



COUNTY OF DEL NORTE

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Memorandum

AGENDA DATE: July 28, 2020
TO: Del Norte County Board of Supervisors
FROM: Administration; County Counsel
SUBJECT: Transactions and Use Tax Ballot Measure Resolution

RECOMMENDATION FOR BOARD ACTION:

- 1.) Approve and Adopt the RESOLUTION OF THE DEL NORTE COUNTY BOARD OF SUPERVISORS SUBMITTING THE DEL NORTE COUNTY TRANSACTIONS AND USE TAX ORDINANCE TO BE PRESENTED TO, AND APPROVED BY THE ELECTORATE AT THE NOVEMBER 3, 2020 GENERAL ELECTION

SUMMARY:

Revenue and Taxation Code Section 7285 provides that a county may levy a transactions and use tax throughout the county, or within the unincorporated area of the county.

("Transactions" taxes are often referred to as "sales" taxes, see Revenue and Taxation Code §7253.) The California Constitution, Article XIII C, as well as Government Code Section 53724 and Revenue and Taxation Code Section 7285 all require the tax be approved by a majority vote of the electors in the affected area.

A resolution submitting an ordinance to the electors must state the type of tax and the rate

of the tax to be levied, the method of collection, the date upon which the election will be held, and, if a special tax, the purpose or services for which the imposition of the tax is sought.

(Government Code Section 53724.) The resolution states that the tax:

- Is a transactions and use tax;
- Will be levied at a rate of one percent;
- Applies only in the unincorporated area of the county;
- Will be collected by the State of California pursuant to contract, as required by law;
- Is a general tax which may be used for general government purposes;
- Will be submitted to the electorate at the November 3, 2020 general election.

The resolution must be approved by 2/3 vote of the legislative body before it may be presented to the voters. Because the Board is a five member body, the resolution must be approved by a 4/5 vote.

Attached to the resolution as Exhibit A is the text of the ordinance itself. This is a form ordinance created by the California Department of Tax and Fee Administration, the State agency responsible for collecting and distributing the tax. The ordinance contains statutorily mandated provisions from Revenue and Taxation Code Section 7261 *et seq.* The form ordinance was renumbered to be consistent with the formatting of the County Code. If approved by the voters, the ordinance will become Chapter 1 of Title 3 of the Del Norte County Code. In addition, a provision was added to require the Board of Supervisors to create, by resolution, a Citizens Oversight Committee, which must consist of 5 resident of the unincorporated county, as well as the CAO and Auditor, or their designees, as non-voting members.

ALTERNATIVE: Do not approve the resolution. No county tax will appear on the November ballot.

AGENCY(S) INVOLVEMENT: Administration, County Counsel.

SIGNATURE REQUIRED: Board Chair.

**COUNTY OF DEL NORTE
STATE OF CALIFORNIA
RESOLUTION NO. 2020-**

**RESOLUTION OF THE DEL NORTE COUNTY BOARD OF SUPERVISORS
SUBMITTING THE DEL NORTE COUNTY TRANSACTIONS AND USE TAX
ORDINANCE TO BE PRESENTED TO, AND APPROVED BY THE ELECTORATE AT
THE NOVEMBER 3, 2020 GENERAL ELECTION**

WHEREAS, Revenue and Taxation Code §7285 authorizes a county 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”; and

WHEREAS, a tax authorized by Revenue and Taxation Code §7285 must be approved by a majority vote of the qualified voters of the entire county if levied on the entire county or the unincorporated area of the county if levied on the unincorporated area of the county, voting in an election on the issue; and

WHEREAS, Article XIII C of the California Constitution and Government Code §53724 require that an ordinance proposing a general tax shall be submitted to the electorate of the local government and approved by a majority vote; and

WHEREAS, Elections Code §9140 provides that the board of supervisors may submit to the voters, without a petition, an ordinance for the repeal, amendment, or enactment of any ordinance; and

