has drafted the following language:

   SECTION 1. Section 180201 of the Public Utilities Code is amended to read:

   180201. A retail transactions and use tax ordinance applicable in the incorporated and unincorporated territory of a county may be imposed by the authority in accordance with this chapter and Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code, if the tax ordinance is adopted by a two-thirds vote of the authority and imposition of the tax is subsequently approved by a majority of the electors voting on the measure<u>, or any otherwise applicable voter approval requirement,</u> at a special election called for that purpose by the board of supervisors, at the request of the authority, and a county transportation expenditure plan is adopted pursuant to Section 180206.

A retail transactions and use tax approved by the electors shall remain in effect for ~~not longer than 20 years, or any lesser~~ *the* period of time specified in the tax ordinance. The tax may be continued in effect, or reimposed, by a tax ordinance adopted by a two-thirds vote of the authority and the reimposition of the tax is approved by <u>any applicable majority</u> of the electors.

4. **Suggested technical amendment.** Section 180204, subdivision (a), provides that the tax ordinance shall be operative on the first day of the first calendar quarter commencing more than 120 days after the adoption of the ordinance. This provision conflicts with Section 7265 of the Transactions and Use Tax Law, which provides for a delay of 110 days. The problem with the delay of 120 days is that depending on when the election to approve the tax is held, a 10-day difference could result in an extra quarter delay. This would result in the county losing one quarter of tax revenues. Additionally, it would be better if these two statutes were the same.

5. **Related Legislation.** ACA 7 (Dutra) would constitutionally authorize cities and counties and any regional transportation agency, subject to 55 percent of the voters of the jurisdiction, to impose a transactions and use tax for a period of 20 to 30 years, as specified, at a rate of 0.50 percent to be used exclusively for transportation purposes.

   SCA 2 (Torlakson) would constitutionally authorize cities, counties, cities and counties, and regional transportation agencies, with the approval of the majority of the voters in the jurisdiction, to impose a transactions and use tax to be used exclusively for funding transportation projects and services and related smart growth planning. The Board voted to support this bill.

COST ESTIMATE

This bill by itself would not result in additional costs to the Board. Counties are required to contract with the Board to perform functions related to the transactions and use tax ordinance, and reimburse the Board for its preparation costs to administer the ordinance as well as the costs for the Board's ongoing services in actually administering the ordinance.

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REVENUE ESTIMATE

To the extent that this bill makes it easier for local governments to impose or extend local transactions and use taxes, this bill, if approved statewide, would increase local government transportation revenues. The revenue impact would be specific to each local government that approved a tax.

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COUNTIES WITH TRANSPORTATION AUTHORITIES IMPOSING TAXES FOR TRANSPORTATION PURPOSES

COUNTY NAME	NAME OF TRANSPORTATION AUTHORITY	EFFECTIVE DATE	EXPIRATION DATE	DURATION OF TAX	
Alameda	Alameda County Transportation Improvement Authority	04/01/02	03/31/22	20 YEARS	
	Bay Area Rapid Transit District - Alameda	04/01/70	NONE		
Contra Costa	Contra Costa Transportation Authority	04/01/89	03/31/09	20 YEARS	
	Bay Area Rapid Transit District - Contra Costa	04/01/70	NONE		
Fresno	Fresno County Transportation Authority	07/01/87	06/30/07	20 YEARS	
Imperial	Imperial Count Local Transportation Authority	04/01/90	03/31/10	20 YEARS	
Los Angeles	Los Angeles County Transportation Commission	04/01/91	NONE		
	Los Angeles County Transportation Commission	07/01/82	NONE		
Madera	Madera County Transportation Authority	10/01/90	09/30/05	15 YEARS	
Orange	Orange County Transportation Authority	04/01/91	03/31/11	20 YEARS	
Riverside	Riverside County Transportation Commission	07/01/89	06/30/39	30 YEARS	*
Sacramento	Sacramento Transportation Authority	04/01/89	03/31/09	20 YEARS	
San Bernardino	San Bernardino County Transportation Authority	04/01/90	03/31/10	20 YEARS	
San Diego	San Diego County Regional Transportation Commission	04/01/88	03/31/08	20 YEARS	
San Francisco	San Francisco Co. Transportation Authority	04/01/90	03/31/10	20 YEARS	
	Bay Area Rapid Transit District - San Francisco	04/01/70	NONE		
San Joaquin	San Joaquin Transportation Authority	04/01/91	03/31/11	20 YEARS	
San Mateo	San Mateo County Transit District	07/01/82	NONE		
	San Mateo County Transportation Authority	01/01/89	12/31/08	20 YEARS	
Santa Barbara	Santa Barbara Co. Local Transportation Authority	04/01/90	03/31/10	20 YEARS	
Santa Clara	Santa Clara County Transit District	10/01/76	NONE		
Santa Cruz	Santa Cruz Metropolitan Transit District	01/01/79	NONE		

* Based on extension of tax already in effect.

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