State of California

Board of Equalization
Legal Department-MIC: 82

M e m o r a n d u m

700.0150

To : Mr. Dan Cady
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Date: February 16, 2005

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Subject: Proposition 218
Increases in City Sales Tax Rates
Government Code § 53750(h)(2)(B)

Under Revenue and Taxation Code section 7202(h)(1) cities may levy local sales and use taxes at rates up to 1% to offset the county local sales and use tax rate of 1.25%.[1] Cities often have arrangements with their counties whereby they forego a portion of the tax rate they could levy. Such agreements usually provide for the cities' rates to change, often annually, up as well as down.[2] The question has arisen as to whether or not Proposition 218 requires that rate increase made pursuant to such agreements receive voter approval.

Proposition 218, passed by the voters at the November 5, 1996, General Election, in part added Article XIIIC to the California Constitution. Section 2(b) provides that no local government may "impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote." Section 1(b) includes cities in the definition of "local government." City local tax ordinances are thus generally subject to the voter-approval requirements of Proposition 281.

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[1] While the "Triple Flip" is in effect, the rates are 0.75% and 1%, respectively. (Rev. & Tax. Code, § 7203.1, as amended by AB 2115, Stats. 2004, Ch. 610, § 10.) 0.25% remains reserved to the county for transportation purposes. (§ 7202(d).) All statutory citations, unless otherwise stated, are to the Revenue and Taxation Code.

[2] Cities often refer to such agreements as "revenue sharing agreements." As explained in Board of Equalization Pamphlet No. 28, "City and County Officials" (July 2000), p. 8, these are not true revenue sharing agreements in that no revenue is split among entities. A city simply sets its rate lower than the upper limit allowed by section 7202(h)(1) with the remainder going to the county.

In the context of such "revenue sharing" agreements, however, city local tax ordinances operate as revenue adjustment mechanisms rather than tax-levying ordinances. It is the county ordinance that sets the local tax rate (1.25%). As the city's rate offsets the county rate, the overall local tax rate remains the same. The city rate only determines how much of the total sales or use tax revenue goes to the city.

Therefore, we conclude that a city's increased tax rate pursuant to a "revenue sharing" agreement with the county is not a tax "increase" requiring voter approval under Proposition 218. Consequently, in the event a city's tax-rate agreement with its county provides for an increase in its local tax rate in a particular year, that increase does not need to be approved by the voters.[3]

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[3] We note that when a city adjusts its rate pursuant to an agreement with its county, it is also implementing a previously approved tax which cannot go above the rate approved when the city entered the local tax system. Such an upward adjustment is not considered a tax rate "increase" under Proposition 218. (See Gov't. Code, § 53750(h)(2)(B).)