WHEREAS, Government Code §53724 provides that a tax may be submitted to the voters by a resolution of the Board of Supervisors approved by 2/3 of the board; and

WHEREAS, Revenue and Taxation Code Section 7270, the tax must be collected by the State pursuant to contract with the county;

NOW, THEREFORE, BE IT RESOLVED that, pursuant to Government Code §53724 and Elections Code §9140, the Board of Supervisors proposes to the electorate an ordinance to impose a 1% transactions and use tax within the unincorporated area of the county, which shall be a general tax which may be used for any general government purpose, which is attached as Exhibit A, to be placed on the ballot for the Statewide General Election scheduled for November 3, 2020.

BE IT FURTHER RESOLVED that the following measure be submitted to the voters, and that the Registrar of Voters be, and hereby is, instructed to place the measure on the ballot at said election in the following form:

“To support vital local services including: providing support for law enforcement for emergency response; repairing potholes and maintaining streets; preparing for and responding to natural disasters and health emergencies; maintaining emergency dispatch services for fire,

ambulance and law enforcement; maintaining jail and criminal justice services; addressing blight and public nuisances; and other general services and infrastructure; shall the measure be adopted imposing a one percent sales tax in the unincorporated area of the county, until ended by voters, providing \$1.2 million dollars annually, with citizen oversight and independent audits?

PASSED AND ADOPTED this 28th day of July, 2020.

AYES:

NOES:

ABSENT:

Gerry Hemmingsen, Chair
Board of Supervisors
Del Norte County, California

EXHIBIT A

MEASURE _____

**AN ORDINANCE OF THE COUNTY OF DEL NORTE
IMPOSING A TRANSACTIONS AND USE TAX TO BE
ADMINISTERED BY THE CALIFORNIA DEPARTMENT OF TAX AND FEE
ADMINISTRATION**

The People of the County of Del Norte ordain as follows:

Chapter 1 of Title 3 is added to the Del Norte County Code to read as follows:

3.01.01. TITLE. This ordinance shall be known as the Del Norte County Transactions and Use Tax Ordinance. The County of Del Norte, hereinafter shall be called "County." This ordinance shall be applicable in the unincorporated territory of the County.

3.01.02. OPERATIVE DATE. "Operative Date" means the first day of the first calendar quarter commencing more than 110 days after the adoption of this ordinance, the date of such adoption being the day the Elections official certifies that this ordinance has been approved by a majority of the voters.

3.01.03. PURPOSE. This ordinance is adopted to achieve the following, among other purposes, and directs that the provisions hereof be interpreted in order to accomplish those purposes:

A. To impose a retail transactions and use tax in accordance with the provisions of Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code and Section 7285 of Part 1.7 of Division 2 which authorizes the County to adopt this tax ordinance which shall be operative if a majority of the electors voting on the measure vote to approve the imposition of the tax at an election called for that purpose.

B. To adopt a retail transactions and use tax ordinance that incorporates provisions identical to those of the Sales and Use Tax Law of the State of California insofar as those provisions are not inconsistent with the requirements and limitations contained in Part 1.6 of Division 2 of the Revenue and Taxation Code.

C. To adopt a retail transactions and use tax ordinance that imposes a tax and provides a measure therefor that can be administered and collected by the California Department of Tax and Fee Administration in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the California Department of Tax and Fee Administration in administering and collecting the California State Sales and Use Taxes.

D. To adopt a retail transactions and use tax ordinance that can be administered in a manner that will be, to the greatest degree possible, consistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, minimize the cost of collecting the transactions and use taxes, and at the same time, minimize the burden of record keeping upon persons subject to taxation under the provisions of this ordinance.

3.01.04. CONTRACT WITH STATE. Prior to the operative date, the County shall contract with the California Department of Tax and Fee Administration to perform all functions incident to the administration and operation of this transactions and use tax ordinance; provided, that if the County shall not have contracted with the California Department of Tax and Fee Administration prior to the operative date, it shall nevertheless so contract and in such a case the operative date shall be the first day of the first calendar quarter following the execution of such a contract.

