

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 335 (Cortese) – As Amended June 19, 2023

**SENATE VOTE:** 37-0

**SUBJECT:** Transactions and use taxes: County of Santa Clara.

**SUMMARY:** Authorizes Santa Clara County to impose a transaction and use tax (TUT) that exceeds the 2% statutory limitation. Specifically, **this bill:**

- 1) Allows the County of Santa Clara to impose a TUT for general or specific purposes to support countywide programs at a rate of no more than .625% that would, in combination with all taxes imposed in accordance with TUT Law, exceed the 2% cap established by law, if all of the following conditions are met:
  - a) The county adopts an ordinance proposing the TUT by any 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 pursuant to Article XIII C of the California Constitution.
  - c) The TUT conforms to TUT Law, as specified.
- 2) Specifies that a TUT rate imposed pursuant to 1) above, shall not be considered for purposes of the combined rate limitation established by law.
- 3) Provides that if, as of December 31, 2028, an ordinance proposing a TUT has not been approved in the County of Santa Clara as authorized by this bill, the provisions of this bill shall be repealed.
- 4) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable because of the unique fiscal pressures being experienced in the County of Santa Clara in providing essential programs.

**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.

<b>Rate</b>	<b>Jurisdiction</b>	<b>Purpose/Authority</b>
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
<b>7.25%</b>	<b>Total Statewide Rate</b>	

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 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.

As of April 1, 2023, local jurisdictions impose a combined 411 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 (BART) District (Alameda, Contra Costa, and San Francisco counties) and the Sonoma-Marín Rail Transit District (Sonoma and Marin counties). Of the 411 TUTs, 67 are imposed countywide, four are imposed in unincorporated county areas, and 340 are imposed citywide.

- 3) **Santa Clara County.** Santa Clara County has ten TUTs levied within its borders, including six countywide taxes and four citywide taxes. The current TUT rate in the cities of Campbell, Milpitas, and San Jose is 9.375%. If Santa Clara County were to be given the authority specified in this bill, the TUT rates in those cities could be as high as 10%.

SB 703 (Skinner), Chapter 651, Statutes of 2017, allowed the Counties of Alameda and Santa Clara, as well as the City of Santa Fe Springs, to impose TUTs outside the current 2% countywide cap. Specifically, this bill gave Santa Clara County the authority to impose a TUT of no more than .625%. However, SB 703 contained a sunset date of December 31, 2022, and this authority was never utilized.

- 4) **Bill Summary and Author's Statement.** This bill allows Santa Clara County to impose a TUT to support countywide programs and general services at a rate of no more than .625% that would, in combination with all taxes imposed, exceed the 2% cap established by law, if specified conditions are met. This bill provides that if an ordinance proposing the TUT authorized by this bill is not approved, the provisions in this bill shall be repealed on December 31, 2028. Santa Clara County is the sponsor of this bill.

According to the author, "The County of Santa Clara is facing significant and growing budget challenges. For the 2023-24 fiscal year, the County had to address a substantial budget deficit; forecasts predict an even greater shortfall the following budget season. The County invested well over \$1 billion into pandemic response activities to protect community health, much of which will either not be reimbursed at all or may take many years for reimbursement. The impact of inflation and flattening revenue are also causing significant challenges.

"Meanwhile, the community need for County services is extensive, including mental health services, supportive housing, and critical health services provided through the County's three hospitals. Community needs are only expected to rise in the coming years, particularly if economic conditions continue to worsen. Currently, the County and local voters lack the opportunity to even consider increasing local sales taxes to fund critical services should the need arise.

“The County serves as the safety net for those communities that are traditionally the most disproportionately affected by budget cuts. Thus, passage of SB 335 provides local voters the ability to continue protecting our communities who need the most assistance.”

- 5) **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 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 10% in some areas of Santa Clara County. While any increase would have to be approved by the voters, the Committee may wish to consider whether SB 335 allows for rates that are too high.
- 6) **Related Legislation.** AB 1256 (Wood) authorizes Humboldt County to impose a TUT that exceeds the 2% statutory limitation. AB 1256 was heard in this Committee on April 19 and passed with a 5-2 vote.

AB 1385 (Garcia) authorizes the Riverside County Transportation Commission to impose a maximum TUT of 1.5%. AB 1385 was heard in this Committee on May 3 and passed with a vote of 5-2.

SB 862 (Laird) specifies that a TUT imposed by the Santa Cruz Metropolitan Transit District shall not be considered for combined rate limit if certain conditions are met. SB 862 is currently pending in this Committee.

- 7) **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 TUT 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 TUT imposed by BART nor the TUT 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.

- 8) **Arguments in Support.** According to Santa Clara County “SB 335 would authorize the County of Santa Clara to impose a transactions and use tax for general or specific purposes that, in combination with other transactions and use taxes, would exceed the 2% cap established by existing law, subject to applicable voter approval requirements. Allowing for a

waiver of the current statutory tax limit for Santa Clara County would provide our voters and Board of Supervisors the flexibility to adopt a modest tax increase of no more than 0.625% above the current statutory limit.

“Given voter approval, implementation of a tax increase would provide our Board the ability to deepen our investments in essential countywide programs and services that improve the lives of our County residents, including supportive housing services for unhoused residents, behavioral health services, trauma and emergency care for the community, services for children and families, health coverage for the uninsured, public safety services, and other local priorities. Passage of SB 335 does not automatically adjust the local sales tax rate, but simply allows the County the ability to present the option to our community.”

- 9) **Arguments in Opposition.** According to the California Taxpayers Association and a coalition of organizations in opposition, “California has the highest state-level sales and use tax rate in the country, and several cities in California, including Campbell, Los Gatos, Milpitas, and San Jose, 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 Santa Clara County to exceed the 2 percent transactions and use tax cap would increase the cost of doing business for critical industries in the area – including the semiconductor manufacturing industry, which the state has prioritized through investments.

“...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.

“...In 1953, the Senate Committee on State and Local Taxation recommended that California adopt a uniform state and local sales tax with a rate cap. The committee reported that with a cap, the local sales tax would have a ‘minimum adverse’ impact on taxpayers. The committee noted the following principles to consider when adopting sales tax changes: ‘[Local sales and use taxes] may and frequently do place unduly heavy compliance costs upon retailers’; and ‘Local business taxes levied under various ordinances and at different rates may produce artificial and unfair discrimination between retailers in the jurisdictions.’ The cap has served the state well, and should not be circumvented.”

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

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Santa Clara County [SPONSOR]

**Opposition**

Bay Area Council  
California Manufacturers & Technology Association  
California Taxpayers Association  
Silicon Valley Leadership Group

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