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STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date:	**02/20/14**	Bill No:	**Assembly Bill 2119**
Tax Program:	**Transactions and Use**	Author:	**Stone**
Sponsor:	**Author**	Code Sections:	**RTC 7285 & 7285.5**
Related Bills:		Effective Date:	**01/01/15**

BILL SUMMARY

This bill authorizes an unincorporated area of a county to levy, increase, or extend a transactions and use tax within its boundaries if approved by the required number of voters voting within those boundaries.

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 to 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 additional local taxes[3] authorize cities and counties to impose transactions and use (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 local jurisdiction cannot exceed 2%[4] (with the exception of the counties of Alameda, Contra Costa, and Los Angeles[5]).

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[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.
[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.

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.

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.

PROPOSED LAW

This bill authorizes a county board of supervisors to levy, increase, or extend a district tax within the unincorporated area of the county for general or special purposes, if the ordinance proposing that tax is approved by the required percentage of voters within the unincorporated area of the county. The tax revenues must be used for general or special purposes, as applicable, solely within the unincorporated area of the county that approved the tax.

If enacted, the bill takes effect on January 1, 2015.

IN GENERAL – DISTRICT TAXES

California voters have approved new 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-Marin 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 are when:

- 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 percent. As stated above, subject to certain exceptions the maximum combined rate of all district taxes imposed in any county cannot exceed 2 percent. The city district taxes count against the 2 percent maximum. Accordingly, if a city imposes a 0.50 percent district tax, the county in which it is located can impose district taxes not to exceed a combined rate of 1.50 percent.

Currently, district tax rates vary from 0.10[6] percent to 1 percent. The combined state, local, and district tax rates range from 7.50 to 10 percent, ranging from jurisdictions with no district taxes to the cities of La Mirada, Pico Rivera, and South Gate located in Los Angeles County which 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.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author. According to the author's office, cities have the ability to place on the ballot a district tax measure for a vote exclusively by city residents who will be affected by the measure. However, when counties place a measure on the ballot, residents within the incorporated areas (cities) as well as the unincorporated area of the county must vote on the measure.

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

The author further states that many counties have half or more of their county in unincorporated areas, making those counties responsible for a large amount of infrastructure. Subject to approval exclusively by the voters in the unincorporated area of the county, the revenues derived from the tax would be spent on infrastructure projects solely in the unincorporated area of the county that approved the tax.

2. **Effect of bill**. This bill allows a county board of supervisors to levy a district tax exclusively within the unincorporated area of the county and to be used solely for purposes within the unincorporated area, if the tax is approved by the required percentage of voters within the same unincorporated area. Current law authorizes a county to impose a district tax for general or specific purposes within the entire county, which includes the incorporated and unincorporated areas. Current law does **not** authorize a county to levy a district tax that is limited to the unincorporated area of the county.

3. **Retailers may struggle to determine the proper tax rate.** It is not always possible to determine the correct tax rate based solely on a mailing address or zip code. Zip codes are not necessarily assigned to areas that are contiguous with city or county borders. Additionally, a customer may reside in an area with a city name and zip code with a particular tax rate, but their mail may be routed to a post office in a neighboring area which has a different tax rate. As a result, a retailer could apply an incorrect tax rate.

   Using Sacramento County as an example, the applicable district tax for the unincorporated area of Sacramento is 8%, which reflects the 7.5% statewide base rate, plus the 0.5% district tax for the entire county. However, if the retailer's customer lived in the City of Sacramento located in Sacramento County, the applicable tax rate is 8.5%. The 8.5% tax rate includes the 7.5% statewide base rate, plus the 0.5% district tax for the entire county, plus another 0.5% City of Sacramento district tax.

   The following table illustrates the applicable tax rate for a retailer's customer whose residence or place of business is located in either the incorporated area (city) or unincorporated area of the county:

Customer's residence or business located in the City of Sacramento	
Statewide base rate	7.50%
City of Sacramento District Tax (General)	0.50%
Sacramento County Transportation Authority	0.50%
Total state, local and district tax rate	8.50%
Customer's residence or business located in unincorporated area of Sacramento County	
Statewide base rate	7.50%
Sacramento County Transportation Authority	0.50%
Total state, local and district tax rate	8.00%

   If voters of the unincorporated area of Sacramento County approved an ordinance to impose a district tax within the unincorporated area of the county under the authority of this bill, the total applicable tax rate would also be 8.5% but allocated thus:

Customer's residence or business located in unincorporated area of Sacramento County	
Statewide base rate	7.50%
Sacramento County unincorporated area district tax	0.50%
Sacramento County Transportation Authority	0.50%
Total state, local and district tax rate	8.50%

The retailer would be required to separately state and report these different 0.5% taxes (city or unincorporated county) on their sales and use tax returns.

These problems are currently faced by retailers with respect to determining whether a retailer is located in a city or in the unincorporated county, but the proposed law may cause these issues to arise more frequently.

4. **BOE offers tools to help retailers identify the correct tax rate.** The BOE website provides a sales and use tax rate locator that allows any person to determine tax rates based on address.

   In addition, some cities offer an online address database within their jurisdiction. The BOE's website provides links to those databases to help identify specific addresses located within a city's taxing boundaries.

5. **Suggested technical amendments.** Although the common sense implication of the proposed language is that a county-wide tax would be voted on by the entire county and an unincorporated area-only tax would be voted on only by the unincorporated area, it is not clear that the language actually states that. The proposed language gives two options for the imposition of the tax and two options for voting, but does not necessarily tie options one together and options two together. The wording "as applicable" is intended to mean that, but this wording is vague. Attached is a suggested amendment to clarify that a county-wide tax or an unincorporated area-only tax would be voted on only by the respective jurisdiction.

   In addition, on page 2, line 21, the word "out" appears to be a typo.

COST ESTIMATE

This bill does not increase administrative costs to the BOE because it only authorizes a county to levy a district tax within its unincorporated area. Under current law, if the voters within the unincorporated county approve a tax, the county would be required to contract with the BOE and pay for its preparation costs, as well as ongoing service costs to administer the ordinance. However, to the extent that more local tax measures are approved by local voters within the unincorporated county, the BOE will need additional resources to administer 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

This bill would not affect state revenues. The local revenue impact would be specific to each county that approved a tax. That revenue impact cannot be estimated.

Analysis prepared by: Debra Waltz 916-324-1890 03/24/14
Contact: Michele Pielsticker 916-322-2376

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PROPOSED AMENDMENTS AB 2119
As introduced February 20, 2014
Prepared by the State Board of Equalization

AMENDMENT 1

On page 2, line 7, add "<u>, if levied on the entire county,</u>" after "*entire county*"

AMENDMENT 2

On page 2, line 8, substitute "<u>if levied on the unincorporated area of the county</u>" for "~~as applicable~~" after "county,"

AMENDMENT 3

On page 2, line 21, delete "~~out~~" after "*throughout*"

AMENDMENT 4

On page 2, line 30, add "<u>,if levied on the entire county,</u>" after "*county*"

AMENDMENT 5

On page 2, line 30, substitute "<u>if levied on the unincorporated area of the county</u>" for "~~as applicable~~" after "*area of the* county,"