May 18, 2020

Scott De Moss, County Administrative Officer
County of Glenn
525 W. Sycamore Street Suite B1
Willows, CA 95988

Scott:

In response to your request to have HdL Companies provide an estimate for a proposed countywide transaction and use tax (TUT), I have prepared the following report. Included with this report is the forecast for the first full year of collections and some background information on how it was developed along with information regarding the mechanics of such taxes.

Transaction and Use Taxes
As with other California taxes, a transaction and use tax district must obtain a majority vote if for general purposes and two-thirds vote if for specific purposes. However, a 1988 court decision found a Santa Clara County District tax that specified that the revenues 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)).

The combined district rate cannot exceed 2.0%. This limits the combined sales, transaction and use tax rate to 9.25%. A local agency may form more than one district but the total tax levy, including the rate of any countywide districts, must not exceed the 2.0% limit unless special legislation has been enacted to allow a higher limit. The pertinent provisions of the California Revenue and Taxation Code are: Sections 7251.1, 7285.9 – 7285.92, 7285 –7285.5. In County of Glenn, the existing base tax rate represent a total of 7.25%, with the City of Orland at 7.75%, so there is room for up to 1.5% in new transaction and use taxes.

How the Tax Is Distributed
Except for specific items sold to operators of common carrier aircraft, the transaction and use tax is imposed on the same goods and merchandise as the local sales and use tax (Bradley-Burns tax). However, where the Bradley-Burns Sales and Use Tax is generally allocated to the jurisdiction where the sale is negotiated or the order is taken, the transaction and use tax is allocated to the district where the goods are delivered or placed into use.

- For “walk-in” retail stores, the California Department of Tax and Fee Administration (CDTFA), formerly the State Board of Equalization (SBOE), presumes 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 transaction tax if there is one, only for the district where the conveyance is to be registered. Residents do not escape the tax by purchasing from a dealer outside the City as dealers statewide are required to collect any transaction tax for the jurisdiction where the vehicle is registered.
- For sales contracts that require shipment of the merchandise, the transaction tax is levied for the active district(s) at the ship-to address if the seller has nexus at that location. Nexus is explained a bit later.
For sales, other than those at “walk-in” stores, the transaction and use tax is imposed only on consumers located within the district. In projecting revenues, agencies who serve a regional market for vehicles or merchandise to be delivered elsewhere such as construction materials or industrial equipment and goods will find that their transaction and use tax is proportionally lower than their existing sales tax revenues. An agency whose residents and businesses must shop outside the agency for vehicles, business, and construction-related goods will find that their transaction and use tax receipts are proportionally higher than their Bradley Burns sales tax revenues.

County of Glenn can expect to receive transaction and use tax revenue from normal sales tax generating businesses like retail stores and restaurants in amounts that is half of what is collected from the Bradley Burns tax, assuming a 1/2% transaction and use tax levy. Both residents and visitors alike will pay the TUT on purchases that they consume or take possession of at a place of business within the city. In addition, any purchases shipped or delivered into the County from other places (business, medical and industrial supplies, construction materials, catalog and internet purchases, furniture, appliances, etc.) will generate additional transaction and use tax revenue.

Retailers are only required to collect a transaction tax for sales in a specific district if they have “nexus” in that district. Nexus is established by:

- Having a permanent or temporary business location within the district including a warehouse, salesperson or office.
- Having a representative in the district for purposes of taking orders, making sales, delivery or installation.
- Deriving rental income from the leasing of tangible personal property within the district or selling conveyances that require registration.

If the retailer has no nexus within the district and does not collect the tax, the buyer is responsible for paying a corresponding use tax. Agencies that have created a transaction tax district may want to consider requiring contractors and other businesses with potential ongoing use tax liabilities to submit proof that they have applied for a California Consumer Use Tax Account (BOE-400-CSU) as part of the agency’s licensing/permitting requirements.

On June 21, 2018, the Supreme Court ruled in a 5-4 decision (South Dakota vs. Wayfair, Inc.) to require out-of-state online retailers to collect sales taxes on sales to in-state residents. The Court overturned the “physical presence” rule, which limits states’ taxing powers under the U.S. Constitution’s Commerce Clause and concluded the obligation to collect sales taxes applies to an activity with a “substantial nexus” to the taxing state. AB 155, signed into law in 2011, required retailers to collect sales taxes if they had a “substantial nexus” to California. Considerable growth in countywide pool allocations has occurred over the past several years as many online out-of-state retailers have been remitting taxes under AB155 since 2012. AB 147 was recently signed into law as a result of the Supreme Court decision. Under the new law, online retailers who sell at least $500,000 annually are now required to collect and remit sales tax from the buyer and marketplace facilitators are now required to collect and remit sales tax on behalf of the third party vendors using their platforms.

