



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	05/12/03	Bill No:	AB 1065
Tax:	Bradley-Burns	Author:	Longville
Board Position:		Related Bills:	AB 1221 (Steinberg and Campbell) ACA 17 (Daucher)

BILL SUMMARY

This bill would authorize a county to increase the local sales and use tax rate by 0.25 percent, from 1.25 to 1.5 percent.

Summary of Amendments

Since the previous analysis, this bill was amended to: (1) authorize a county to impose a local sales and use tax at a rate of either 1.25 or 1.5 percent; and (2) require the county to comply with the voter-approval requirements of Section 2 of Article XIII C of the California Constitution when the county imposes, extends, or increases a tax.

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, of the California Constitution**, "General tax" means any tax imposed for general governmental purposes. "Special tax" means any tax imposed for specific purposes, including a tax imposed for specific purposes, which is placed into a general fund. Under Section 2 of Article XIII C, a local government may impose a general tax by a majority of the voters, and impose a special tax by two-thirds of the voters. Also under Section 2 of Article XIII C, special purpose districts or agencies, including school districts, have no power to levy general taxes.

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 county, or purchased outside the county for use in the county.

Under the Bradley-Burns Law, counties are authorized to impose a local sales and use tax at a rate of up to 1.25 percent. Cities are also authorized to impose a local sales and use tax at a rate of up to 1 percent that is credited against the county rate so that the combined local sales and use tax rate under the Bradley-Burns Law does not

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exceed 1.25 percent. Of the 1.25 percent, cities and counties use the 1 percent to support general operations. The remaining 0.25 percent is designated by statute for county transportation purposes and may be used only for road maintenance or the operation of transit systems.

Also, under Bradley-Burns Law, counties are required to comply with the provisions of Article 11 (commencing with Section 29530) of Chapter 2 of Division 3 of Title 3 of the Government Code. Under Section 29530 of the Government Code, all revenues derived from that portion of the Bradley-Burns rate in excess of 1 percent are required to be deposited in a local transportation fund in the county treasury and dedicated for county transportation purposes.

The Board performs all functions in the administration and operations of the ordinances imposing the Bradley-Burns Uniform Local Sales and Use Tax and all local jurisdictions imposing these taxes are required to contract with the Board for administration of these taxes.

Proposed Law

This bill would amend Sections 7202 and 7203 of the Revenue and Taxation Code to authorize counties to impose a local sales and use tax at a rate of either 1.25 or 1.5 percent. This bill would require counties to comply with the voter-approval requirements of Section 2 of Article XIII C of the California Constitution when the county imposes, extends, or increases the tax authorized under Sections 7202 and 7203 of the Revenue and Taxation Code.

History

In 1955, the Bradley-Burns Uniform Local Sales and Use Tax Law was enacted in an effort to put an end to the problems associated with the different sales and use tax rates among the various communities in the state. Initially, it was optional for counties to participate in the Bradley-Burns tax program, and the local sales and use tax rate was fixed at 1 percent. The difference now is that the cities and counties cannot impose their own local sales tax program separate from Bradley-Burns.

The board of supervisors of seven counties (Inyo, Los Angeles, Mariposa, Mono, Orange, Sacramento, San Benito) adopted ordinances effective April 1, 1956. Subsequently, 50 other county boards adopted ordinances by June 1959, and the final county (Siskiyou) board, adopted their ordinance in December 1961. None of these ordinances had been approved by the voters of the respective jurisdiction.

In 1972, when sales tax was first levied on gasoline, counties began receiving 0.25 percent local tax revenue for transportation purposes.

In 1978, voters approved Proposition 13, which lowered property taxes and placed other restrictions on local government taxation. Specifically, Proposition 13 included a section stating that "Cities, Counties, and special districts, by a two-thirds vote of the qualified electors of such district, may impose special taxes on such district . . ." In 1986, voters approved a statutory measure known as Proposition 62, which prohibited a local government from imposing (1) a tax for specific purposes unless it is approved by two-thirds of the voters, and (2) a tax for general purposes unless it is approved by a majority of the voters.