3.01.05. TRANSACTIONS TAX RATE. For the privilege of selling tangible personal property at retail, a tax is hereby imposed upon all retailers in the incorporated and unincorporated territory of the County at the rate of 1 % of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in said territory on and after the operative date of this ordinance.

3.01.06. PLACE OF SALE. For the purposes of this ordinance, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations to be prescribed and adopted by the California Department of Tax and Fee Administration.

3.03.07. USE TAX RATE. An excise tax is hereby imposed on the storage, use or other consumption in the County of tangible personal property purchased from any retailer on and after the operative date of this ordinance for storage, use or other consumption in said territory at the rate of 1% of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

3.03.08. ADOPTION OF PROVISIONS OF STATE LAW. Except as otherwise provided in this ordinance and except insofar as they are inconsistent with the provisions of Part 1.6 of Division 2 of the Revenue and Taxation Code, all of the provisions of Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code are hereby adopted and made a part of this ordinance as though fully set forth herein.

3.03.09. LIMITATIONS ON ADOPTION OF STATE LAW AND COLLECTION OF USE TAXES. In adopting the provisions of Part 1 of Division 2 of the Revenue and Taxation Code:

A. Wherever the State of California is named or referred to as the taxing agency, the name of this County shall be substituted therefor. However, the substitution shall not be made when:

1. The word "State" is used as a part of the title of the State Controller, State Treasurer, State Treasury, or the Constitution of the State of California;

2. The result of that substitution would require action to be taken by or against this County or any agency, officer, or employee thereof rather than by or against the California Department of Tax and Fee Administration, in performing the functions incident to the administration or operation of this Ordinance.

3. In those sections, including, but not necessarily limited to sections referring to the exterior boundaries of the State of California, where the result of the substitution would be to:

a. Provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the State under the provisions of Part 1 of Division 2 of the Revenue and Taxation Code, or;

b. Impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property which would not be subject to tax by the state under the said provision of that code.

4. In Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797 or 6828 of the Revenue and Taxation Code.

B. The word "County" shall be substituted for the word "State" in the phrase "retailer engaged in business in this State" in Section 6203 and in the definition of that phrase in Section 6203.

1. "A retailer engaged in business in the District" shall also include any retailer that, in the preceding calendar year or the current calendar year, has total combined sales of tangible personal property in this state or for delivery in the State by the retailer and all persons related to the retailer that exceeds five hundred thousand dollars (\$500,000). For purposes of this section, a person is related to another person if both persons are related to each other pursuant to Section 267(b) of Title 26 of the United States Code and the regulations thereunder.

3.03.10. PERMIT NOT REQUIRED. If a seller's permit has been issued to a retailer under Section 6067 of the Revenue and Taxation Code, an additional transactor's permit shall not be required by this ordinance.

3.03.11. EXEMPTIONS AND EXCLUSIONS.

A. There shall be excluded from the measure of the transactions tax and the use tax the amount of any sales tax or use tax imposed by the State of California or by any city, city and county, or county pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law or the amount of any state-administered transactions or use tax.

B. There are exempted from the computation of the amount of transactions tax the gross receipts from:

1. Sales of tangible personal property, other than fuel or petroleum products, to operators of aircraft to be used or consumed principally outside the County in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or

property under the authority of the laws of this State, the United States, or any foreign government.

2. Sales of property to be used outside the County which is shipped to a point outside the County, pursuant to the contract of sale, by delivery to such point by the retailer or his agent, or by delivery by the retailer to a carrier for shipment to a consignee at such point. For the purposes of this paragraph, delivery to a point outside the County shall be satisfied:

a. With respect to vehicles (other than commercial vehicles) subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, and undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code by registration to an out-of-County address and by a declaration under penalty of perjury, signed by the buyer, stating that such address is, in fact, his or her principal place of residence; and

b. With respect to commercial vehicles, by registration to a place of business out-of-County and declaration under penalty of perjury, signed by the buyer, that the vehicle will be operated from that address.