**Implementation issues and Resources**

Cities and counties are required to contract with the CDTFA for administration of the ordinance imposing a transaction and use tax. The County has an existing contract with the CDTFA/BOE to administer the Bradley-Burns Tax. This agreement does not cover a new transaction and use tax for which two new contracts are required. One is for setting up the tax; the second is for ongoing administration. Additionally,
as the transaction 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.

Agencies contemplating a transaction and use tax should begin by contacting the CDTFA’s Local Revenue Allocation Section. A team has been established to assist agencies with the preparatory functions for placing a proposal on the ballot including proper wording of the ordinance and subsequent contracts. The specific advisor is Olivia Siu (916.322.2563).

California Constitution Article XIII C should be reviewed with agency legal counsel to determine whether the specific tax proposal being contemplated falls under the requirements for consolidation with a regularly scheduled general election for members of the governing body.

**Preparation of County of Glenn Transaction and Use Tax Estimate**

For purposes of this estimate, 2020-21 is the baseline year used for estimating the TUT. The estimate started with the forecast for the countywide 1% Bradley Burns sales tax that considers the recent impacts of the Covid-19 pandemic, then adjustments are made using the pool allocations to estimate additional taxes for deliveries/shipments into the County and additional vehicles registered within the County. A comparison was made to the per capital sales in Tehama County for each category.

You’ll note in the exhibit below that a one-half cent (1/2%) levy of a local transaction and use tax is estimated to generate about $1.9 million. Consistent with the CDTFA formulas, I projected administration fees at 1.5%. The estimate reflects a full fiscal year of transaction and use tax revenue.

**Summary**

If the County were to begin a serious discussion regarding a transaction and use tax, I recommend contacting the CDTFA for information regarding the preparatory steps required for a ballot measure.

The timeline listed below should help you better understand the implementation process for a new transaction tax measure and the anticipated fiscal impacts.

<table>
<thead>
<tr>
<th>Month tax measure on ballot</th>
<th>November 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date approved measure effective</td>
<td>April 1, 2021</td>
</tr>
<tr>
<td>Month of first advance from CDTFA</td>
<td>June 2021</td>
</tr>
<tr>
<td>Fiscal impact for annual budget</td>
<td>Approx. 1/4 year in FY 2020-21 first full year FY 2021-22</td>
</tr>
</tbody>
</table>

If the tax measure is successful in the future, the new tax would be implemented at the start of the next calendar quarter that is at least 110 days from the date the election occurs. Using my illustration, if the measure passes at the November 2020 election, the new tax would be effective on April 1, 2021.

It is likely that there will be a small number of vendors who are slow to comply with the need to collect and remit the transaction tax during the period immediately following its implementation. As a result, expect the first few quarters to reflect less than the full value of estimated tax until all vendors comply. H&L can provide services under a separate contract that ensure any outlet not collecting the tax is identified and contacted regarding their failure to report.

Please contact me with any questions you may have.

Respectfully,

**Susie Woodstock**

Susie Woodstock, Principal
## County of Glenn 1/2% Estimated Transaction and Use Tax

<table>
<thead>
<tr>
<th>Industry Group</th>
<th>Projection</th>
<th>Adjustment</th>
<th>1/2% TUT Estimate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Autos &amp; Transportation</td>
<td>208,141</td>
<td>90,000</td>
<td>298,141</td>
</tr>
<tr>
<td>Building &amp; Construction</td>
<td>168,098</td>
<td>25,000</td>
<td>193,098</td>
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<tr>
<td>Business &amp; Industry</td>
<td>352,454</td>
<td>35,000</td>
<td>387,454</td>
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<tr>
<td>Food &amp; Drugs</td>
<td>104,141</td>
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<tr>
<td>Fuel &amp; Service Stations</td>
<td>609,844</td>
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<td>609,844</td>
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<tr>
<td>General Consumer Goods</td>
<td>151,917</td>
<td>150,000</td>
<td>301,917</td>
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<tr>
<td>Restaurants &amp; Hotels</td>
<td>77,866</td>
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<td>77,866</td>
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<tr>
<td><strong>Tax Total</strong></td>
<td></td>
<td></td>
<td>1,972,462</td>
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<tr>
<td><strong>Less State Administration Cost</strong></td>
<td></td>
<td></td>
<td>(29,587)</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>1,943,900</td>
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