

Date of Hearing: September 13, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 723 (Quirk) – As Amended September 6, 2019

**SUBJECT:** Transactions and use taxes: County of Alameda: Santa Cruz Metropolitan Transit District.

**SUMMARY:** Exempts specified transactions and use taxes (TUTs) from counting towards the statutory 2% combined rate cap. Specifically, **this bill:**

- 1) Provides that the existing TUT imposed in Alameda County by the Bay Area Rapid Transit (BART) shall not be considered for purposes of the 2% cap.
- 2) Clarifies that the specific TUTs imposed by Alameda County shall not be considered for purposes of the 2% cap, and states that this change is declaratory of existing law.
- 3) Specifies that the existing TUT imposed by the Santa Cruz County Metropolitan Transit District shall not be considered for purposes of the 2% cap.
- 4) Finds and declares that a special law is necessary because of the unique fiscal pressures in the Counties of Alameda and Santa Cruz.

**FISCAL EFFECT:** None

**COMMENTS:**

- 1) **Transactions and Use Taxes.** Existing law authorizes cities and counties to impose transactions and use taxes in 0.125% increments, in addition to the state's 7.25% sales tax, provided that the combined rate in the county does not exceed 2%. Transactions and use taxes are taxes imposed on the total retail price of any tangible personal property and the use or storage of such property when sales tax is not paid. These types of taxes may be levied as general taxes (majority vote required), which are unrestricted, or special taxes (two-thirds vote required), which are restricted for a specified use.

Prior to 2003, cities lacked the ability to place transactions and use taxes 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 transactions and use tax cap because of the possibility that certain counties were going to run out of room under their caps, if cities within those counties approved transactions and use taxes.

State law allows cities, counties, and specified special districts to increase the sales and use tax applicable in their jurisdiction, also known as district or transactions and use taxes. As of April 1, 2019, 316 local agencies impose their own district taxes: 56 are imposed countywide, 258 citywide, and two across multiple counties.

State law caps the total rate for any county at 2%, with exceptions for the cities of Alameda, Berkeley, Emeryville and Santa Fe Springs; counties of Alameda, Contra Costa, and Santa Clara; the Peninsula Corridor Joint Powers Board; the transportation agency for Monterey County; the San Mateo County Transit District; and, the Los Angeles Metropolitan Transportation Authority. Last year, the Legislature also allowed the County of Sonoma, any city in the County, and the Sonoma County Transportation Authority to impose a transactions and use tax of up to 1% [SB 152 (McGuire), Chapter 728, Statutes of 2018].

- 2) **County of Alameda.** Alameda County currently has three 0.5% district taxes, plus a 0.5% rate applicable to all counties within BART, for a countywide rate of 9.25%. The Legislature initially allowed one of the 0.5% taxes imposed by the Alameda County Transportation Commission to exceed the 2% cap, which voters subsequently approved as Proposition BB in 2014. However, the authorization to exceed the 2% cap became less explicit when the Legislature altered the statute to transfer authority to impose the tax from Alameda County to Contra Costa County, while stating Alameda's tax can continue [AB 1665 (Bonilla), Chapter 45, Statutes of 2016]. The 2% cap in Alameda County was reached when the City of San Leandro imposed its district tax in 2015. In response, the Legislature allowed the County of Alameda to impose a tax of up to 0.5% above the 2% cap [SB 703 (Skinner), Chapter 651, Statutes of 2017], but voters have not yet approved the tax.
- 3) **County of Santa Cruz.** Before this year, Santa Cruz County had three countywide district taxes: a 0.5% tax for the County Transportation Commission, another 0.5% for the Metropolitan Transit District, and a 0.25% rate for libraries. In November 2018, voters in unincorporated Santa Cruz County approved Measure G which imposed an additional 0.5% general tax only in the unincorporated area, and which became effective on April 1, 2019, using an authority created by the Legislature for the first time [AB 2119 (Stone), Chapter 148, Statutes of 2014].
- 4) **Bill Summary and Author's Statement.** This bill makes three changes to create room under the cap for Alameda County, cities in Alameda County, and cities in Santa Cruz County to impose a district tax. First, the bill provides that the tax imposed by BART, in Alameda County, shall not be considered for purposes of the 2% cap. Second, the bill clarifies that the 0.5% previously authorized for Alameda County shall not be considered for purposes of the 2% cap either, and states that this change is declaratory of existing law. Lastly, the measure changes state law authorizing the Santa Cruz County Metropolitan Transit District to impose a district tax to state that this tax shall not be considered for purposes of the 2% cap. This bill is sponsored by Alameda County and the City of Fremont.

