

Date of Hearing: August 28, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

AB 2443 (Juan Carrillo) – As Amended August 6, 2024

SUBJECT: Transactions and use taxes: Cities of Lancaster, Palmdale, and Victorville.

SUMMARY: Authorizes the cities of Lancaster, Palmdale, and Victorville to impose a transaction and use tax (TUT) that exceeds the 2% statutory limitation. Specifically, **this bill:**

- 1) Authorizes the cities of Lancaster, Palmdale, and Victorville, by ordinance or by citizens' initiative, to impose a TUT for general or specific purposes at a rate of no more than 1% 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 city council of the respective city adopts an ordinance proposing the TUT by the applicable voting approval requirement.
 - b) The ordinance proposing the TUT is submitted to the electorate and is approved by the voters voting on the ordinance by the applicable voting approval requirement in accordance with the California Constitution.
 - c) The TUT conforms to the TUT Law.
- 2) Specifies that a TUT rate imposed pursuant to this bill shall not be considered for purposes of the combined rate limitation established by law.
- 3) Provides that if, as of January 1, 2029, an ordinance or citizens' initiative proposing a TUT has not been approved by Lancaster, Palmdale, or Victorville, the provisions in this bill that apply to each city, respectively, shall be repealed as of that same date.
- 4) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable because of the critical needs of transportation infrastructure and general services within the Cities of Lancaster, Palmdale, and Victorville.
- 5) Contains an urgency clause.

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 (2011 Realignment)	Local governments to fund local public safety services
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 a 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. 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.

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, which imposed the uniform 2% countywide cap.

AB 464 (Mullin) of 2015 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."

According to CDTFA data, 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 Bay Area Rapid Transit District (Alameda, Contra Costa, and San Francisco counties) and the Sonoma-Marín Rail Transit District (Sonoma and Marin counties). Of the 413 TUTs, 67 are imposed countywide, four are imposed in unincorporated county areas, and 342 are imposed citywide.

- 3) **Lancaster and Palmdale TUTs.** Los Angeles County currently has 61 TUTs levied within its borders. Los Angeles County imposes four 0.5% TUTs for transportation, two of which the Legislature has exempted from the 2% cap [AB 2321 (Feuer), Chapter 302, Statutes of 2008, and SB 767 (De Leon), Chapter 580, Statutes of 2015], as well as Measure H's (2017) 0.25% tax, for a total countywide rate of 9.5%. Last year, the Legislature allowed Los Angeles County to impose a TUT of up to 0.5% that exceeds the 2% cap if the tax replaces the tax currently imposed by Measure H in Los Angeles County [AB 1679 (Santiago), Chapter 731, Statutes of 2023]. There are 56 citywide TUTs in Los Angeles County, including 0.75% rates in the cities of Lancaster and Palmdale, for a total rate of 10.25% in those cities. As a result, both cities need an exemption from the 2% cap if they want to impose additional TUTs.
- 4) **Victorville TUT.** San Bernardino County has nine TUTs levied within its borders: one countywide tax (for transportation purposes) and eight city-wide taxes. The countywide TUT of 0.5% is subject to the 2.00% combined rate limitation. Presently, the City of Victorville in San Bernardino County imposes a TUT rate of 1%, thus its combined TUT rate is 8.75%. Therefore, the City of Victorville can currently impose an additional 0.50% before it reaches the 2% rate limitation.
- 5) **Upland.** On August 28, 2017, the California Supreme Court entered a decision in *California Cannabis Coalition v. City of Upland*, 3 Cal. 5th 924, which held that the requirement in Article XIII C, Section Two, subdivision (b) of the California Constitution that general taxes be submitted to the electorate at a regularly scheduled general election where members of the local governing board are subject to election did not apply to taxes proposed by voter initiative. As discussed in a March 7, 2018, joint oversight hearing, "*Uproar over Upland? Assessing the California Supreme Court's Decision*," groups seeking to impose special taxes by majority vote by initiative argued if the Court held the general election requirement in subdivision (b) did not apply to initiatives, then neither did the 2/3 vote requirement for

special taxes in subdivision (d). At least seven such taxes imposed by voters in various local agencies across the state have been approved, and no court thus far has invalidated them. AB 2443's authority for the cities of Victorville, Lancaster, and Palmdale to exceed the 2% cap applies to both taxes imposed by ordinance or initiative, so if voters submitted an initiative, rather than the county or a city, the measure would have a majority vote requirement.

- 6) **Bill Summary and Author's Statement.** This bill allows the cities of Lancaster, Palmdale, and Victorville to impose a TUT for general or specific purposes at a rate of no more than 1% that would, in combination with all taxes imposed, exceed the 2% cap established by law, if specified conditions are met. This bill provides that the TUT authorizations with respect to any of the three specified cities must be repealed if an ordinance or citizens' initiative proposing the authorized TUT is not approved by the respective city by January 1, 2029. This bill is sponsored by the author.

According to the author, "AB 2443 would authorize the cities of Lancaster, Palmdale, and Victorville to levy a transactions and use tax of no more than 1% that, in combination with other transactions and use taxes, would exceed the combined rate limit of 2%. Each of these cities are facing significant challenges around transportation infrastructure, housing, and homelessness. This district bill would provide flexibility to allow residents in these cities to vote on local measures to fund critical needs facing the community."

- 7) **Policy Consideration.** 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 heavily 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. With this bill, the sales tax rate could grow as high as 11.5% in cities of Lancaster and Palmdale. While any increase would have to be approved by the voters, the Committee may wish to consider whether AB 2443 allows for rates that are too high.
- 8) **Related Legislation.** AB 2431 (Mathis) 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. This bill was never heard in the Assembly Local Government Committee.

AB 3259 (Wilson) allows the cities of Campbell and Pinole, the Solano County Board of Supervisors and a city council in Solano County to impose a TUT, by ordinance or voter initiative, of up to 0.5% even if it exceeds the 2% cap. This bill is currently pending on the Senate Floor.

- 9) **Previous 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 TUT 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.

10) **Arguments in Support.** None on file.

11) **Arguments in Opposition.** According to the California Taxpayers Association, “California has the highest state-level sales and use tax rate in the country, and several cities in California, including Lancaster and Palmdale, have even higher rates. 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. Inflation has increased the cost of everyday goods, which in turn increases the sales tax that is imposed as a percentage of the retail price. Adding even more to the cost of living with a sales tax increase would harm Californians, and will disproportionately impact the state’s most vulnerable residents.

“...Businesses engaged in manufacturing and research-and-development activities face a significant sales and use tax burden in California. Under existing law, when a business purchases manufacturing or R&D equipment, the purchase is subject to a one-time local sales tax of 1.25 percent plus any additional voter-approved transactions and use taxes. Taxing business inputs increases overall production costs for everyday goods produced in California. Authorizing Lancaster, Palmdale, and Victorville to exceed the 2 percent transactions and use tax cap would increase the cost of doing business for critical industries in the area.

“...Unlike the federal government, which receives an exemption for all state and local sales taxes, purchases made by municipal and state agencies are subject to state and local sales

taxes. Increasing the local sales tax would increase costs for purchases made by cities and counties, public school districts, and universities operating in the county.”

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Taxpayers Association

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