3. The sale of tangible personal property if the seller is obligated to furnish the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. A lease of tangible personal property which is a continuing sale of such property, for any period of time for which the lessor is obligated to lease the property for an amount fixed by the lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, the sale or lease of tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

C. There are exempted from the use tax imposed by this ordinance, the storage, use or other consumption in this County of tangible personal property:

1. The gross receipts from the sale of which have been subject to a transactions tax under any state-administered transactions and use tax ordinance.

2. Other than fuel or petroleum products purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of this State, the United States, or any foreign government. This exemption is in addition to the exemptions provided in Sections 6366 and 6366.1 of the Revenue and Taxation Code of the State of California.

3. If the purchaser is obligated to purchase the property for a fixed price pursuant to a contract entered into prior to the operative date of this ordinance.

4. If the possession of, or the exercise of any right or power over, the tangible personal property arises under a lease which is a continuing purchase of such property for any period of time for which the lessee is obligated to lease the property for an amount fixed by a lease prior to the operative date of this ordinance.

5. For the purposes of subparagraphs (3) and (4) of this section, storage, use, or other consumption, or possession of, or exercise of any right or power over, tangible personal property shall be deemed not to be obligated pursuant to a contract or lease for any period of time for which any party to the contract or lease has the unconditional right to terminate the contract or lease upon notice, whether or not such right is exercised.

6. Except as provided in subparagraph (7), a retailer engaged in business in the County shall not be required to collect use tax from the purchaser of tangible personal property, unless the retailer ships or delivers the property into the County or participates within the County in making the sale of the property, including, but not limited to, soliciting or receiving the order, either directly or indirectly, at a place of business of the retailer in the County or through any representative, agent, canvasser, solicitor, subsidiary, or person in the County under the authority of the retailer.

7. "A retailer engaged in business in the County" shall also include any retailer of any of the following: vehicles subject to registration pursuant to Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, aircraft licensed in compliance with Section 21411 of the Public Utilities Code, or undocumented vessels registered under Division 3.5 (commencing with Section 9840) of the Vehicle Code. That retailer shall be required to collect use tax from any purchaser who registers or licenses the vehicle, vessel, or aircraft at an address in the County.

D. Any person subject to use tax under this ordinance may credit against that tax any transactions tax or reimbursement for transactions tax paid to a County imposing, or retailer liable for a transactions tax pursuant to Part 1.6 of Division 2 of the Revenue and Taxation Code with respect to the sale to the person of the property the storage, use or other consumption of which is subject to the use tax.

3.0.12. AMENDMENTS. All amendments subsequent to the effective date of this ordinance to Part 1 of Division 2 of the Revenue and Taxation Code relating to sales and use taxes and which are not inconsistent with Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, and all amendments to Part 1.6 and Part 1.7 of Division 2 of the Revenue and Taxation Code, shall automatically become a part of this ordinance, provided however, that no such amendment shall operate so as to affect the rate of tax imposed by this ordinance.

3.03.13. ENJOINING COLLECTION FORBIDDEN. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against the State or the County, or against any officer of the State or the County, to prevent or enjoin the collection under this ordinance, or Part 1.6 of Division 2 of the Revenue and Taxation Code, of any tax or any amount of tax required to be collected.

3.03.14. SEVERABILITY. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provision to other persons or circumstances shall not be affected thereby.

3.03.15. EFFECTIVE DATE. This ordinance relates to the levying and collecting of the County transactions and use taxes and shall take effect immediately.

3.03.16 CITIZENS OVERSIGHT COMMITTEE. A seven-member oversight committee will be created by the Board of Supervisors by resolution. The Committee will meet at least annually to review and publically report on the expenditure of revenues generated by the tax imposed by this Ordinance. The committee will include the County Administrative Officer and Auditor, or their designees, as non-voting members, and five residents of the unincorporated area of the County. Resident members of the committee will be appointed to two-year terms by the Board of Supervisors.