According to the author, "Cities and Counties across our state are responsible for providing a wide range of support services such as homelessness and housing, police and fire services. Existing law subjects Cities and Counties to limitations and voter approval requirements to levy transactions and use taxes. AB 723 changes how the TUT Law cap is calculated for Alameda and Santa Cruz Counties. This measure will give Alameda and Santa Cruz Counties the needed flexibility and option to obtain additional revenue to provide much-needed general purpose local government services such as road repairs, park maintenance, and homelessness prevention."

5) **Policy Considerations.** The Committee may wish to consider the following:

- a) **New Standard?** The Legislature has often authorized individual local agencies to increase their TUT above the 2% cap on a case-by-case basis that gives the Legislature oversight. One of the most recent attempts, AB 618 (Stone) of the current session, would have allowed the cities of Scotts Valley and Emeryville to adopt an ordinance proposing the imposition of a TUT that exceeds the 2% statutory limitation. While consistent with past measures that were routinely signed into law, AB 618 was vetoed by the Governor in July.

AB 723 presents an alternate approach that allows any local agency that has the ability to levy or increase a TUT to do so until the 2% cap is once again reached in affected counties. If approved into law, future jurisdictions will likely seek the same treatment for their county's transportation taxes. The Committee may wish to consider whether the unintended consequences of such a policy might create competition among local agencies in tax measures absent the Legislature's oversight.

- b) **No Guarantees.** By exempting specific existing countywide TUTs from the 2% cap, room under the cap will be increased. However, this bill does not designate specific local agencies that can increase a TUT, essentially creating a renewed free-for-all, race to the ballot to fill that newly created space. This means that each city within a county, or the county itself, can place TUT measures on the ballot until the 2% countywide cap is reached. One benefit of identifying specific local agencies is assurance that local agency will have a decent opportunity to submit a tax increase to the voters and for the voters to approve it. For example, if the City of Scotts Valley submits a TUT increase to its voters and the measure fails, AB 723 does not preclude a competing countywide tax measure in Santa Cruz County from being passed, potentially preventing Scotts Valley from any future TUT increases. The Committee may wish to consider how the approach in AB 723 will dictate winners and losers as local agencies compete to raise local revenue.

- 6) **Arguments in Support.** The City of Scotts Valley argues, "Scotts Valley is a small and carefully managed city that is heavily reliant on sales tax revenue. Receiving a low share of property tax revenue at just 6.5%, other tax streams such as sales tax are critical to maintain our core city services. Locally, nearly three-quarters of our 2% transaction and use tax limit flows through regional entities and does not directly benefit the City. AB 723 would exempt one of these regional measures from the cap and free up capacity for Scotts Valley to ask its voters for an increase that would otherwise be in excess of the cap.

"Scotts Valley has a long history of financial prudence and strong management; however, with rising costs of delivering services and other demands on local government, we are examining significant service reductions if revenue streams are not strengthened. In addition to lean government and a focus on economic development, Scotts Valley will go to its voters in 2020 to ask for a sales tax increase. In that effort, AB 723 provides a vital opportunity to ask our voters for a level of taxation to support a strong City and continued delivery of quality public services."

- 7) **Arguments in Opposition.** According to the Howard Jarvis Taxpayers Association, "The Bradley Burns Sales and Use Tax Act, established in 1956, set a uniform sales tax rate for local governments of no more than 2%. In the years following, a number of municipalities have sought legislative authorization to increase their sales tax rates above this common-

sense threshold. AB 723 would allow the County of Alameda to authorize a maximum sales tax of up to 1%, thus exceeding the 2% threshold. The bill also exempts the Santa Cruz Metropolitan Transit District from being subject to the 2% cap in the event it proposes any additional taxes.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alameda County [SPONSOR]  
City of Fremont [SPONSOR]  
California Professional Firefighters  
City of Scotts Valley  
MuniServices

**Opposition**

California Taxpayers Association  
Howard Jarvis Taxpayers Association

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