



**Contra
Costa
County**

To: Board of Supervisors
From: David Twa, County Administrator
Date: October 20, 2015

Subject: COUNTY SALES TAX OPTIONS FOR NOVEMBER 2016 BALLOT

RECOMMENDATION(S):

CONSIDER report on options for placing a County sales tax measure on the November 2016 ballot; DETERMINE what further actions should be taken at this time; DIRECT staff as appropriate.

FISCAL IMPACT:

None at this time.

BACKGROUND:

On September 15, 2015, the Board received a report from the Transportation, Water and Infrastructure Committee regarding the Contra Costa Transportation Authority's (CCTA's) development of a Transportation Expenditure Plan and potential sales tax ballot measure. At that time, the Board asked for further information about the options for placing a countywide sales tax measure on the November 2016 ballot. Although often called a "sales tax," the tax in question would technically be a "transactions and use tax," imposed under Division II, Part 1.7, Chapter 2, of the Revenue and Taxation Code, "Counties Transactions and Use Taxes" (Revenue and Taxation Code section 7285 et. seq.).

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **10/20/2015** ☐ APPROVED AS RECOMMENDED ☒ OTHER

Clerks Notes:

See Addendum

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: October 20, 2015

, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: David Twa
925-335-1080

Potential direction from the Board might include: whether staff should take further action regarding a County sales tax separate from the action currently being taken on behalf of CCTA concerning a new sales tax for transportation purposes. If the Board directs further action, the Board might provide guidance concerning the duration of a proposed new sales tax; the proposed sales tax rate; and whether the sales tax proceeds would be used to fund general services or specific services and, if specific services, what those services would be.

BACKGROUND: (CONT'D)

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A. Public Opinion Polls Conducted in 2014 and 2015.

On June 24, 2014, the Board of Supervisors accepted a presentation and report from EMC Research on the results of a public opinion poll on a potential countywide sales tax. That poll showed that when likely voters were presented with categories of how the sales tax revenues would be used, the voters gave funding for fire-fighting, emergency medical, emergency response, public safety, and road repairs the highest favorable response. A summary of the 2014 opinion poll is attached to this Board Order as Attachment A. Based on the results of the poll, the Board directed the County Administrator to take no further action regarding a potential countywide sales tax.

At the Board of Supervisors meeting on September 15, 2015, EMC Research, on behalf of CCTA, presented the results of a telephone survey of 800 likely voters in this County. The respondents were asked whether they would approve a half cent or a quarter cent sales tax for specific purposes. The revenues would support transportation programs (i.e., to fix roads, improve highways, reduce traffic congestion, increase bicycle and pedestrian safety, enhance transit services for seniors and people with disabilities, and similar uses) and/or for public safety programs (i.e., for fire and police services and equipment). A copy of the results of the 2015 CCTA opinion poll is attached to this Board Order as Attachment B.

B. Potential Sales Tax Options

The Board potentially has three general options with regard to the imposition of a new County sales tax: (1) The County could seek special legislation to authorize a general or special Countywide sales tax measure for the entire County for purposes other than transportation; (2) the County could continue to work with CCTA on a transportation sales tax measure without special authorizing legislation; or (3) the County could propose a general or special sales tax measure in the unincorporated area only without special authorizing legislation.

1. Legislation Would be Needed to Propose a New Countywide Sales Tax to Fund Services or Facilities Not in the CCTA Transportation Expenditure Plan

Sales taxes are either “special” or “general.” If the Board of Supervisors wants to consider placing a countywide sales tax measure on the November 2016 ballot, the Board of Supervisors would need to decide whether it intends to propose a “general” or a “special” sales tax. A general purpose sales tax measure can be used to fund general governmental facilities or services. Revenue and Taxation Code section 7285 permits a county board of supervisors to propose a general sales tax at a rate of 0.125% or a multiple thereof. The ordinance proposing the tax must be adopted by four members of

the Board of Supervisors (i.e., “a two-thirds vote of all the members”). The sales tax measure must be approved by a *majority* of the electors voting on the measure.

Alternatively, Revenue and Taxation Code section 7285.5 permits a county board of supervisors to propose a tax to the voters to fund specific services. A tax measure that proposed to dedicate the revenues to fund specific services like firefighting, emergency services, public safety, roads or other specific purposes is a "special" tax. A special tax may be imposed at a rate of 0.125% or a multiple thereof. The ordinance proposing the tax must be adopted by four members of the Board of Supervisors (i.e., “a two-thirds vote of all the members”). Unlike general sales tax measures, the law requires that special taxes measures be approved by *two-thirds* of the voters voting on the measure.

