

Date of Hearing: April 17, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2431 (Mathis) – As Introduced February 13, 2024

SUBJECT: Taxation: Transactions and Use Tax Law: limit increase.

SUMMARY: Authorizes a city, county, or city and county to impose a transactions and use tax (TUT) at an unspecified rate that exceeds the 2% statutory limitation if certain conditions are met. Specifically, **this bill:**

- 1) Allows a city, county, or city and county to impose a TUT at an unspecified rate that would, in combination with all taxes imposed, exceed the 2% cap established by law if all of the following conditions are met:
 - a) The governing body adopts an ordinance proposing the TUT by any applicable voting approval requirement, including citizen’s initiative.
 - b) The ordinance proposing the TUT is submitted to the electorate and is approved by the voters voting on the ordinance pursuant to the California Constitution.
 - c) The TUT conforms to TUT Law.
 - d) The city, county, or city and county has reached the 2% rate limitation, as specified.
 - e) A joint powers authority (JPA) that is operating in part or all of the jurisdiction of the city, county, or city and county is issuing a bond for the sole purpose of seismic retrofitting for a general acute hospital.
- 2) Provides that a TUT rate imposed pursuant to 1) above shall not be considered for the purposes of the combined rate limitation as established in existing law.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Sales and Use Taxes.** State law imposes the sales tax on every retailer “engaged in business in this state” that sells tangible personal property, and requires them to register with the California Department of Tax and Fee Administration (CDTFA), as well as collect the appropriate tax at purchase and remit the amount to CDTFA. Sales tax applies whenever a retail sale occurs, which is generally any sale other than one for resale in the regular course of business. The current rate is 7.25% as shown in the table below.

Rate	Jurisdiction	Purpose/Authority
3.9375%	State (General Fund)	State general purposes
1.0625%	Local Revenue Fund	Local governments to fund local public safety services

Rate	Jurisdiction	Purpose/Authority
	(2011 Realignment)	
0.50%	State (1991 Realignment)	Local governments to fund health and welfare programs
0.50%	State (Proposition 172 - 1993)	Local governments to fund public safety services
1.25%	Local (City/County) 1.00% City and County 0.25% County	City and county general operations Dedicated to county transportation purposes
7.25%	Total Statewide Rate	

Unless the purchaser pays the sales tax to the retailer, he or she is liable for the use tax, which the law imposes on any person consuming tangible personal property in the state. The use tax is the same rate as the sales tax, and also like the sales tax, must be remitted on or before the last day of the month following the quarterly period in which the person made the purchase.

- 2) **Transactions and Use Taxes.** The California Constitution states that taxes levied by local governments are either general taxes, subject to majority approval of its voters, or special taxes, subject to 2/3 vote (Article XIII C). Proposition 13 (1978) required a 2/3 vote of each house of the Legislature for state tax increases, and 2/3 vote for local special taxes. Proposition 62 (1986) prohibited local agencies from imposing general taxes without majority approval of local voters, and a 2/3 vote for special taxes. Proposition 218 (1996) extended those vote thresholds to charter cities, and limited local agencies' powers to levy new assessments, fees, and taxes. Local agencies generally propose to increase taxes by adopting an ordinance or a resolution at a public hearing.

State law allows cities, counties, and specified special districts to increase the sales and use tax applicable in their jurisdiction, also known as district taxes or TUTs. Prior to 2003, cities lacked the ability to place TUTs before their voters without first obtaining approval by the Legislature to bring an ordinance before the city council, and, if approved at the council level, to the voters. This was remedied by SB 566 (Scott), Chapter 709, Statutes of 2003. SB 566 also contained provisions to increase a county's TUT cap because of the possibility that certain counties were going to run out of room under their caps, if cities within those counties approved TUTs.

Generally, the combined TUT tax rate imposed within a local jurisdiction cannot exceed 2%. To determine whether a county has reached this rate limitation, all countywide taxes and the highest combined rate imposed by a city within the county are counted towards the county's rate limit. For example, if a county imposes three 0.5% countywide taxes and two cities within the county each impose a 0.5% tax, the combined rate in those two cities would be 2%. In such a circumstance, the two cities could not impose another TUT, and the county

could not impose another countywide TUT, absent special authority to exceed the rate limitation.

AB 464 (Mullin) would have increased the maximum combined rate of all TUTs that may be levied by authorized entities within a county from 2% to 3%. This bill was vetoed by Governor Brown stating, “This bill would raise, on a blanket basis, the limit on local transactions and use tax for all counties and cities from two percent to three percent. Although I have approved raising the limit for individual counties, I am reluctant to approve this measure in view of all the taxes being discussed and proposed for the 2016 ballot.”