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In 1996, voters approved Proposition 218, which added Articles XIII C and XIII D to the California Constitution. Proposition 218 requires, among other things, that (1) any tax imposed for general governmental purposes must be approved by a majority of the voters (including taxes imposed by chartered cities); (2) any tax imposed for specific purposes must be approved by two-thirds of the voters; (3) any tax imposed for a specific purpose is a "special tax," even if the funds are placed into a general fund; and (4) special purpose districts or agencies, including school districts, shall have no power to levy general taxes.

COMMENTS

- 1. Sponsor and purpose.** This bill is sponsored by the California Transit Association in an effort to increase revenues for county transit services. According to the sponsor, under the Transportation Development Act (Senate Bill 325, Chapter 1400, Stats. 1971) tax revenues collected by the Board in excess of one percent, and pursuant to a contract entered into by the county board of supervisors pursuant to Government Code Section 29530, would be returned to each county that established a Local Transportation Fund. The tax revenues deposited in the local transportation fund were to be used exclusively to provide public transit service and to maintain streets and roads in rural counties.

According to the sponsor, these tax revenues have proven to be the backbone of transit funding in California and contribute to vital road maintenance and rehabilitation in rural areas. However, the 0.25 percent local tax portion dedicated for county transportation purposes has not been increased since its inception (Senate Bill 325, Chapter 1400, Stats. 1971). Consequently, the value of the revenues derived from this 0.25 percent tax portion have eroded precipitously over time. According to the sponsor, this bill will provide counties another possible tool to address the long decline in the local transportation buying power.

The sponsor also stated that this bill would presumably be subject to existing constitutional requirements and case law regarding imposition of sales and use taxes for special purposes.

- 2. Summary of May 12 amendments.** Amendments to this bill require a county to impose a local sales and use tax at a rate of either 1.25 or 1.5 percent, instead of allowing a rate of at least 1.25 percent, but not to exceed 1.5 percent. Amendments also require the county to comply with the voter-approval requirements of Section 2 of Article XIII C of the California Constitution when the county imposes, extends, or increases a tax.
- 3. Approval by the voters would be required.** This bill authorizes counties to increase the Bradley-Burns sales and use tax rate from 1.25 percent to 1.50 percent. Proposition 218, which was passed by the voters in November 1996, requires that in order to raise a new tax or to increase an existing one, local governments must obtain the required voter approval. Therefore, since this bill proposes to increase a tax by a local government, a vote is required. All general taxes must be approved by a majority vote of the people. All special taxes must be approved by a two-thirds vote of the people.

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Is this tax a general or special tax? While Board staff is of the opinion that this tax is a general tax, an argument can be made for both. The ordinances imposing the tax do not specify whether the 0.25 percent of the taxes must be used for transportation purposes. Such specification is required to be in the contracts under Section 7202, subdivision (d). Section 7202 (d) requires that the contract must contain a provision that the county agrees to comply with Section 29530 of the Government Code. As previously stated, Section 29530 of the Government Code requires that the county board of supervisors agrees by contract with the Board to establish a local transportation fund in the county treasury and shall deposit in this fund all revenues transmitted to the county by the Board pursuant to provisions of the Bradley-Burns law. Thus, while the contract specifies that the county will comply with Section 29530, such specification is in the contract, not the ordinance.

Regarding the ordinance, Section 7202, subdivision (e) provides that the county's ordinance must contain a provision that it becomes inoperative if it fails to comply with Government Code Section 29530. This does not, however, necessarily translate to the entire ordinance being for special purposes. For these reasons, Board staff is of the opinion that this tax is a general tax which requires a majority vote.

- 4. This bill creates problem if not all 58 counties get the voter approval.** This bill would require all 58 counties to get voter approval to increase a Bradley-Burns sales and use tax in their jurisdictions. The Bradley-Burns system is a uniform system. This means that the same rules apply to all counties. There is a very real possibility that not all counties would even attempt to put a measure on the ballot, much less get the required voter approval.

The Bradley-Burns Uniform Law was enacted in 1955 to put an end to the varying tax rates levied by local jurisdictions throughout the state. Prior to the enactment of Bradley-Burns, retailers were faced with many situations that complicated tax collection, reporting, auditing, and accounting. Because of the differences in taxes between areas, retailers were affected competitively. Many retailers advertised "no sales tax if you buy in this area." With the enactment of the Bradley-Burns Law, costs to the retailer were reduced, and illogical competitive situations were corrected. Not all counties and cities, however, came on board at once. The last entities to enact Bradley-Burns ordinances did so in 1961. Litigation over the interface between jurisdictions in the system and those outside of it resulted in the published cases *City of Pomona v. SBE* (1959) 52 Cal.2d 305 and *City of Commerce v. SBE* (1962) 205 Cal.App.2d 387. With the differing rates proposed by this bill, such litigation would likely erupt again, thus draining state resources from program administration into litigation.