The Legislature has limited the maximum combined rate of sales, transactions and use taxes that can be imposed in California at 9.5% (the “cap”). Revenue and Taxation Code section 7251.1 caps the local portion of this combined rate at 2%. On August 17, 2015, Governor Brown vetoed AB 464, which would have raised the maximum combined rate of local sales, transactions and use taxes from 2% to 3%.

The cities of Richmond, Moraga and Pinole each have a 1% transaction and use tax which, when combined with the countywide tax, puts the sales and use tax rates in these cities at the 9.5% cap. Last year, El Cerrito obtained special legislation that allowed it to exceed the 2% cap by 0.5%. City voters approved the additional 0.5% sales tax effective January 1, 2015. That means the current sales and use tax rate in El Cerrito is 10%. Below is a list of the Contra Costa County sales and use tax rates in effect on July 1, 2015.

<u>Jurisdiction</u>	<u>Tax Rate</u>
County (this includes the unincorporated area and cities in this County except as listed below)	8.50%
City of Antioch	9.00%
City of Concord	9.00%
City of El Cerrito	10.00%
City of Hercules	9.00%
Town of Moraga	9.50%
City of Orinda	9.00%
City of Pinole	9.50%
City of Pittsburg	9.00%
City of Richmond	9.50%
City of San Pablo	9.25%

Because several cities in this County have a sales tax rate at or above the statutory cap, in order to impose a new countywide sales tax (i.e., including both the incorporated and unincorporated areas of the County) for a general purpose or a specific purpose (for example, a tax that would support enhanced fire or police services), other than the support of countywide transportation programs, the County would need to obtain special

“above the cap” legislation.

2. Special Legislation is Not Required to Propose New Countywide Special Sales Tax Measure to Support Countywide Transportation Programs.

Special legislation would not be required for the County to continue to work with CCTA to develop a sales tax measure to provide additional funding for transportation programs in this County. By way of background, in 1998, Contra Costa County voters approved Measure C, a transportation sales tax measure. In November 2004, the voters approved Measure J to continue this County’s half-cent transportation sales tax for 25 more years beyond the original expiration date of 2009. According to the CCTA's website, Measure C was approved by 71% of the voters.

In 2013, the Legislature approved AB 210, amending Sections 7291 and 7292 of the Revenue and Taxation Code. Revenue and Taxation Code section 7291 authorizes the County to impose an “above the cap” sales tax, of up to one-half cent (0.5%), *“for the support of countywide transportation programs.”* CCTA’s Countywide Transportation Plan (CTP) is this County’s only “countywide transportation program.” The Transportation Expenditure Plan (TEP) identifies the projects that are part of the plan and will be funded by the existing Measure C and Measure J sales tax proceeds and, potentially by the proceeds of a future sales tax measure. If the Board elects to place a special tax measure on the ballot “for the support of countywide transportation programs,” the tax proceeds would be used in the manner specified in CCTA's TEP. A ballot measure proposed under this statute requires two-thirds voter approval. The authority to impose this tax expires if the voters have not approved the new tax by December 31, 2020.

In 2014, Alameda voters approved a measure called Measure BB, which proposed a 30-year transportation sales tax under the authority of Revenue and Taxation Code section 7291. Measure BB passed by a 70.76% vote. That ballot measure read as follows:

*“Shall voters authorize implementing the Alameda County 30 year Transportation Expenditure Plan to:
Expand and modernize BART in Alameda County;
Improve transit connections to jobs and schools;
Fix roads, improve highways and increase bicycle and pedestrian safety;
Reduce traffic congestion and improve air quality; and
Keep senior, student, and disabled fares affordable?”*

On September 15, 2015, the Department of Conservation and Development asked this Board to provide direction on projects that should be included in CCTA’s new TEP and funded with the proceeds of a proposed new 25 year sales tax. The Department of Conservation and Development continues to work with CCTA on this project.

3. Special Legislation is Not Required to Propose a New General or Special

Sales Tax in the Unincorporated Area Only.

Before January 1, 2015, a county board of supervisors could only levy, increase, or extend a transaction and use tax within the entire county. However, in many cases, counties were unable to levy further transaction and use taxes because, as is true in this County, the statutory cap for the transaction and use tax rate had been reached in the cities. Former Revenue and Taxation Code sections 7285 and 7285.5 required the tax to be levied on the entire county. To allow counties to levy a transaction and use tax solely within the unincorporated area of a county, the Legislature amended Revenue and Taxation Code sections 7285 and 7285.5.