As of April 1, 2024, local jurisdictions (city, county, and special purpose authorities) impose a combined 413 TUTs for general or special purposes. Generally, TUTs are levied throughout the entire area of a single county, the entire unincorporated area within a single county, or a single incorporated city, except for those imposed by the BART District (Alameda, Contra Costa, and San Francisco counties) and the Sonoma-Marín Rail Transit District (Sonoma and Marin counties). Of the 413 district taxes, 67 are imposed countywide, four are imposed in unincorporated county areas, and 342 are imposed citywide.

- 3) **Joint Powers Agencies.** JPA Law allows two or more public agencies to use their powers in common if they sign an agreement. Sometimes an agreement creates a new, separate public entity called a joint powers agency or joint powers authority. Entities that can exercise joint powers include federal agencies, state departments, counties, cities, special districts, school districts, federally recognized tribal governments, and even other joint powers authorities.
- 4) **Seismic Safety Requirements.** In 1973, the Legislature passed the Alquist Act, which required all new hospital construction to meet stringent seismic safety standards. The original Alquist Act did not apply to existing buildings, partly because of the expectation that older hospital buildings would be replaced with conforming buildings over time. However, by the time the 1994 Northridge earthquake occurred more than 20 years later, 80% of hospital beds were still in pre-1973 non-conforming buildings. The Northridge earthquake experience prompted the Legislature to update the Alquist Act in 1994 to bring older hospital buildings into compliance with structural requirements by 2008 (which was subsequently delayed through various bills over the years), and to adopt additional requirements that would ensure hospitals, by January 1, 2030, would not only remain standing, but would also remain operational following a major earthquake (referred to as “2030 compliance”).
- 5) **Bill Summary.** This bill authorizes a city, county, or city and county to impose a TUT at an unspecified rate that exceeds the 2% statutory limitation if certain conditions are met. Such conditions include:
 - a) That the governing body adopt an ordinance proposing a TUT by applicable vote requirement.
 - b) The ordinance is submitted to the electorate and is approved by the voters.
 - c) The TUT conforms to TUT Law.
 - d) The city or county had reached the 2% cap.

- e) A JPA that is operating in part or all of the jurisdiction of the city or county is issuing a bond for the sole purpose of seismic retrofitting for a general acute hospital, as defined.

The author is the sponsor of this bill.

- 6) **Author's Statement.** According to the author, "AB 2431 is a common sense solution that provides a crucial mechanism to ensure that California hospitals can remain open, and continue to provide care for the millions of Californians that use the facilities each day."
- 7) **Policy Considerations.** The Committee may wish to consider the following:
 - a) **Too high?** California's sales tax rate is currently at 7.25%, which is high compared to other states, especially when incorporating locally imposed TUTs. Some tax experts argue that sales and use taxes are regressive, meaning that the tax incidence falls more on low-income individuals than high-income individuals because those of lesser means generally spend a greater percentage of their income on taxable sales, instead of intangible products or services which are not taxed. According to CDTFA data, the current highest sales and use tax rate is 10.75%. This bill's maximum TUT increase is currently unspecified. Given that this bill does not specify the maximum TUT rate, and while any increase would have to be approved by the voters, the Committee may wish to consider whether AB 2431 could allow for rates that are too high.
 - b) **Is Clarification Needed?** The author states that the intent of this bill is to assist hospitals stay open. However, a few of the bill's provisions are unclear, including:
 - i) This bill requires that a JPA must be operating in part or all of the jurisdiction of the city or county and is issuing a bond for the sole purpose of seismic retrofitting for a general acute hospital, but there does not seem to be a requirement that the TUT revenue be spent towards seismically retrofitting hospitals or for healthcare services.
 - ii) This bill cross-references the definition of "general acute hospital," which means a health facility having a duly constituted governing body with overall administrative and professional responsibility and an organized medical staff that provides 24-hour inpatient care. Does this definition also include privately owned hospitals? Should this bill be limited to financing seismic retrofits of publically owned hospitals?
 - iii) Consistent with the Alquist Act, hospitals in California are generally required to be seismically retrofitted by 2030. Should this bill contain a sunset clause to limit the time in which a city or county can increase a TUT above the 2% cap for the purposes of seismically retrofitting a hospitals?
 - iv) It is unclear which, if any, JPAs have been formed to issue bonds for the sole purpose of seismic retrofitting a hospital. This bill does not specify if the JPA has to already exist or if a new one can be formed, potentially expanding the application of this bill's provisions. Should the bill's scope be limited?

