THE HdL COMPANIES
(909) 861-4335

ISSUE UPDATE

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TO: ALL CLIENTS

SUBJECT: CITY TRANSACTIONS AND USE TAX AUTHORIZED

On October 8, the governor approved SB566 (Scott) which authorizes cities to seek voter approval to levy a transactions and use tax in multiples of 0.25%. The following is an overview of the tax and its process.

BACKGROUND

The authority to impose special transactions and use taxes was initially provided to counties and countywide special districts in 1969. The first voter approved district tax was the San Francisco Bay Area Rapid Transit District to finance construction of the BART system. Several transportation districts in other counties followed and eventually, the use of district taxes was expanded to fund schools, open space protection, hospitals, county services and public libraries. There are currently 24 countywide districts imposing voter approved transactions and use taxes.

In addition, 22 cities have successfully gone to the California Legislature for special legislation to impose a district transactions and use tax. Of these, ten ultimately won voter approval. These are: Clearlake, Clovis and Placerville (public safety); Calexico and Avalon (hospitals); Truckee and Willits (road repairs); Woodland (capital improvements) and Sebastopol and West Sacramento (general purposes).

As with other taxes, a transactions and use tax district must obtain a majority vote if for general purposes and two-thirds vote if for special purposes. However, a 1988 court decision found a Santa Clara County District that specified that the revenue could be spent for general county purposes required only a majority vote despite the passage of a related advisory measure stating the voters intent that the revenues be spent on specific projects (Coleman vs. County of Santa Clara (64 Cal. App 4th 662).

With the exception of certain goods sold to operators of common carrier aircraft, the transactions and use tax is imposed on the same goods and merchandise as the local sales and use tax. However, where the Bradley Burns Sales and Use Tax is generally allocated to the jurisdiction where the sale is negotiated or order taken, the transactions and use tax is allocated to the district where the goods are delivered or placed into use.

- For "walk-in" retail stores and restaurants, the Board of Equalization generally assumes that the merchandise will be used within the district where the store is located, unless the retailer is asked to ship the merchandise outside the district as part of the sale.

- Sellers or lessors of vehicles, vessels or licensed aircraft are required to collect the transactions tax (if any), only for the district where the conveyance is to be registered.

- For sales contracts that require shipment of the merchandise, the transactions tax is levied for the district to where the merchandise is shipped if that district has a transactions tax.

Thus, for sales other than "walk-in" stores, the transactions and use tax is imposed only on consumers located within the district. In projecting revenues, cities who serve a regional market for vehicles or merchandise to be delivered-elsewhere such as contractor materials or industrial equipment and goods, will find that their transactions and use tax is proportionally lower than their sales tax revenues. A city whose residents and businesses must shop outside the city for vehicles and business and construction related goods, will find that their transactions and use tax receipts are proportionally higher than their sales tax revenues.

Retailers are only required to collect a transactions tax for sales in a specific district if they have nexus in that district. Nexus is established by having any kind of representative operating in the district for purposes of taking orders, making sales, delivery or installation, leasing tangible personal property within the district and selling vehicles that require registration. If the retailer has no nexus within the district and is therefore not required to collect the tax, the buyer is responsible for paying a corresponding use tax.

<u>SB566</u>

SB566 becomes effective January 1, 2004 and essentially makes it possible for cities to seek voter authorization to impose a tax without first obtaining special legislation from the State. The pertinent provisions of the Revenue and Taxation Code are:

- Section 7258.9 authorizes cities to impose a general purpose transactions tax and use tax in increments of 0.25% if the ordinance proposing the tax is approved by a two-thirds vote of the council and by a majority of the voters.

- Section 7285.91 authorizes cities to impose a special transactions and use tax in 0.25% increments for specific purposes if the ordinance proposing that tax is approved by a two-thirds vote of the city council and by two-thirds of the voters.

- Section 7251.1 provides that the combined city and county transactions and use tax districts in any county cannot exceed 2% (for a total sales, transactions and use tax rate of 9.25%). A table showing current rates in each county is attached.

The tax is authorized for citywide or countywide districts only. Proposals for districts with otherwise modified boundaries such as just part of a city, or a city plus a sphere of influence, still require special enabling legislation from the State Legislature.

PROCESS ISSUES

Cities and counties are required to contract with the State Board of Equalization for administration of the ordinance imposing the tax. There are two contracts. One is for setting up the tax, the second is for ongoing administration. Additionally, as the transactions and use tax is separate and distinct from the local sales and use tax, a separate *Resolution of Confidentiality* for access to the allocation data is required.

Cities contemplating a transactions and use tax should begin by contacting the State Board of Equalization's Local Revenue Allocation Section. A team has been established to assist cities with the preparatory functions for placing a proposal on the ballot including proper wording of the ordinance and subsequent contracts. The specific advisors are currently Cleveland Turner (916) 324-1386 and Debby Nelson (916) 324-1334. In addition, Board Publication 28, *Tax Information for City and County Officials* and Publication 44, *Tax Tips for District Taxes* contain related information and can be downloaded from www.boe.ca.gov.

Finally, California Constitution Article XIII C should be reviewed with the City Attorney to determine whether or not the specific tax proposal being contemplated falls under the requirements for consolidation with a regularly-scheduled general election for members of the governing body.

Combined Sales, Use and Transactions Tax Rates
As of October 1, 2003

(Maximum allowed under SB 566 is 9.25%)

County	Rate
Alameda	8.25%
Alpine	7.25%
Amador	7.25%
Butte	7.25%
Calaveras	7.25%
Colusa	7.25%
Contra Costa	8.25%
Del Norte	7.25%
El Dorado	7.25%
City of Placerville	7.50%
Fresno	7.875%
City of Clovis	8.175%
Glenn	7.25%
Humboldt	7.25%
Imperial	7.75%
City of Calexico	8.25%
Inyo	7.75%
Kern	7.25%
Kings	7.25%
Lake	7.25%
City of Clearlake	7.75%
Lassen	7.25%
Los Angeles	8.25%
City of Avalon	8.75%
Madera	7.75%
Marin	7.25%
Mariposa	7.75%
Mendocino	7.25%
City of Willits	7.75%
Merced	7.25%
Modoc	7.25%
Mono	7.25%
Monterey	7.25%
Napa	7.75%

County	Rate
Nevada	7.375%
Town of Truckee	7.875%
Orange	7.75%
Placer	7.25%
Plumas	7.25%
Riverside	7.75%
Sacramento	7.75%
San Benito	7.25%
San Bernardino	7.75%
San Diego	7.75%
San Francisco	8.50%
San Joaquin	7.75%
San Luis Obispo	7.25%
San Mateo	8.25%
Santa Barbara	7.75%
Santa Clara	8.25%
Santa Cruz	8.00%
Shasta	7.25%
Sierra	7.25%
Siskiyou	7.25%
Solano	7.375%
Sonoma	7.50%
City of Sebastopol	7.625%
Stanislaus	7.375%
Sutter	7.25%
Tehama	7.25%
Trinity	7.25%
Tulare	7.25%
Tuolumne	7.25%
Ventura	7.25%
Yolo	7.25%
City of West Sacramento	7.75%
City of Woodland	7.75%
Yuba	7.25%