Revenue and Taxation Code section 7285 now permits a county board of supervisors to “levy, increase, or extend a transactions and use tax throughout the entire county *or within the unincorporated area of the county* for general purposes Revenue and Taxation Code section 7285.5, as amended, gives a county board of supervisors the same ability to levy a transactions and use tax for special purposes.

These statutes require that the revenue derived from the imposition of a tax in the unincorporated area may only be used for the general or specific purposes within the unincorporated area. Thus, for example, if the Board of Supervisors were to propose a half-cent special tax for public safety purposes to the voters of the unincorporated area, the proceeds of the sales tax would have to be spent for safety services to the unincorporated area only.

C. Potential Sales Tax Revenues.

A voter-approved Transactions Tax for the unincorporated area of Contra Costa County at 0.5% is estimated to generate \$8.5 million in year one. The estimate, which was provided by the County’s sales tax consultant HdL Companies, uses FY 2014/15 base values, a Pool allocation adjustment at 65%, and has been adjusted for businesses making local sales but delivering goods outside the County area as well as for purchases by County area residents or businesses of registered vehicles, vessels or aircraft from dealers not located in the County area and for taxable goods delivered by out of area sellers to County area purchasers. Base values will vary based on the amount of time between this estimate and the actual receipt of funds pending a successful election.

California levies a "use tax" on the use, storage and consumption of taxable goods on which the state's sales tax was not paid and allocates the tax, levied at the same rate as the local sales tax, through a system of countywide use tax pools. Most use tax is generated by purchases of taxable goods from sellers outside the state (including catalogers and online sellers), private party sales of autos, boats and aircraft, long-term equipment leases and contractor installation sales. Each local jurisdiction in the County receives a share of the pooled use tax each quarter based on its proportionate share of countywide sales tax receipts.

As noted an adjustment was made for local sales of goods delivered to purchasers outside the county area. The methodology we use also adjusts in the opposite direction. For example county area residents who buy a car from a dealership not in the county area, would pay the district tax. This adjustment is made by using countywide per capita sales for the autos and transportation group - the underlying assumption being that county area residents buy cars at more or less the same frequency and price as other county residents.

Using the Contra Costa Transportation Authority (CCTA) for which we have quarterly totals, in FY 2014-15 CCTA received, net of BOE administrative charges, a total of \$79.1 million for their 0.5% tax rate. Therefore, a countywide tax at 0.5% would generate approximately \$79.1 million.

D. Timing.

By statute, ballot measures must be received by the Elections Department 88 days before the date of the election. In this case that would be Friday, August 12, 2016. That deadline does not work well for our Elections Department because it doesn't allow them enough time to do what they have to do. Their procedures usually call for the measure to be submitted a few weeks earlier. For discussion purposes, it can be assumed that the last date a ballot measure should be submitted to the Elections Department is Friday, July 29, 2016.

An ordinance proposing a special tax requires two readings at two different meetings of the Board of Supervisors. Since the Board of Supervisors is not scheduled to meet on July 26, 2016, the latest that a sales tax ordinance could be introduced would be July 12, 2016, with adoption to follow on July 19, 2016.

CONSEQUENCE OF NEGATIVE ACTION:

This report will not be accepted and staff will not be given further direction about a potential sales tax measure for the November 2016 ballot.

CLERK'S ADDENDUM

Speakers: Mark Peterson, Contra Costa County District Attorney; Shawn A. Welch; Vincent Wells, President of Firefighters' Local 1230; Vito Impastato, Firefighters' Local 1230; Jerry Short, Firefighters' Local 1230; Gil Guerrero, Local 1230.

CONSIDERED the report on options for placing a County sales tax measure on the November 2016 ballot; DETERMINED it was not feasible to go forward this election cycle; REFERRED to the Public Protection Committee the matter of pursuing dialogue, discussion and team building to place a County tax measure on a 2017 or later ballot, that includes examination of the Emergency Medical Services (EMS) funding via Measure H.

ATTACHMENTS

Attachment A: ARCHIVED DOCUMENT - EMC Survey of Likely November 2014 Voters – Presentation to Board of Supervisors, June 24, 2014

Attachment B: EMC Contra Costa Transportation Authority Survey Results Summary – Presentation to Board of Supervisors, September 15, 2015

Presentation: Sales Tax Options for November 2016 Ballot