The Committee may wish to consider if additional clarity is needed.

- 8) **Committee Amendments.** In order to address the above policy considerations, the Committee may wish to amend this bill in the following ways:

7286.10. (a) Notwithstanding any law, ~~a city, county, or city and county~~ the Counties of Fresno, Kings, and Tulare, may impose a transactions and use tax for the support of healthcare programs, including the seismic retrofitting of a publicly owned hospital, at a rate of no more than **0.5** percent that would, in combination with all taxes imposed in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), exceed the limit established in Section 7251.1, if all of the following conditions are satisfied:

- (1) The governing body adopts an ordinance proposing the transactions and use tax by any applicable voting approval requirement, including by citizen's initiative.
- (2) The ordinance proposing the transactions and use tax is submitted to the electorate and is approved by the voters voting on the ordinance pursuant to Section 11 of Article II or Section 2 of Article XIII C of the California Constitution, as applicable.
- (3) The transactions and use tax conforms to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), other than Section 7251.1.
- (4) The ~~city, county, or city and county~~ has reached the rate limitation set forth in Section 7251.1.
- (5) ~~A joint powers authority formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code that is operating in part or all of the jurisdiction of the city, county, or city and county is issuing a bond for the sole purpose of seismic retrofitting for a general acute hospital, as defined in Section 1250 of the Health and Safety Code.~~

(b) Notwithstanding Section 7251.1, a transactions and use tax rate imposed pursuant to subdivision (a) shall not be considered for purposes of the combined rate limitation established by Section 7251.1.

(c) This Section becomes inoperative for any city within the Counties of Fresno, Kings, and Tulare that has not had an ordinance proposing a transactions and use tax approved as required by Section 7294.2 by January 1, 2029.

7286.11. (a) Notwithstanding any law, any city within the Counties of Fresno, Kings, and Tulare, may impose a transactions and use tax for the support of healthcare programs, including the seismic retrofitting of a publicly owned hospital, at a rate of no more than 0.5 percent that would, in combination with all taxes imposed in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), exceed the limit established in Section 7251.1, if all of the following conditions are satisfied:

- (1) The governing body adopts an ordinance proposing the transactions and use tax by any applicable voting approval requirement, including by citizen's initiative.**
- (2) The ordinance proposing the transactions and use tax is submitted to the electorate and is approved by the voters voting on the ordinance pursuant to Section 11 of Article II or Section 2 of Article XIII C of the California Constitution, as applicable.**
- (3) The transactions and use tax conforms to the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), other than Section 7251.1.**
- (4) The city has reached the rate limitation set forth in Section 7251.1.**

(b) Notwithstanding Section 7251.1, a transactions and use tax rate imposed pursuant to subdivision (a) shall not be considered for purposes of the combined rate limitation established by Section 7251.1.

(c) This Section becomes inoperative for any city within the Counties of Fresno, Kings,

and Tulare that has not had an ordinance proposing a transactions and use tax approved as required by Section 7286.11 by January 1, 2029.

- 9) **Related Legislation.** AB 2293 (Mathis) authorizes one or more private, nonprofit mutual benefit corporations formed for purposes of providing health care services to join a joint powers authority or enter into a joint powers agreement with one or more public entities. This bill is currently in the Assembly Local Government Committee.

AB 3259 (Wilson) authorizes Solano County or any city within Solano County to impose a transaction and use tax (TUT) for general purposes that exceeds the 2% statutory limitation. This bill is currently in the Assembly Local Government Committee.

- 10) **Recent Legislation.** AB 618 (Stone) of 2019 would have permitted the Cities of Emeryville (Alameda County) and Scotts Valley (Santa Cruz County) to impose a tax of up to 0.25% that exceeds the 2% cap. AB 618 was vetoed with a message that stated, “The Cities of Emeryville and Scotts Valley have not yet reached the statewide cap of 2 percent, making it unclear why additional tax authority is needed.”

AB 723 (Quirk), Chapter 747, Statutes of 2019, provided that neither the tax imposed by BART nor the tax imposed by the Alameda County Transportation Commission counts against the 2% cap, and made a similar change in Santa Cruz County.

SB 1349 (Glazer), Chapter 369, Statutes of 2020, permitted Contra Costa County, and cities within Contra Costa County, additional legal flexibility to impose local TUTs.