- 5. Why destroy the uniformity of Bradley-Burns; instead, increase the rate limitation for counties under the Transactions and Use Tax Law.** As stated under Comment 4, Bradley-Burns is a uniform system for which the same rules apply to all local jurisdictions. The Transactions and Use Tax Law is not uniform. Under the transactions and use tax law, counties have blanket authority to impose a general tax (majority vote) or a special tax (two-thirds vote). Since the sponsor agrees that in order to increase the local sales and use tax rate, voter approval is required, why not increase the rate limitation under the transactions and use tax law from 1.50 percent to 2 percent. This would give counties the authority, with the

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approval of its voters, to impose an additional one-half percent. This would reduce the burden on out-of-state retailers not engaged in business in the county levying the new tax as they would only have to collect use tax at the rate in effect in the jurisdiction where they are physically present.

6. **All counties would be required to adopt a new ordinance.** Current law imposes a local tax at a rate of 1.25 percent in a county. This bill would require every county that adopts the tax to adopt new ordinances reflecting the new maximum rate of 1.50 percent for counties.
7. **Technical amendment - partial local sales and use tax exemption for aircraft common carriers needs to be reduced from 80 percent to 67 percent.** This bill increases the local sales and use tax rate imposed by a county to 1.50 percent. There is a partial exemption of 80 percent on sales and purchases of property (i.e. parts, supplies, and equipment) to aircraft operators if: (1) the aircraft is operated by a common carrier according to the laws of California, the United States, or a foreign government; (2) the property is used or consumed directly and exclusively in the use of the aircraft as a common carrier of persons or property; and (3) the property is used or consumed principally outside the county in which the sale was made. **This exemption does not apply to the sale or purchase of fuel and petroleum products.**

As stated above, the sales and purchases of property to aircraft common carriers is exempt from the 1 percent local tax. Under Bradley-Burns, counties are authorized to impose a local sales and use tax at a rate of 1.25 percent. The partial exemption of 80 percent is calculated based on the 1 percent of the 1.25 percent county local tax. Therefore, since this bill would increase the local sales and use tax rate to 1.50 percent, a corresponding reduction needs to be made to the exemption. The partial aircraft common carrier exemption needs to be reduced from 80 percent ($1 / 1.25$) to 67 percent ($1.00 / 1.50$). Without this reduction, the exemption will be overstated resulting in an understated amount of local sales and use tax paid to the counties. Board staff is willing to work with the author's office to draft these amendments.

8. **Related legislation. AB 1221 (Steinberg and Campbell)**, among other things, would: (1) prohibit a city from imposing a local sales and use tax at a rate not to exceed 0.50 percent; (2) prohibit a county from imposing a local sales and use tax rate at a rate not to exceed 0.75 percent; (3) increase the state sales and use tax rate by 0.50 percent; and (4) increase the amount of property tax revenue allocated to a county or city by that county or city's reimbursement amount, as defined, and correspondingly decrease the amount of property tax revenue allocated to a county's Educational Revenue Augmentation Fund by the countywide adjustment amount, as defined. **ACA 17 (Daucher)**, among its provisions, would authorize a city or a county to irrevocably elect an increase in its property tax revenue by an amount equal to its local sales and use tax revenue attributable to a rate of 0.50 percent.

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COST ESTIMATE

Modifying the local sales and use tax rate a county may impose would require every county to adopt a new ordinance and a new contract with the Board. Programming and data entry would also be necessary to modify the Fund Distribution System to account for different rates allocated to the various counties. Retailers would have to be notified of the change in the local tax rate. Tax returns and various Board publications would have to be revised to reflect the new rate changes. A detailed cost estimate is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Taxable sales in California for 2003-04 are estimated to be \$458.4 billion. A tax rate of 0.25 percent would raise \$1.1 billion.

Revenue Summary

If all counties elected to increase their tax rate by 0.25 percent, the annual revenue gain would be \$1.1 billion.

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