AB 2453 (Bennett), Chapter 286, Statutes of 2022, authorized the Ventura County Transportation Commission to impose a TUT of no more than 0.5% that does not count against the cap in Ventura County.

AB 1256 (Wood), Chapter 572, Statutes of 2023, authorized Humboldt County to impose a TUT of up to 1% that exceeds the 2% statutory limitation.

AB 1385 (Garcia), Chapter 578, Statutes of 2023, raised the maximum TUT that RCTC may impose, from 1% to 1.5%.

AB 1679 (Santiago), Chapter 731, Statutes of 2023, authorizes Los Angeles County to impose a TUT of up to .5% that exceeds the 2% statutory limitation, as specified.

SB 335 (Cortese), Chapter 391, Statutes of 2023, allows the Santa Clara County Board of Supervisors to propose a district tax of up to .625% in Santa Clara County that exceeds the 2% cap and shifted the authority to impose a TUT for countywide transportation purposes in Ventura County that exceeds the 2% cap from the Ventura County Transportation Commission to the County.

SB 862 (Laird), Chapter 296, Statutes of 2023, authorized the board of directors of the Santa Cruz Metropolitan Transit District to impose a retail TUT of up to .5% after January 1, 2024, that is excluded from the 2% combined rate limit, if certain conditions are met.

- 11) **Arguments in Support.** According to the California Special Districts Association, “Many hospitals report ongoing financial pressures, including rising inflation and increased labor

costs. Of the more daunting financial concerns hospitals are soon to confront, an upcoming mandate to meet certain seismic building standards poses a significant challenge. To avoid financial insolvency and closure, hospitals will need all types of financial tools and assistance. To that end, AB 2431 would authorize a city, county, or city and county to impose a transactions and use tax at a rate that, in combination with other transactions and use taxes, would exceed the existing rate limit of 2%, under certain conditions. Among those conditions, the ordinance approving the tax would need to be approved by voters in the relevant jurisdiction, and a joint powers authority that is operating in part or all of the jurisdiction of the city, county, or city and county must be issuing a bond for the sole purpose of seismic retrofitting for a general acute hospital.

“In this way, AB 2431 would allow jurisdictions to partner with their local hospital in attempting to keep the hospital operational using local revenues. For these reasons, CSDA is pleased to support Assembly Bill 2431.”

- 12) **Arguments in Opposition.** According to a coalition in opposition, “California already has the highest state-level sales tax rate in the United States. By removing the cap on local transactions and use tax rates, AB 2431 would lead to even higher local rates. California’s state-level sales tax rate already makes our state uncompetitive with other states for many employers. This bill would exacerbate the problem by making our local sales tax rates uncompetitive, too.

“...The combined sales tax rate in parts of the state is as high as 10.75 percent. The sales and use tax is a regressive tax that has the greatest impact on low-income residents because it makes it more expensive for these taxpayers to purchase everyday necessities. Adding even more to the cost of living with a sales tax increase would harm Californians, with a disproportionate impact on the state’s most vulnerable residents.

“...California provides limited tax relief for business inputs on state-level taxes, but local rates continue to add costs for key industries that engage in vital sectors of the California economy. Taxation of business inputs leads to a pyramiding effect throughout the production process, resulting in higher costs for purchases made by consumers.

“To counter tax-layering and pyramiding, California provides only state-level exemptions for activities including manufacturing, research and development, teleproduction and post-production, and farm equipment. If the state authorizes localities to exceed the 2 percent transactions and use tax cap, these partially exempt activities could be taxed at a higher rate, defeating the purpose of the state-level exemptions and making it more cost-prohibitive to conduct such activities in California.

...Unlike the federal government, which is exempt from all state and local sales taxes, state agencies are subject to state and local sales taxes for their purchases. Every increase in the local sales tax rate increases costs for purchases made by state agencies operating in these jurisdictions, making it more expensive for the state to continue providing existing levels of service.”

- 13) **Double-Referral.** This bill is double-referred to the Assembly Committee on Revenue and Taxation.

REGISTERED SUPPORT / OPPOSITION:

Support

California Special Districts Association

Opposition

Alameda County Taxpayers Association
California Building Industry Association
California Business Properties Association
California Business Roundtable
California Chamber of Commerce
California Hotel & Lodging Association
California Retailers Association
California Taxpayers Association
Family Business Association of California
Kern County Taxpayers Association
Orange County Taxpayers Association
San Diego County Taxpayers Association
San Gabriel Valley Economic Partnership

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